

## Asking the Court to Define Fair Settlements in Dell Appraisal

### [Motion to determine what Dell must offer](#) [Importance as model for investor reliance on appraisal process](#)

A motion was filed this morning in the Dell appraisal case to request the court's resolution of the questions we have been addressing about the terms of settlement Dell must offer to other claimants.<sup>1</sup>

#### **Motion to determine what Dell must offer**

Based on its interests and responsibilities as the petitioner that initiated the Dell appraisal proceeding to support Forum participants, Cavan Partners has made the following motion for the court to (a) define the specific terms of a settlement it approves between Dell and the T. Rowe Price petitioners, and then (b) enforce Dell's obligation to offer all other claimants the same terms of settlement:

- [October 14, 2016, In Re: Appraisal of Dell, Inc. \(Consol. C. A. No. 9322-VCL\): Motion of Petitioner Cavan to Clarify and Enforce Order Approving Settlement](#) (64 pages, 2.0 MB, in [PDF](#) format)

#### **Importance as model for investor reliance on appraisal process**

Beyond its relevance to Dell appraisal claimants who might be offered 88 cents per share to release their rights to appeal decisions in the case, the court's decision can be expected to establish a model for settlements in future appraisal cases. Cornish F. ("Con") Hitchcock of the [Hitchcock Law Firm PLLC](#), the expert on investor rights who collaborated in the preparation of the motion as special counsel to Cavan,<sup>2</sup> has offered the following observations for Forum participants' consideration:

*This case has presented the Delaware court with the task of deciding a number of issues, and the resolution of those issues will have a huge impact on how future appraisal cases are litigated. The motion being presented now asks the court to define fair processes for settlements, something that is especially important when some claimants depend on another claimant to manage their interests.*

*The particular dispute at issue now is a bit unusual in that the Court was asked to approve an agreement without notice to all parties, without a public hearing, and without being provided with the text of the agreement – and to do all this under considerable time pressure so that the money being*

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<sup>1</sup> See [September 28, 2016 Forum Report: Dell Decision to Rely Upon Court for Definition of Settlement Offer](#).

<sup>2</sup> See the "[Determining the interests of all claimants](#)" section of the [September 19, 2016 Forum Report: Rights to Payment for Waiving Appeal of Dell Appraisal Decisions](#).

*paid by Dell to the T. Rowe Price claimants could be booked and reported in three days' time. In approving the settlement, the Court noted the importance of giving notice of the settlement to active participants in the case and cited the need to protect the rights of non-settling claimants. Such notice was not provided, however, even though there are claimants other than T. Rowe Price who have the right to an appeal and who have not received the same 88 cents/share offer to waive an appeal. Cavan's motion thus seeks to clarify the rights of these claimants in this case and to clarify the procedures for future appraisal cases where partial settlements can affect the interests of other claimants.*

Your comments on these observations are invited, and I will of course welcome questions about the motion.

*GL – October 14, 2016*

Gary Lutin  
Chairman, The Shareholder Forum  
575 Madison Avenue, New York, New York 10022  
Tel: 212-605-0335  
Email: [gl@shareholderforum.com](mailto:gl@shareholderforum.com)