



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: APPRAISAL OF DELL INC.

Consol. C. A. No. 9322-VCL

POST-TRIAL OPENING BRIEF

GRANT & EISENHOFER P.A.

Stuart M. Grant (# 2526)

Michael J. Barry (# 4368)

Christine M. Mackintosh (# 5085)

123 Justison Street

Wilmington, DE 19801

(302) 622-7000

Counsel for Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
GLOSSARY	v
FORM OF CITATIONS TO THE RECORD.....	vii
PRELIMINARY STATEMENT	1
FACTUAL SUMMARY	3
ARGUMENT	13
I. PETITIONERS HAVE ESTABLISHED THAT THE FAIR VALUE OF DELL AS OF THE TRANSACTION DATE WAS \$28.61 PER SHARE ..	13
A. PROFESSOR CORNELL EMPLOYED THE APPROPRIATE INPUTS IN HIS DCF; PROFESSOR HUBBARD DID NOT	13
1. Professor Hubbard’s Adjustments To The BCG 25% Case Are Unwarranted.....	16
(a) Professor Hubbard Improperly “Updated” The BCG Base Case With The August 2013 IDC Forecast	16
(b) Professor Hubbard’s Adjustment To Dell’s Attachment Rates Is Unwarranted.....	19
2. Professor Cornell’s Use Of A BCG 50% Case Is Proper Given Dell’s Success In Taking Out Costs	20
3. Professor Cornell Appropriately Uses The Bank Case With Cost Savings In His DCF	23
4. Professor Hubbard’s Transition Period Is Unnecessary	25
5. Dell’s Historical Effective Tax Rate Should Be Used In The Terminal Period, Not The Federal Marginal Rate	26
6. Professor Cornell Properly Uses A 9.0% WACC	30
B. DELL HAS SUBSTANTIAL NET CASH THAT NEEDS TO BE ADDED TO THE DCF VALUE.....	32
1. Dell’s Working Capital Needs Were Already Accounted For In The Projections And Therefore No Working Capital Deduction Is Necessary	33
2. No Deduction Needs To Be Made From Dell’s Enterprise Value For Deferred Taxes.....	34

3.	No Deduction Needs To Be Made From Dell’s Cash Balance For Contingent Taxes Reserved For Under FIN 48.....	38
II.	THE MERGER PRICE DOES NOT ACCURATELY REFLECT DELL’S FAIR VALUE AS A GOING CONCERN	40
A.	STRUCTURAL HURDLES IN THE DELL MBO PROCESS PREVENT THE DEAL PRICE FROM ACCURATELY REFLECTING DELL’S FAIR VALUE AS A GOING CONCERN	43
1.	Information Asymmetries Exposed Competing Bidders To The Winner’s Curse	44
2.	Competing Bidders Seeking To Top MSD Were On A Ticking Clock.....	46
3.	A Competing Bidder Was Not Guaranteed To Have The Substantial Value That MSD Brings To The Table.....	48
4.	MSD Had Financial Incentives To Deter A Topping Bid	49
B.	AN MBO PROCESS IS NOT DESIGNED TO YIELD A PRICE REFLECTIVE OF FAIR VALUE.....	52
III.	AN ALTERNATIVE VALUATION	56
	CONCLUSION.....	62

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>In re AT&T Mobility Wireless Operations Holdings Appraisal Litig.</i> , 2013 WL 3865099 (Del. Ch. Jun. 24, 2013)	30
<i>Delaware Open MRI Radiology Assocs. P.A.</i> , 898 A.2d 290 (Del. Ch. 2006)	30
<i>Gearreald v. Just Care, Inc.</i> , 2012 WL 1569818 (Del. Ch. Apr. 30, 2012)	57
<i>Global GT LP v. Golden Telecom, Inc.</i> , 993 A.2d 497 (Del. Ch. 2010)	30, 57
<i>Golden Telecom, Inc. v. Global GT LP</i> , 11 A.3d 214 (Del. 2010)	41
<i>Huff Investment P’ship v. CKx, Inc.</i> , 2013 WL 5878807 (Del. Ch. Nov. 1, 2013)	41
<i>Merion Capital, L.P. v. 3M Cogent, Inc.</i> , 2013 WL 3793896 (Del. Ch. July 8, 2013)	41
<i>Merion Capital, LP v. BMC Software, Inc.</i> , 2015 WL 6164771 (Del. Ch. Oct. 21, 2015)	41
<i>Ng v. Heng Sang Realty Corp.</i> , 2004 WL 885590 (Del. Ch. Apr. 22, 2004), <i>aff’d</i> 867 A.2d 901 Del. 2005)	30, 36
<i>In re Orchard Enters., Inc.</i> , 2012 WL 2923305 (Del. Ch. July 18, 2012)	41, 57
<i>Owen v. Cannon</i> , 2015 WL 3819204 (Del. Ch. June 17, 2015)	14, 30
<i>Paskill Corp. v. Alcoma Corp.</i> , 747 A.2d 549 (Del. 2000)	36

STATUTES

8 *Del. C.* § 262(h).....61

GLOSSARY

Bain	Bain & Company
Bank Case	Set of projections of Dell prepared by Silver Lake in January 2013, as modified in August 2013 and as presented to investors in September 2013
Bank Case With Cost Savings	Bank Case with impact of \$1 billion in incremental cost savings as identified by Silver Lake
BCG	The Boston Consulting Group, Inc.
CAGR	Compound annual growth rate
Company	Dell Inc.
DCF	Discounted cash flow
Dell	Dell Inc.
EBITA	Earnings before interest, taxes, and amortization
EBITDA	Earnings before interest, taxes, depreciation and amortization
EUC	End-user computing
Evercore	Evercore Group LLC
ESS	Enterprise solution and services
FY	Fiscal Year
Gartner	Gartner, Inc.
HP	Hewlett-Packard Company
IDC	International Data Corporation

KKR	Kohlberg Kravis Roberts & Co. L.P.
LBO	Leveraged buyout
MBO	Management buyout
Merger Agreement	The Agreement and Plan of Merger by and among Denali Holding Inc., Denali Intermediate Inc., Denali Acquiror Inc., and Dell Inc., dated February 5, 2013 (as amended on August 2, 2013)
MoM	Multiple of invested capital
MSD	Michael Dell
PC	Personal computer
PGR	Perpetuity growth rate
PTO	Stipulated [Proposed] Joint Pre-Trial Order (Transaction ID 57892025)
ROIC	Return on invested capital
S&D	Support and deployment
Silver Lake	Silver Lake Management LLC
Southeastern	Southeastern Asset Management
Transaction	Transaction in which Michael Dell took Dell private with two funds affiliated with Silver Lake, as effected through the Merger Agreement
WACC	Weighted average cost of capital

FORM OF CITATIONS TO THE RECORD

Citations in the form “JX[●]:[●]” are to the corresponding Joint Exhibit and page number.

Citations in the form “TT[●](Surname)” are to the corresponding page numbers of the trial transcript and identify the witness providing the testimony.

Citations in the form “JX[●]:[●](Surname)” are to the deposition transcript of the named witness and identify the page(s) of the testimony being cited.

Citations in the form “COR¶[●]” are to the Revised Expert Report of Bradford Cornell (JX897A), with identification of the cited paragraph number(s).

Citations in the form “CRR¶[●]” are to the Revised Rebuttal Expert Report of Bradford Cornell (JX908A), with identification of the cited paragraph number(s).

Citations in the form “Cornell Demonstrative:[●]” are to the demonstrative slides used during Professor Cornell’s testimony and the cited page number.

Citations in the form “HOR¶[●]” are to the Revised Expert Report of Glenn Hubbard (JX896A), with identification of the cited paragraph number(s).

Citations in the form “HRR¶[●]” are to the Rebuttal Expert Report of Glenn Hubbard (JX907) and the Supplement To Rebuttal Expert Report Of Glenn Hubbard (JX907A), with identification of the cited paragraph number(s).

Citations in the form “Hubbard Demonstrative:[●]” are to the demonstrative slides used during Professor Hubbard’s testimony and the cited page number.

Citations in the form “SRR¶[●]” are to the Rebuttal Expert Report of Guhan Subramanian (JX909), with identification of the cited paragraphs number(s).

Citations in the form “Subramanian Demonstrative:[●]” are to the demonstrative slides used during Professor Subramanian’s testimony and the cited page number.

Citations in the form “PTO¶[●]” are to the Stipulated Joint Pretrial Order, with identification of the cited paragraph number(s).

PRELIMINARY STATEMENT

With some games, the only winning move is not to play. The Dell MBO was such a game. While Dell's Board failed to realize that, the private equity sponsors that represented MSD's only real competition understood this all too well. When the "smartest guys in the room" opted not to play the unwinnable Dell MBO game, the Board was faced with a dilemma: deliver a below-fair-value deal, or subject the Company's stockholders to greater harm. The Board chose the former.

By embarking on a process that allowed MSD to take the Company private in an MBO that was timed to take advantage of the \$14 billion Dell had spent to transform from a PC maker to an ESS provider, the Board assured that Dell would be sold for less than its fair value. The highest price that Silver Lake (or any other equity sponsor) would be willing to pay was based on a financial model that used leverage to extract a projected return. This kind of financial engineering effectively capped the price that *any* equity sponsor would be able to pay in an MBO *below* the Company's fair value.

Before MSD made his first offer for Dell, the Board was told that Dell was worth between \$20 and \$27 per share. The Board was also told (1) that an equity sponsor looking to make a standard 20% return within a standard five-year exit window would not be able to pay more than \$14.13 per share for Dell; (2) that if it

signed a deal with MSD, the chances of it being jumped were miniscule; and (3) that once it locked up a deal with MSD, it had to deliver or cause the stockholders greater harm. When MSD's initial \$13.75 offer came in, the stage was set for a game that could not be won. Nevertheless, the Board decided to play.

The private equity firms to whom Evercore "shopped" Dell knew better. Looking at the M&A chessboard, these sophisticated firms saw *two losing paths*: (1) spend thousands of man hours and tens of millions of dollars conducting due diligence, arranging financing, and putting in a bid, only to have MSD, with his superior knowledge and timing advantage, *top it*; or (2) spend thousands of man hours and tens of millions of dollars conducting due diligence, arranging financing, and putting in a bid, only to have MSD *not top it*, and realize that they just overpaid. Faced with this scenario, the private equity firms wisely decided not to play.

Delaware law provides a remedy for the losers of this unwinnable game in the form of appraisal rights. Petitioners are entitled to the fair value of Dell as of October 29, 2013, without regard to the artificial price limitations imposed through an MBO. Petitioners are entitled to an award of \$28.61 per share, plus interest.

FACTUAL SUMMARY

On October 29, 2013, MSD and Silver Lake took Dell private for \$13.75 per share.¹ The agreed-to sale price had nothing to do with what Dell was worth as a going concern but, rather, was set following a financial engineering exercise: Silver Lake figured out how much leverage it could put on the Company, how quickly it could pay down that debt, and how much Silver Lake could pay without jeopardizing its ability to meet the outsized returns it demanded on its investment.² In setting the price it was willing to offer, Silver Lake did not value Dell as a going concern³ and did not form any view on whether the market price of Dell's stock reflected the Company's fair value as a going concern.⁴ MSD, in turn, went "along for the ride" and agreed to invest his capital alongside Silver Lake at whatever price it was willing to pay.⁵ The Special Committee, for its part, did not seek to determine the value of Dell as a going concern in deciding to accept the

¹PTO¶1.

²JX894:13-14(Durban).

³PTO¶132;JX894:67-68(Durban);JX894:11-12(Durban)(in evaluating an investment Silver Lake is "***not concerned at all ...with the intrinsic value analysis of the business***")(emphasis added).

⁴JX894:68(Durban).

⁵TT465-467(Dell).

MSD/Silver Lake offer, deferring to the market price as the “best available indicator of the Company’s going concern value.”⁶

From the outset, Silver Lake targeted outsized returns – ranging from 29.2% up to 46.3% – over a 4.25 year period.⁷ After the Transaction closed, Bain showed MSD plans to triple or quadruple his money within five years;⁸ MSD had a “value growth ambition” to quadruple his money within five years.⁹ MSD and Silver Lake would achieve these massive returns not by changing the Company’s strategy¹⁰ but by capitalizing on a disconnect between Dell’s fair value and its market price that allowed them to buy the Company for much less than it was worth.

⁶JX532:60(“The Special Committee did not seek to determine a pre-merger going concern value for the Common Stock to determine the fairness of the merger consideration to the Company’s unaffiliated stockholders. The Special Committee believes that the trading price of the Common Stock at any given time represents the best available indicator of the Company’s going concern value at that time ...”).

⁷JX705:96(assuming 4.5x exit multiple).

⁸JX892:383-384(Dell).

⁹JX816:13.

¹⁰JX530:9(“The [merger] agreement does not change our long-term transformation strategy.”);JX894:51(Durban)(Silver Lake did not plan to make any changes after taking company private);JX915:97(Hubbard)(MSD and Silver Lake expected to make money via “financial engineering”; “They weren’t expecting, in other words, a much higher exit multiple, so-called operational engineering as much as they expected to profit from financial engineering.”).

At the time he proposed taking Dell private, MSD believed that the public market “significantly undervalued” Dell’s stock.¹¹ In fact, in the years leading up to the Transaction MSD managed the Company with an eye toward long-term value, knowing full well that the strategic decisions he made would inevitably drive the stock price down in the short term.¹² These decisions led to an ever-widening gap between Dell’s fair value and its market price. A January 2011 sum-of-the-parts analysis prepared by Dell management showed that the Company was worth \$22.49 per share (by line of business) or \$27.05 per share (by business segments) versus a \$14.05 trading price.¹³ Recognizing this disparity, MSD encouraged investors to view Dell as “a sum of the parts.”¹⁴

By July 2012, the disparity between the Company’s stock price and its fair value had grown. In a July 2012 Board presentation, CFO Brian Gladden explained that the Company’s cash flows implied a valuation in excess of \$30 per

¹¹TT457(Dell)(“Q: Now, prior to you deciding that you want to explore taking Dell public – private, you believed that Dell’s shares were significantly undervalued; correct?; A: Correct.”).

¹²TT463(Dell)(“Q: And so these strategic decisions that you made wound up having the effect of driving down the stock price, correct?; A: Yes.; Q: And you were willing to do that because you said, ‘Don’t worry. There’s long-term benefit to doing this.’ Right?; A: These were things that we always did.”); JX96:2(Company was “will sacrifice short term results”).

¹³JX45:1.

¹⁴JX46:1.

share¹⁵ (versus a \$12 trading price).¹⁶ Critically, the market price implied a 20% annual “perpetual decline in free cash flows”¹⁷ - performance *far worse* than MSD¹⁸ or the Board¹⁹ expected. Despite the \$25 billion “valuation discount” in the public market,²⁰ Dell planned to increase its enterprise value “by over 50% to almost ~\$70B” by FY 2016.²¹ Ignoring the \$25 billion “valuation discount,” MSD remained “committed to accelerating [the] transformation” by continuing to “sacrifice short term results.”²²

Once the long-term-driven decisions he had made led to the predictable result of driving the Company’s stock prices down to historic lows, MSD decided

¹⁵JX97:10

¹⁶JX923:6(\$12.13 stock price on July 12, 2012).

¹⁷JX97:12.

¹⁸JX892:465(Dell)(MSD did not expect Company to be “shrinking in perpetuity”).

¹⁹TT235(Mandl)(Special Committee did not consider negative perpetual growth realistic).

²⁰JX97:16(“Industry revenue multiples implies enterprise value of \$40B at the end of FY12 -- Valuation discount of ~\$25B...”).

²¹JX97:16.

²²JX96:2.

to take the Company private.²³ In short, MSD paved the path to an opportunistically timed buyout – a fact he admitted at trial.²⁴

After MSD approached the Board, the Special Committee was repeatedly advised that the disconnect between Dell’s fair value and its market price persisted. On October 18, 2012, Goldman Sachs told the Special Committee that Dell’s stock price and trading multiples lagged peers due to “a broad disconnect from valuation fundamentals,”²⁵ and that companies “at the center of industries undergoing major structural changes often suffer from depressed valuations that seem ‘disconnected’ from fundamentals” “for protracted periods.”²⁶ On December 6, 2012, BCG told the Special Committee that Dell’s “low valuation does not match apparent company strengths” and that “[a]t consensus profitability, [Dell] will generate its own market cap in free cash flow in 3.2 years ... with zero terminal value

²³TT453-454(Dell)(MSD put Company in play when the stock price was “certainly comparatively low to where it had been the previous five years”).

²⁴TT463(Dell)(“Q: When you’re doing a buyout, it’s easier to buy out a company if the stock price is lower, correct?; A: Yes.; Q: And so these strategic decisions that you made wound up having the effect of driving down the stock price, correct?; A: Yes.”).

²⁵JX170:4.

²⁶JX170:6.

implied.”²⁷ In other words, the Special Committee was told that Dell was trading as if it would have *no cash flows at all* after about 3 years.²⁸

The vast disconnect between Dell’s fair value and its market price virtually assured that Dell’s stockholders would be paid an inadequate price in an MBO. Any private equity firm seeking to do an MBO of Dell would be constrained in the amount it could offer by: (1) limits on the amount of leverage that could be put on the Company²⁹ and (2) required rates of return.³⁰ The realities of MBO pricing were so well-established and easy to predict that the Special Committee was *told* how it would end *before the first offer even came in*: a private equity firm

²⁷JX344:42.

²⁸JX877:111(Ning)(“Q: So the market-based projections would imply that the company will have no cash flows after 3.2 years, right?; A: Logically, yes.”); TT220(Mandl)(“Q: So in other words, a little over three years’ worth of cash flow is going to be generated and that will be all of what Dell is worth in the marketplace at the moment. Do you understand that?; A: I do understand that.”).

²⁹TT402(Hiltz)(banks limited in amount of leverage they can loan in an MBO). To put these limits into context, JPMorgan’s Drago Rajkovic admitted during his deposition that leverage constraints in the lending market would have made an MBO of Dell at \$19 or more *impossible*. JX874:106(Rajkovic)(“Q: In order to get a price of \$19 or higher, what kind of leverage would there have had to have been based on this analysis?; A: It would have to be leverage that would not be possible for the company.; Q: What do you mean by that?; A: It would have to be leverage that you could not get in the marketplace to get to \$19 per share.”).

³⁰JX226:22(equity sponsors typically have comparable “return hurdles”).

looking at a standard five-year exit with 20% IRR and 3.1x leverage³¹ would be unable to pay above \$14.13 per share.³² After Silver Lake made its initial offer for Dell (which, as predicted, was substantially below \$14.13),³³ JPMorgan told the Special Committee that it should not even bother to reach out to other parties to see if anyone would submit a better offer because they were “unlikely to see any material difference, given comparable LP make-up and return hurdles.”³⁴

Having paved the way for a low-priced buyout, MSD and Silver Lake submitted a “final” offer at \$13.65 on February 4, 2013.³⁵ This offer represented a multiple of less than 8 times Dell’s earnings – a level at which no other major company had *ever* gone private³⁶ – and was far below what the Special Committee

³¹Rajkovic admitted at trial that the major private equity firms typically offer substantially similar prices because of these realities. TT751(Rajkovic)(“Q: So among the big boys in private equity, and I know you don’t want to hear this, they basically have the same models, the same hurdle rates, the same returns and, in fact, often the same clients. Correct?; A: ... [T]hey come fairly close in most situations.”).

³²JX162:27.

³³PTO ¶131(preliminary proposal at \$11.22-\$12.16 per share);PTO ¶144(updated proposal at \$12.70 per share).

³⁴JX226:22.

³⁵PTO ¶174.

³⁶JX437:5(\$13.65 represented “less than 8 times earnings”; “[n]o major company has ever gone private at such a low valuation”);JX891:47(Dell)(MSD aware that “multiples of revenue for a company like ours would be at the lower end of all companies, whether they were public or private or going private”).

had been told Dell was worth as a going concern.³⁷ To render fairness opinions on this offer, the Special Committee’s financial advisors presented DCF analyses implying negative perpetuity growth rates³⁸ – an input that implied the “*perverse sort of outcome that the business is assumed to go down to basically zero over time.*”³⁹ This fact alone should have caused the Special Committee to realize that \$13.65 did not reflect Dell’s fair value, because the Special Committee did not actually think Dell was going to continue to shrink forever and go out of business.⁴⁰ Nevertheless, the Special Committee accepted this offer,⁴¹ subject to a 45 day go-shop.⁴²

Once the Special Committee accepted the \$13.65 offer, the sale of Dell at a price below its fair value was a *fait accompli* because: (1) the odds of a topping bid emerging during the go-shop were miniscule; and (2) the Special Committee knew that once it announced the \$13.65 deal it had to deliver or Dell’s

³⁷JX162:15(DCF valuing Dell at \$20-\$27per share).

³⁸JX300:25-26(EBITDA exit multiples JPMorgan used in fairness opinion presentation translated into negative perpetuity growth rates); TT410(Hiltz)(terminal multiples Evercore used in its DCF for its fairness opinions all implied negative perpetuity growth rates).

³⁹JX874:227(Rajkovic).

⁴⁰TT235(Mandl)(“Q: [Y]ou didn’t really think that, in perpetuity, that Dell was going to get smaller and smaller and smaller and go out of business, did you?; A: An unlikely scenario, no.”).

⁴¹PTO¶175.

⁴²PTO¶182.

stockholders would end up in a *worse* position than they would be in if they were cashed out at the below-fair-value \$13.65 price.⁴³

Because topping bids in the context of an MBO are exceedingly rare,⁴⁴ Evercore’s William Hiltz admitted that at the outset of the go-shop he “recognized that the mathematical chances of producing a higher bid [were] low based on the history of go-shops.”⁴⁵ The odds of a topping bid emerging during the Dell go-shop were even smaller than in a “typical” MBO.⁴⁶ MSD and his chosen partner, Silver Lake, had been working on a deal for nearly six months before the Special Committee started to look for a competing offer.⁴⁷ Faced with a tight 45 day window⁴⁸ in which to diligence a \$25 billion deal that had been in the works for months, a rational third-party bidder might see no path to success and simply decide not to start down the path in the first place, *even if* it thought Dell was

⁴³JX411:3(25 withdrawn take privates from 2005-2012 – 60-day average share price decline of 21%, 2-year average share price decline of 34%; 112 voted down transactions from 2005-2012 – average 1-year price decline of 27%, average 2-year price decline of 60%);JX867:172(Mandl)(“Q: Did this analysis that J.P. Morgan provided to the special committee create an incentive for the committee to hold onto Michael Dell’s offer, regardless of its price, out of fear of what could happen if it was withdrawn or voted down?; A: It was, of course, part of the consideration.”);TT234(Mandl)(same).

⁴⁴SRR¶¶58-73.

⁴⁵TT366(Hiltz).

⁴⁶SRR¶¶81-129.

⁴⁷PTO¶91(MSD and Silver Lake begin to discuss going private in August 2012); PTO¶183(go-shop begins on February 5, 2013).

⁴⁸PTO¶182.

worth much more than Silver Lake was willing to pay.⁴⁹ This reality was particularly acute here, because (1) MSD's status as a net buyer meant that a competing offer would *cost him money*, a fact that would have been readily apparent to competing bidders;⁵⁰ (2) even if a bidder were inclined to run the risk of alienating (or losing) MSD by making a higher bid that would cost him more money, the bidder would know that MSD and Silver Lake could just top the bid (*i.e.*, the bidder would have wasted time and money investigating a deal only to lose in the end);⁵¹ and (3) even if a bidder were willing to (a) run the risk of alienating (or losing) MSD by making an offer that would cost him more money *and* (b) overlook the fact that its bid could simply be topped, the bidder would know that if it won (*i.e.*, if MSD decided not to top it), it would almost certainly mean that the bidder had overpaid.⁵² Examining the MSD/Silver Lake MBO, Professor Subramanian pointedly noted, “*[I]f there was ever a situation in an MBO where you would say this deck is stacked or this train has left the station, this is pretty much as close as you can get to that.*”⁵³

⁴⁹TT811(Subramanian).

⁵⁰SRR¶¶107-108;Subramanian Demonstrative:9(\$1 increase in the deal price would cost MSD approximately \$250 million if debt and equity contributions increase proportionately and over \$1 billion if debt was held constant).

⁵¹SRR¶¶114-116.

⁵²SRR¶¶38-42&82;TT782-783(Subramanian).

⁵³TT895(Subramanian).

The buyout group’s opportunistic strategy worked. While MSD kept the *exact same strategy* for Dell as a private company as he had when it was public,⁵⁴ within six months he and Silver Lake had nearly *doubled* their money.⁵⁵

The evidence makes clear that Dell was worth \$28.61 as of the Transaction Date; the MBO price was only \$13.75.

ARGUMENT

I. PETITIONERS HAVE ESTABLISHED THAT THE FAIR VALUE OF DELL AS OF THE TRANSACTION DATE WAS \$28.61 PER SHARE

Both valuation experts agree that a DCF is the proper way to value Dell as a going concern.⁵⁶

A. PROFESSOR CORNELL EMPLOYED THE APPROPRIATE INPUTS IN HIS DCF; PROFESSOR HUBBARD DID NOT

Professor Cornell used the following inputs in his DCF: (1) the BCG 50% Case and the Bank Case Plus Cost Savings, weighted equally;⁵⁷ (2) Dell’s historical effective tax rate;⁵⁸ (3) a 9.0% WACC;⁵⁹ and (4) a 1% PGR.⁶⁰

⁵⁴TT463-464(Dell)(same strategy as a private company).

⁵⁵TT479-480(Dell)(Silver Lake May 2014 sum-of-the-parts analysis confirmed that MSD and Silver Lake had “basically had doubled [their] investment”);JX892:387-388(Dell)(*Bloomberg* report that value of equity stake had nearly doubled was “reasonably accurate”).

⁵⁶COR¶86;HOR¶133.

⁵⁷COR¶91.

⁵⁸COR¶105.

⁵⁹COR¶111.

Professor Hubbard used (1) his own revised, substantially lower version of the BCG 25% Case;⁶¹ (2) Dell’s historical effective tax rate in the projection period and in a Hubbard-created transition period;⁶² (3) a 35.8% tax rate in the terminal period;⁶³ (4) a 9.46% WACC;⁶⁴ and (5) a 2% PGR.⁶⁵

The following are not in dispute:

- Dell took out \$1.6 billion in costs in FY2014.⁶⁶
- As of the closing of the Transaction, Dell was on track to take an additional \$1.5 billion out in costs in FY2015,⁶⁷ which Dell appears to have succeeded in doing.⁶⁸
- The Bank Case is a reliable input in valuing Dell: it was prepared closest in time to the Transaction; it was prepared with assistance from Dell management; and it was used to secure financing for the Transaction.⁶⁹

⁶⁰COR¶100.

⁶¹HOR¶¶135, 189-202.

⁶²HOR¶221.

⁶³HOR¶¶222-223.

⁶⁴HOR¶257.

⁶⁵HOR¶217.

⁶⁶JX807:5.

⁶⁷JX807:19.

⁶⁸TT476-478(Dell)(Dell beat free cash flow projections in first post-closing year).

⁶⁹COR¶93;HOR¶177. The fact that the Bank Case was used to secure financing, standing alone, is reason to give the Bank Case “great weight.” *Owen v. Cannon*, 2015 WL 3819204, at *20 (Del. Ch. June 17, 2015)(“[B]ecause it is a federal felony ‘to knowingly obtain any funds from a financial institution by false or fraudulent pretenses or representations,’ projections that are provided to a financing source are typically given ‘great weight.’”)(quotation omitted).

The experts disagree on the following:

- Professor Hubbard makes a number of adjustments to the BCG 25% Case; Professor Cornell accepts it “as is.”
- Professor Cornell weights the BCG 25% Case and the BCG 75% Case equally (creating the mathematical equivalent of a BCG 50% Case) given Dell’s success in taking out costs.
- Professor Cornell uses the Bank Case (supplemented with \$1 billion in cost savings modeled by Silver Lake) in his DCF; Professor Hubbard uses the Bank Case (without cost savings) only for corroboration.⁷⁰
- Professor Hubbard adds a five-year transition period to his DCF.
- While Professors Cornell and Hubbard both use Dell’s historical effective tax rates in the projection period,⁷¹ Professor Hubbard uses a 35.8% tax rate in the terminal period.⁷²
- Professor Cornell uses a 9.0% WACC; Professor Hubbard uses a 9.46% WACC.

The evidence makes clear that Professor Cornell takes the correct position on each of these disputes.

⁷⁰CRR¶58.

⁷¹Professor Cornell uses 21%, the rate that the Special Committee’s financial advisors used in their DCFs; Professor Hubbard uses a 17.8% rate calculated by Professor Shay. COR¶105;HOR¶221.

⁷²HOR¶223.

1. Professor Hubbard's Adjustments To The BCG 25% Case Are Unwarranted

Professor Hubbard claims to have used the BCG 25% Case in his DCF.⁷³ In reality, Professor Hubbard made a number of unnecessary and improper adjustments to the BCG 25% Case that render his DCF unreliable.

(a) Professor Hubbard Improperly "Updated" The BCG Base Case With The August 2013 IDC Forecast

Professor Hubbard's attempt to "update" the BCG Cases to take into account August 2013 IDC projections was inappropriate. Because BCG had already modeled a 4% decline in PC revenue⁷⁴ in its Base Case, its forecasts were significantly below the IDC projections.⁷⁵ When the new IDC numbers emerged, BCG considered whether to update its forecasts⁷⁶ and *chose not to make any changes* because there was no evidence of market price declines beyond the Base

⁷³HOR ¶¶135-136.

⁷⁴TT517(Ning);JX512:5("The base case forecast revenue already had *market driven* price declines built in(~4% per year – the cost reduction is incremental").

⁷⁵TT522(Ning).

⁷⁶TT528(Ning)("Q: When that [August 2013] IDC forecast came out, what it confirmed was your projections were correct, that the market trailed off in the way that you thought it would. Correct?; A: Correct"; "Q: So you actually thought about whether you needed to update. Correct? Because this postdates your projections? A: That's correct.").

Case.⁷⁷ BCG’s projections, therefore, did not need to be “updated” to account for the macro developments in the PC industry reflected in the August 2013 IDC forecast.⁷⁸

Even if BCG had not already modeled a decline in the PC market of the type anticipated by the August 2013 IDC forecast, Professor Hubbard’s adjustment would *still* be improper. Professor Hubbard has *admitted* that he lacks the expertise to understand how macro-economic changes in the PC industry – like those projected in the August 2013 IDC forecasts – would affect Dell specifically.⁷⁹ In deciding to make changes that he admits were beyond his

⁷⁷TT527(Ning)(“Q: Well, one of the reasons is because you said that you haven’t seen evidence of market pricing decline beyond that in your base case assumption. Correct?; A: That’s correct.”);JX919:111-112(Nicol)(negative developments in PC market not considered to have impacted the validity of BCG’s model as of May 2013 because “frankly, we had anticipated this in our previous analysis and modeling” “so we didn’t see much of a shift to Dell’s operating income relative to the Base Case because we already incorporated that lower PC business – or PC decline”).

⁷⁸TT585(Nicol)(“Q: And BCG had already projected what wound up occurring. Correct?; A: Correct.; Q: And, therefore, there was no need to update BCG’s projections with new industry data. Correct? A: That is correct.”).

⁷⁹TT687-88(Hubbard). Hubbard’s lack of expertise to make this judgment matters tremendously: While the August 2013 IDC forecasts projected a decline in PC sales as compared to its 2012 forecasts, Dell’s shipments increased 8% during this time period. JX915:179-180(Hubbard). Professor Hubbard’s use of IDC forecasts as a proxy for Dell’s expected performance is improper.

expertise, Professor Hubbard did not ask *anyone* at BCG or Dell⁸⁰ if those changes were necessary or appropriate.⁸¹

Although Professor Hubbard would like the Court to believe that he did nothing more than “swap out” older BCG PC forecasts for the August 2013 IDC numbers,⁸² this claim is false. Lutao Ning, who created the BCG model,⁸³ testified that it was *not possible* to simply “pull out” BCG’s PC industry inputs and “plug in” the August 2013 IDC numbers.⁸⁴ Instead, BCG used its judgment,⁸⁵ gained over years of experience in the technology industry, in selecting PC inputs such that Professor Hubbard could not have engaged in a simple “plug-and-play” exercise, as he claims to have done.⁸⁶

⁸⁰Had Professor Hubbard reached out to anyone at Dell, he would have discovered that Dell was so distrustful of IDC’s forecasting ability that it considered developing a proprietary forecasting model to monitor expected changes in the PC industry. JX865:78-79(Gladden).

⁸¹TT689-90(Hubbard).

⁸²TT604-606(Hubbard);HOR¶192(“In order to reflect the market outlook as of the valuation date, I updated the August 2012 IDC forecast that BCG used in its model with the August 2013 IDC forecast, the most recent forecast as of the valuation date.”).

⁸³TT482(Ning)(Ning was “primarily responsible” for developing BCG model).

⁸⁴TT522-532(Ning).

⁸⁵TT523(Ning);TT491(Ning)(BCG’s market forecast was “pretty specific”).

⁸⁶TT523(Ning)(“Q: And you couldn’t just decide to pull out whatever IDC had in there and put in a new IDC and that would all of a sudden make your model work. Right?; A: No.; Q: So definitely not a plug-and-play job. Right?; A: Definitely not a plug-and-play job.”).

Further, Professor Hubbard made no attempt to “update” the BCG model to reflect changes in Dell’s *other* lines of business,⁸⁷ thereby overlooking the possibility that whatever “negative” impact the August 2013 IDC numbers might have had on Dell (a judgment that he was not equipped to make) might have been offset by positive developments in Dell’s other lines of business.⁸⁸

In short, Professor Hubbard’s “revisions” are improper, wholly unsupported by the record, and must be rejected.

(b) Professor Hubbard’s Adjustment To Dell’s Attachment Rates Is Unwarranted

Professor Hubbard’s improper “update” of the BCG model forced him to make yet another adjustment: lowering the attachment rates that were used to estimate S&D revenue as a function of the underlying hardware revenue in Hubbard’s revised BCG 25% Case.⁸⁹ Because the August 2013 IDC update was improper, the attachment rate update it necessitated is also improper.⁹⁰

⁸⁷TT692(Hubbard).

⁸⁸JX915:79-88(Hubbard).

⁸⁹HOR¶¶195-196.

⁹⁰While the attachment rates in BCG’s model came directly from Dell management (TT495(Ning)), Professor Hubbard made no effort to obtain updated attachment rates from Dell management. TT696(Hubbard).

2. Professor Cornell's Use Of A BCG 50% Case Is Proper Given Dell's Success In Taking Out Costs

Dell achieved \$1.6 billion in cost savings in FY14,⁹¹ surpassing what was needed to be “on track” for even the 75% Case.⁹² Dell was on track to achieve an additional \$1.5 billion in cost savings in FY15,⁹³ which it appears to have ultimately achieved.⁹⁴ Under these circumstances, use of a 50% Case was appropriate.

Unable to deny that Dell took enough costs out of the business to be “on track” to achieve even the BCG 75% Case as of the Transaction Date, Professor Hubbard erects a strawman by disputing whether the savings dropped to the bottom line.⁹⁵ This argument is baseless.

⁹¹PTO¶267;JX807:5.

⁹²JX307:12(Dell needed to achieve \$251M in cost savings by the end of FY14 to be on track for the BCG 75% Case).

⁹³JX807:19.

⁹⁴TT476-478(Dell)(in the year following the closing, Dell generated free cash flow that was well-above projections).

⁹⁵TT665&702(Hubbard).

First, under the BCG models the targeted cost savings were incremental to the Base Case forecast.⁹⁶ Professor Hubbard cannot just “ignore” aspects of BCG’s model that he disagrees with in deciding which Case to use.

Second, all cost savings – by definition – drop to the bottom line.⁹⁷ Every dollar that Dell saves *will*, absent action by management, *fall to the bottom line in the form of a dollar-for-dollar EBTIDA increase*. Professor Hubbard’s suggestion to the contrary is just wrong.

Third, Professor Hubbard falsely equates Dell’s *choice* to reinvest the dollars it saved in the hopes of earning a higher return⁹⁸ with an admission that the costs savings did not make Dell a more valuable Company.⁹⁹ Specifically,

⁹⁶TT703(Hubbard)(“Q: Now, in the BCG models, all cost savings were expected to increase cash flow. Correct?; A: In the 25 percent case and 75 percent case, yes, that’s true.”);TT531(Ning)(“Q: So when you did this model, you said, ‘These dollars are going to fall out and be free and, Dell, you could do whatever you want with them.’ Right? That’s what incremental means?; A: That’s correct.”).

⁹⁷TT704(Hubbard)(all cost savings drop to bottom line absent management action); TT344(Sweet)(same).

⁹⁸TT346-348(Sweet)(Dell chose to reinvest cost savings because it thought that was the best return for those dollars).

⁹⁹Tom Sweet flatly refuted any suggestion that Dell’s cost savings were necessary for Dell to “tread water,” as Professor Hubbard suggests. TT276(Sweet)(“Q: I’ve given you two polar opposites. One is value creating; one is to just sort of keep you where you are. ... What was your assessment at the time of where these things stood? ... A: I think at the time we thought investing back into the business, both in the form of pricing and in the form of increased R&D spend in our solutions, would ultimately be value creating.”);JX807:17(price cuts “yielded higher Dell share and newly acquired customers”);JX511:6-7(investing in price cuts improves long-term profitability and cash flow).

Professor Hubbard looks to the fact that Dell chose to let only \$200 million (about thirteen cents on the dollar) fall to the bottom line¹⁰⁰ as “proof” that the bulk of the cost savings disappeared, largely due to Dell’s decision to cut prices to gain share.¹⁰¹ Professor Hubbard’s claim that price cutting is a “use” of money Dell saved from the cost takeouts is demonstrably false, because he has *admitted* that Dell could have cut prices without *any* cost savings.¹⁰² Professor Hubbard confuses the *lowering of revenue* that would follow a decision to drop prices (*i.e.*, a revenue-side impact to the financial statements)¹⁰³ with a *disappearance of money saved via the cost take outs* (*i.e.*, an expense-side reduction in the financial statements).¹⁰⁴ Professor Hubbard erroneously conflates a business decision that

¹⁰⁰JX807:5.

¹⁰¹TT625-626(Hubbard).

¹⁰²TT706(Hubbard)(“Q: So the fact that you have cost savings is not something that, by definition, allows you to cut prices because you could cut prices anyway. Correct?; A: That’s absolutely true.”).

¹⁰³The Special Committee – which was fully aware of Dell’s strategy to trade margin for share (JX96:2) – did not find the BCG Cases’ revenue assumptions unrealistic. To the contrary, the Special Committee endorsed the BCG Cases by instructing its financial advisors to rely on them in rendering fairness opinions. TT757:12-15(Rajkovic).

¹⁰⁴During his deposition Professor Hubbard *admitted* that if Dell dropped prices as a result of having taken costs out of the business, “[i]nstead of just having that disappear, what I would see is a 25 percent reduction in the revenue from goods sold” and “a reduction of the cost of goods sold.” JX915:153-154(Hubbard).

had the effect of decreasing revenue¹⁰⁵ with the *disappearance* of the admittedly real cost savings.

Because the Hubbard-constructed “dropping to the bottom line” argument is wrong, Professor Cornell’s use of a BCG 50% Case is appropriate, a conclusion BCG agrees with.¹⁰⁶

3. Professor Cornell Appropriately Uses The Bank Case With Cost Savings In His DCF

Professors Cornell uses the Bank Case (supplemented by cost savings modeled by Silver Lake) for 50% of his DCF value, while Professor Hubbard uses the Bank Case (without cost savings) only for “corroboration” of his DCF.

While Professors Cornell and Hubbard agree that the Bank Case is reliable,¹⁰⁷ they part ways on (1) whether to include incremental cost savings in the Bank Case and (2) whether the Bank Case should be used in the DCF.

Professor Cornell appropriately included in his DCF \$1 billion in incremental cost savings that Silver Lake modeled.¹⁰⁸ While Professor Hubbard

¹⁰⁵BCG recognized that Dell’s decision to trade margin for share did not impact its earnings power. JX512:5(revenue miss “due to mix shift [*i.e.*, shifting to higher volume in lower margin products], not a fundamental shift in earnings power”).

¹⁰⁶TT531(Ning);TT578-80(Nicol). Moreover, Ning testified that it would have been reasonable to rely on the 50% Case ***based solely on Dell’s success in taking out \$1.6 billion in costs*** (*i.e.*, he did not need to know “what” Dell did with the money it had saved, only that it had saved it). JX877:269(Ning).

¹⁰⁷COR¶86;HOR¶133.

¹⁰⁸JX678:13.

claims these cost savings were unachievable,¹⁰⁹ Dell's CFO Tom Sweet specifically acknowledged, in response to questioning from the Court on this precise issue, that Dell considered these savings achievable.¹¹⁰ Professor Hubbard's subjective view on the achievability of these cost savings should be accorded no weight, particularly given his admission that he is not a technology expert.¹¹¹ Considering the amount of cost savings that Dell actually achieved at the time of the Transaction, Professor Cornell's decision to supplement the Bank Case with cost savings modeled by Silver Lake is appropriate.

Moreover, Professor Hubbard's concern that the Bank Case should not be used in a DCF because it was "done from the perspective of a private company"¹¹² is misplaced. Because the Transaction was not going to change Dell's fundamental business and operations,¹¹³ the fact that Silver Lake prepared the Bank Case for Dell as a private company is not a bar to its use as long as one can remove the costs that were related solely to being a private company and add back the costs that

¹⁰⁹HRR¶68.

¹¹⁰TT273-74(Sweet);JX807:17(price cuts "yielded higher Dell share and newly acquired customers");JX511:6-7(investing in price cuts improves long-term profitability and cash flow).

¹¹¹TT680(Hubbard).

¹¹²HOR¶280.

¹¹³JX530:9("The [merger] agreement does not change our long-term transformation strategy.").

would be incurred if Dell remained a public company. This is precisely what Professor Cornell did, making it appropriate to use the Bank Case in his DCF.¹¹⁴

4. Professor Hubbard's Transition Period Is Unnecessary

Professor Hubbard's insertion of a "transition period" to create a three-stage DCF¹¹⁵ is improper.¹¹⁶ While transition periods may be necessary to allow for normalized growth in the case of a rapid-growth company, Professor Hubbard acknowledged that Dell is a mature company with moderate growth prospects.¹¹⁷ Furthermore, Professor Hubbard did not use his transition period to normalize anything; his transition period *holds constant* the operating margins from the projection period.¹¹⁸ His "transition period" does nothing but project additional investment in order to support his chosen 2% PGR.¹¹⁹ But as Professor Cornell explained, the projected investments in the forecast period are more than sufficient to support a 1% PGR, even assuming the validity of Professor Hubbard's formula for determining required investments.¹²⁰

¹¹⁴TT37-38(Cornell);COR¶91 n.237;CRR¶¶55-59.

¹¹⁵HOR¶200-202.

¹¹⁶ Notably, *none* of the three highly-paid financial advisors who prepared DCFs of Dell used a transition period. TT698(Hubbard).

¹¹⁷HOR¶¶58-62.

¹¹⁸TT701(Hubbard).

¹¹⁹HOR¶211.

¹²⁰CRR¶¶23-28.

5. Dell's Historical Effective Tax Rate Should Be Used In The Terminal Period, Not The Federal Marginal Rate

Professors Cornell and Hubbard agree that Dell's historical effective tax rate should be used during the projection period.¹²¹ They disagree, however, on what tax rate should be used during the terminal period. Professor Cornell uses Dell's historical effective tax rate,¹²² while Professor Hubbard uses a 35.8% tax rate (the 35% federal marginal tax rate supplemented by an additional 0.8% for state taxes).¹²³ The use of the federal marginal rate in the terminal period undervalues Dell.

Professor Hubbard uses a 35.8% tax rate in the terminal period based on a flawed tax methodology created by Professor Shay. Professor Shay's methodology assumes that beginning in 2023 *all* of Dell's *global* profits will be *immediately and in perpetuity* taxed at the *U.S.* marginal rate (*i.e.*, Dell's earnings globally will be taxed at the highest U.S. marginal rate, regardless of where the profits are actually earned).¹²⁴ There is simply no basis to assume that Dell will begin to pay the full federal marginal rate on all of its worldwide income in real time beginning precisely in 2023.

¹²¹COR¶105;HOR¶221.

¹²²CRR¶34.

¹²³HOR¶¶222-223.

¹²⁴TT707-708(Hubbard)(use of 35.8% rate in terminal period assumes that Dell's global profits will be immediately taxed at U.S. marginal rate beginning in 2023);TT988-989(Shay).

First, the U.S. tax code since the advent of corporate taxation has permitted companies that earn income from overseas operations (like Dell) to defer payment of U.S. taxes on those earnings.¹²⁵ There is no reason to assume that the deferral system will come to a screeching halt beginning in 2023.

Second, Dell has *never* paid anywhere near the federal marginal rate on its worldwide earnings.¹²⁶ To the contrary, Dell's historical effective tax rates in the years leading up to the Transaction were substantially below the marginal rate,¹²⁷ and its historical cash tax rates (*i.e.*, the percent of its income that it actually paid out in cash)¹²⁸ were *even lower* than its effective tax rates.¹²⁹ Because Dell's ability to defer U.S. taxes was very valuable to the Company,¹³⁰ it spent millions of dollars on tax lawyers and accountants each year to ensure that it would continue to pay far less than the federal marginal rate.¹³¹ And Dell was so confident that it would continue to be able to beat the marginal rate that it instructed Houlihan

¹²⁵TT1027(Steines).

¹²⁶TT336-337(Sweet).

¹²⁷PTO ¶¶287-292(23% in 2008; 25.4% in 2009; 29.2% in 2010; 21.3% in 2011; 17.6% in 2012; 16.5% in 2013).

¹²⁸TT321(Sweet);JX921:58(Sweet).

¹²⁹PTO ¶¶294-298(20% in 2008; 24.1% in 2009; 21.4% in 2010; 13% in 2011; 9.6% in 2012).

¹³⁰JX921:96-97(Sweet).

¹³¹JX921:64-66(Sweet).

Lokey to assume a 17% tax rate in conducting post-closing valuations of Dell.¹³² Under these circumstances, assuming that Dell will immediately lose 35.8% of every dollar it earns around the world to taxes beginning in 2023 undervalues the Company.

Third, Professors Hubbard and Shay admitted¹³³ that they are unaware of *any evidence* to suggest that Dell will begin to pay the U.S. marginal rate on all of its global income beginning in 2023.

Fourth, neither Professor Hubbard nor Professor Shay has identified any support in the academic literature for the proposition that a 35% tax rate “must be” used in conducting a DCF of a multinational corporation that earns a substantial portion of its income overseas.¹³⁴ The fact that Professor Shay was forced to rely on *Ancestry.com* – which, as set forth in Petitioners’ Pretrial Brief, involved a

¹³²JX757.

¹³³TT709-710(Hubbard)(“Q: And you have no evidence that Dell will begin to pay the U.S. marginal rate on all its global income beginning in 2023. Correct?; A: I am not tendering that, no.; Q: Is that correct? You have no evidence?; A: Right.”); TT987-988(Shay)(“Q: You can’t point to any piece of evidence that says that beginning in 2023, that Dell will pay the U.S. federal marginal tax rate for all of its worldwide income in real-time each and every year beginning in that year; A: That is correct.”).

¹³⁴While Professor Hubbard does cite some academic literature suggesting that use of a 35% tax rate is appropriate in a DCF, none of the works he cites address the propriety of using a 35% tax rate in the context of a multinational corporation that earns a substantial portion of its incomes in overseas jurisdictions for which U.S. taxes are deferred and as to which the corporation has made an “indefinitely reinvested” election.

domestic corporation without significant overseas operations whose historical effective rate was the marginal rate – for this proposition belies the notion that there is any support at all in the academic literature for his selection of the marginal rate here.

Finally, the Special Committee instructed its advisors to use Dell’s historical effective tax rate in conducting DCF analyses of Dell;¹³⁵ parties conducting due diligence on Dell were told to assume that Dell would continue to pay far less than the marginal tax rate;¹³⁶ and Houlihan Lokey was told to use a 17% tax rate in performing post-closing valuation analyses.¹³⁷ Professor Hubbard is the *only person* who values Dell on the assumption that it will lose 35.8% of every dollar it earns worldwide to taxes beginning in 2023.

Because Professor Hubbard’s use of a 35.8% tax rate in the terminal period does not reflect Dell’s “operative reality” as of the Transaction Date, the Court

¹³⁵JX329;JX650;JX360;JX632.

¹³⁶TT323-324(Sweet);JX156;JX921:97-98(Sweet).

¹³⁷JX757.

should decline to use this unrealistic input in valuing Dell and should instead use its historical effective tax rate.¹³⁸

6. Professor Cornell Properly Uses A 9.0% WACC

Professor Cornell uses a 9.00% WACC; Professor Hubbard uses a 9.46% WACC.¹³⁹ The Professors use different equity risk premia: Professor Cornell uses a 5.50% *forward-looking* equity risk premium;¹⁴⁰ Professor Hubbard uses a 6.41% *historical and supply-side* equity risk premium.¹⁴¹

Research published over the past twenty years demonstrates that the average equity risk premium is significantly lower than the historical equity risk premium.¹⁴² Professor Cornell's selected 5.50% market equity risk premium is based on a current calculation of the implied equity risk premium based on current market returns, a thorough review of academic and practitioner literature

¹³⁸*In re AT&T Mobility Wireless Operations Holdings Appraisal Litig.*, 2013 WL 3865099, at *4 (Del. Ch. Jun. 24, 2013)(adopting effective tax rate as “[c]onsistent with the Companies’ operative reality”); *Global GT LP v. Golden Telecom, Inc.*, 993 A.2d 497, 513 (Del. Ch. 2010)(adopting 31% tax rate based on predictions of management and company’s historical tax rate), *aff’d* 11 A.3d 214 (Del. 2010); *Delaware Open MRI Radiology Assocs. P.A.*, 898 A.2d 290, 313 (Del. Ch. 2006)(adopting 29.4% tax rate); *Ng v. Heng Sang Realty Corp.*, 2004 WL 885590, at *6 (Del. Ch. Apr. 22, 2004) (adopting 11% tax rate), *aff’d* 867 A.2d 901 (Del. 2005); *Owen*, 2015 WL 3819204, at *25 (adopting 22.71% tax rate).

¹³⁹CRR¶80;HRR¶22.

¹⁴⁰TT40(Cornell).

¹⁴¹HRR Figure 5;HOR¶250.

¹⁴²COR¶110, n.269;CRR¶83, n.178;TT40-42(Cornell).

demonstrating that the equity risk premium is declining over time, and his experience, research, and writings.¹⁴³

Professor Hubbard *admits* that the finance community has questioned the accuracy of the historical equity risk premium.¹⁴⁴ While Professor Hubbard attempts to mitigate his reliance on this admittedly problematic input by combining it with supply-side equity risk premium, his 6.11% supply-side estimate exceeds other forward-looking estimates at the time of the Transaction.¹⁴⁵ Had Professor Hubbard used Professor Cornell's 5.50% equity risk premium, his WACC would have been 8.58% - only 0.08% higher than Dell's internal 8.5% WACC estimate.¹⁴⁶

¹⁴³TT40-41(Cornell);COR¶110, n.269 (citing John R. Graham and Campbell R. Harvey, "The Equity Risk Premium in 2014," Duke University Working Paper (http://papers.ssn.com/sol3/papers.cfm?abstract_id=2422008) (surveying 404 CFOs who reported an average equity risk premium of 3.11%));CRR¶83, n.180(citing Pablo Fernandez, "The Equity Premium in 150 Textbooks," Unpublished Working Paper, January 9, 2015(surveying 150 valuation and finance textbooks; average equity risk premium estimated by those authors who took current market values into account was 4.8%)).

¹⁴⁴HOR¶249;TT648(Hubbard)(acknowledging "vigorous" debate over risk premium).

¹⁴⁵CRR¶83, n.179.

¹⁴⁶CRR¶83;JX865:43(Gladden);JX718.

B. DELL HAS SUBSTANTIAL NET CASH THAT NEEDS TO BE ADDED TO THE DCF VALUE

Net cash needs to be added to (or subtracted from) the result of a DCF to determine Dell's equity value.¹⁴⁷ At the time of the Transaction, Dell had \$11.040 billion in cash¹⁴⁸ and \$5.054 billion in debt on its balance sheet.¹⁴⁹ After accounting for \$172 million in Transaction-related expenses,¹⁵⁰ this leaves net cash of \$6.158 billion.¹⁵¹ Professor Cornell adds the full amount of this net cash to Dell's enterprise value.¹⁵²

Professor Hubbard claims that three deductions must be made from Dell's net cash: (1) \$5 billion for working capital;¹⁵³ (2) \$2.24 billion for deferred taxes;¹⁵⁴ and (3) \$3 billion for contingent taxes reserved for under FIN 48.¹⁵⁵ Through these adjustments, Professor Hubbard transforms Dell's substantial net cash from an asset that must be added to its enterprise value into a \$3.81 billion

¹⁴⁷Cornell Demonstratives:40.

¹⁴⁸PTO¶317.

¹⁴⁹JX896A;TT45(Cornell)(adopting Professor Hubbard's net debt number).

¹⁵⁰PTO¶¶315-316, *infra* n.257.

¹⁵¹CRR¶66.

¹⁵²Cornell Demonstrative:39.

¹⁵³HOR¶262.

¹⁵⁴HOR¶271;HOR Exhibit 23.

¹⁵⁵HOR¶267.

liability, reducing Dell's enterprise value.¹⁵⁶ Each of these three deductions is improper.

1. Dell's Working Capital Needs Were Already Accounted For In The Projections And Therefore No Working Capital Deduction Is Necessary

Sweet makes clear that Professor Hubbard's \$5 billion¹⁵⁷ working capital deduction is wrong. Dell's working capital needs were baked into the Company's own cash flow projections¹⁵⁸ and those prepared by BCG and Silver Lake.¹⁵⁹ Those working capital needs at the time of the closing were between \$3.2 and \$3.4 billion¹⁶⁰ and were reduced to \$2.2 billion after the closing though a number of working capital initiatives that Dell could have implemented before the closing.¹⁶¹ In short, Dell needs far less for working capital than the \$5 billion Professor Hubbard deducts.

¹⁵⁶Professor Hubbard adds \$280 million in net operating loss carryforwards to Dell's enterprise value, leading to a net deduction of \$3.81 billion from the Company's enterprise value. Hubbard Demonstrative:14.

¹⁵⁷Professor Hubbard admits that his \$5 billion includes \$2 billion in restricted cash that was never working capital. TT712(Hubbard).

¹⁵⁸TT342(Sweet).

¹⁵⁹TT343(Sweet).

¹⁶⁰TT277(Sweet). Similarly, Silver Lake's LBO model assumed that Dell needed \$3 billion for working capital. TT337(Sweet);JX701:3.

¹⁶¹TT338(Sweet).

Moreover, Dell generated sufficient cash to fund its operations and was expected to continue to do so after the closing.¹⁶² At the time of the closing Dell had access to a \$2 billion line of credit that it could have used to address the business needs that required it to keep cash on hand (namely, the “seasonality of the cash and the geographical disbursements of cash”).¹⁶³ Under these circumstances, no deduction from Dell’s excess cash for working capital is necessary.

2. No Deduction Needs To Be Made From Dell’s Enterprise Value For Deferred Taxes

Professor Hubbard’s deduction of \$2.24 billion for deferred taxes attributable to Dell’s foreign earnings and profits is at odds with both the academic literature and the evidence. Professor Hubbard¹⁶⁴ admits that there is no support in the academic literature for deducting deferred taxes in converting enterprise value to equity value.¹⁶⁵

¹⁶²TT339-340(Sweet).

¹⁶³TT339(Sweet).

¹⁶⁴To the extent Professor Hubbard purports to rely on Professor Shay’s report in deducting deferred taxes, Professor Shay has admitted that he is not qualified to offer an opinion on whether deferred taxes need to be deducted in a DCF. TT964-965(Shay).

¹⁶⁵JX915:490(Hubbard)(“Q: Can you tell me which valuation texts support deducting deferred tax liabilities in arriving at a company’s equity value?; A: I’m not aware of any.”).

Even if there were, the evidence makes clear that a deduction for deferred taxes would be improper here. Dell earns a substantial portion of its income overseas in jurisdictions that impose taxes at rates far lower than the U.S. corporate tax rate.¹⁶⁶ Dell will not have to pay *any* U.S. taxes on the earnings and profits attributable to this offshore income *unless and until* it actually repatriates them.¹⁶⁷ Because Dell intends to indefinitely reinvest these earnings overseas, Dell *does not record liabilities for these deferred U.S. taxes on its balance sheet.*¹⁶⁸ Dell does, however, quantify the deferred U.S. tax it would owe *if* Dell were to repatriate those earnings and profits in footnote disclosures.¹⁶⁹ Professor Hubbard tries to turn these footnote disclosures into *actual liabilities* that must be deducted from Dell's excess cash.

The axiom underlying Professor Hubbard's deferred tax deduction is that Dell will repatriate foreign earnings and profits over a 25 year period beginning in 2023. Unfortunately for Dell, there are no facts to support this axiom and, in fact, the undisputed facts refute it: (1) Dell had *no plans* to repatriate its offshore

¹⁶⁶TT986(Shay);PTO ¶¶279-80;JX682:40(in FY2013, Dell earned more than 50% of its revenue overseas).

¹⁶⁷TT329(Sweet);TT969-970(Shay).

¹⁶⁸TT656(Hubbard);TT966(Shay).

¹⁶⁹TT917-918(Shay)(deferred U.S. taxes identified in footnote disclosing what taxes would be owed "were they distributed").

earnings and profits at the time of the Transaction;¹⁷⁰ (2) Dell had plenty of opportunities to continue to invest these earnings and profits overseas, which it planned to seize;¹⁷¹ and (3) Dell has never repatriated offshore earnings and profits at the full marginal rate.¹⁷² Given these facts, Professor Shay admitted that his assumption that Dell would have to pay deferred taxes in 25 equal installments beginning precisely in 2023 was not based on any evidence concerning Dell's actual business plans as of the date of the Transaction.¹⁷³ “In determining fair value, this Court cannot consider speculative tax liabilities.” *Heng Sang*, 2004 WL 885590, *6.¹⁷⁴

¹⁷⁰TT329-331(Sweet);TT766(Rajkovic)(JPMorgan told that Dell had no immediate plans to repatriate);TT974(Shay)(Professor Shay understood that Dell had no plans to repatriate offshore earnings and profits).

¹⁷¹TT331-332(Sweet)(at the time of the Transaction, Dell had substantial opportunities for growth overseas and was planning to increase its presence in the BRIC countries, the Asia Pacific region, and other emerging markets);JX161:20 (Dell planning to “[c]apitalize on the shift of geographic wealth to emerging countries”);JX534:2(“The Parent Parties currently expect that, following the merger, the Company will make significant investments to enhance its presence and ability to compete in emerging markets In addition, the Parent Parties expect that the Company will expand aggressively in other parts of Asia, Latin and South America, Central and Eastern Europe, the Middle East and Africa.”).

¹⁷²TT330(Sweet);TT979(Shay).

¹⁷³TT974-980(Shay).

¹⁷⁴*See also Paskill Corp. v. Alcoma Corp.*, 747 A.2d 549, 552 (Del. 2000)(Chancery Court “should have excluded any deduction for the speculative tax liabilities”).

Critically, Professor Shay's testimony makes clear that if his assumptions are wrong (and they are), his methodology would cause Professor Hubbard to undervalue Dell (and he does). Professor Shay admitted during trial that: (1) if one were able to defer repatriation long enough, the present value of the deduction for deferred taxes could be so small that it would not make sense to deduct it *at all*;¹⁷⁵ and (2) if Dell were able to defer U.S. taxes on any part of its global profits until sometime after 2023, his methodology would have caused Professor Hubbard to have underestimated Dell's cash flows and thereby understate the value of Dell.¹⁷⁶

While the foregoing is sufficient to make clear that Professor Hubbard's \$2.24 billion deduction is improper, the evidence suggests yet another reason to question its propriety: Dell's CFO Tom Sweet testified that deferred taxes are *included* in Dell's effective tax rate and that Dell's cash tax rate was typically a full 10% lower than the effective tax rate precisely because the effective tax rate

¹⁷⁵TT977-978(Shay).

¹⁷⁶TT989-990(Shay)("Q: And if Dell was able to defer U.S. taxes on any part of its global profits to sometime after 2023, then the assumptions that are made in [Professor Hubbard's DCF] model would underestimate Dell's cash flows. Correct?; A: That is correct. Q: And that would cause the value of Dell to be underestimated. Correct?; A: That is correct.; Q: And the longer that Dell is actually able to defer U.S. taxes on any part of its global profits, the more that your methodology would understate Dell's cash flows. Right?; A: That is correct.").

included Dell’s substantial deferred tax liabilities.¹⁷⁷ Accordingly, Dell’s deferred taxes are *already accounted for* by using Dell’s effective tax rate in a DCF.¹⁷⁸ By taking a deduction from Dell’s cash at closing for these already-accounted-for liabilities, Professor Hubbard has double counted.

3. No Deduction Needs To Be Made From Dell’s Cash Balance For Contingent Taxes Reserved For Under FIN 48

Professor Hubbard’s deduction of \$3 billion for contingent taxes reserved for under FIN 48 is improper.¹⁷⁹ No valuation textbook or other authoritative source supports deducting “contingent tax liabilities” that *may never be paid* from

¹⁷⁷TT336(Sweet)(“Q: Mr. Sweet, deferred tax liabilities are included in Dell’s effective tax rates. Correct?; A: That is correct.; Q: And that’s the major reason why Dell’s effective tax rate is higher than its cash tax rate. Correct?; A: That’s correct.”).

¹⁷⁸TT336(Sweet)(“Q: And so if one would use the effective tax rate as part of the discounting in the cash flow analysis, that would take into account deferred taxes. Correct? A: Yes, it would for what’s been provided. Yes.”).

¹⁷⁹To the extent Professor Hubbard purports to rely on Professor Shay for his FIN 48 deduction, such reliance is completely misplaced. Professor Shay admits that he did not analyze the composition of Dell’s FIN 48 reserves, the likelihood of Dell losing an audit with respect to any of the positions underlying the \$3 billion reserve, or the time at which Dell might be called upon to pay anything out from the reserve. TT949-951(Shay). Professor Shay further admitted that he is not qualified to offer an opinion on whether Dell’s FIN 48 reserve needs to be deducted from the value of Dell. TT947(Shay). In short, Professor Shay offers no “tax opinion” on FIN 48 – a fact that is underscored by Professor Steines’s testimony that he “didn’t see anything in Professor Shay’s report [concerning FIN 48] that [he] as a tax lawyer could respond to.” TT1029-1030(Steines).

the value derived via a DCF.¹⁸⁰ For this reason, it is not surprising that no one conducting a DCF of Dell *ever* deducted FIN 48 reserves.¹⁸¹

Even if there were support for such a deduction, the evidence makes clear that deducting \$3 billion for FIN 48 would vastly undervalue Dell, for at least three reasons. First, Dell expects to pay only a small fraction of its \$3 billion FIN 48 reserve. In an October 2013 solvency certification Dell's CFO pegged the total amount of *tax and legal* liabilities that Dell expected to pay over the 5 year projection period at \$800-\$850 million,¹⁸² \$650 million of which was what Dell expected to pay to settle \$2.35 billion of the \$3 billion FIN 48 reserve.¹⁸³ Under these circumstances, the most that could be deducted for these contingent taxes is \$1.3 billion (the \$650 million Dell expected to pay to resolve \$2.35 billion of the FIN 48 reserve plus the remaining \$650 million of the total \$3 billion FIN 48 reserve).

Second, Tom Sweet admitted that Dell did not present value its FIN 48 reserve.¹⁸⁴ Because many years could elapse between the time when a FIN 48 reserve was first put on for an issue and the time any amount might actually be

¹⁸⁰TT721-722(Hubbard).

¹⁸¹TT317-318(Sweet);TT328(Sweet);TT722(Hubbard);TT765(Rajkovic).

¹⁸²JX725:2.

¹⁸³JX725:11; JX169:11(tax liability ~\$.6B or less, compared to ~\$2.5B reserved).

¹⁸⁴TT307-308(Sweet).

paid out from that reserve,¹⁸⁵ the difference between the “face value” of the \$3 billion FIN 48 reserve and a “discounted-to-present-value value” of the \$3 billion FIN 48 reserve is likely to be substantial.¹⁸⁶

Finally, because changes in the amount of the FIN 48 reserve were captured in the effective tax rate¹⁸⁷ that Professor Cornell uses in his DCF, separately deducting the *entire* FIN 48 reserve from Dell’s enterprise value as Professor Hubbard proposes would undervalue the Company.

II. THE MERGER PRICE DOES NOT ACCURATELY REFLECT DELL’S FAIR VALUE AS A GOING CONCERN

In conducting an appraisal, the Court cannot simply defer to the market price in a sale transaction:

In an appraisal proceeding, the Court of Chancery ‘shall determine the fair value of the shares ... together with interest, if any, to be paid upon the amount determined to be the fair value.’ Section 262(h) neither dictates nor even contemplates that the Court of Chancery should consider the transactional market price of the underlying company. ...

* * *

Requiring the Court of Chancery to defer – conclusively or presumptively – to the merger price, even in the face of a pristine, unchallenged transactional process, would contravene the unambiguous language of the statute and the reasoned holdings of

¹⁸⁵TT307-308(Sweet).

¹⁸⁶As of the Transaction, Dell had open tax issues dating back to **1999**, underscoring this point. TT317(Sweet).

¹⁸⁷TT949(Shay).

our precedent. It would inappropriately shift the responsibility to determine 'fair value' from the court to the private parties.

Golden Telecom, Inc. v. Global GT LP, 11 A.3d 214, 217 (Del. 2010) (emphasis added). Delaware law simply does not contemplate complete deference to the deal price.¹⁸⁸

Petitioners acknowledge that the Chancery Court in several instances has concluded that the merger price was indicative of fair value where “the sales process [was] thorough, effective, and free from any spectre of self-interest or disloyalty.” *BMC*, 2015 WL 6164771, at *14. None of the cases in which the Court has deferred to the merger price, however, involved allegations that (1) impediments in the deal process deterred topping bids and (2) MBO ability-to-pay realities prevented the deal price from serving as a valid tool of price discovery, like those detailed below.

In exercising its statutory mandate to determine the fair value of Dell as a going concern, the Court should not be deterred from awarding Petitioners the fair value of Dell simply because of the gap between that value and the deal price. The

¹⁸⁸Following *Golden Telecom*, certain Chancery Court decisions have declined to give any weight at all to merger price (*see, e.g., Merion Capital, L.P. v. 3M Cogent, Inc.*, 2013 WL 3793896, *4 (Del. Ch. July 8, 2013); *In re Orchard Enters., Inc.*, 2012 WL 2923305, *5 (Del. Ch. July 18, 2012)), while others have interpreted *Golden Telecom* to allow consideration of (but not deference to) the merger price. *See, e.g., Merion Capital, LP v. BMC Software, Inc.*, 2015 WL 6164771 (Del. Ch. Oct. 21, 2015); *Huff Investment P'ship v. CKx, Inc.*, 2013 WL 5878807 (Del. Ch. Nov. 1, 2013).

record makes clear that in the years preceding the Transaction there was a well-known, significant valuation disconnect between Dell’s publicly traded stock price and the Company’s fair value.¹⁸⁹ The parties who were involved in setting and agreeing to the deal price have admitted that they made *no effort to calculate the fair value of Dell as a going concern*.¹⁹⁰ Under these circumstances, deference to the deal price is not factually warranted.

Given the size of the gap between the deal price and the fair value, the Court has questioned why, “given the degree of the process that went on here ... that degree of valuation gap would not have been sussed out?”¹⁹¹ Accordingly, the Court noted that the “challenge for the petitioner is to explain why ... the sale process answer isn’t the right answer in this circumstance, and then, secondarily, to explain why the sale process answer isn’t the right answer at least for the purposes of rebutting a 2X multiple.”¹⁹² There are compelling answers to both questions.

First, the process does not provide the answer, because structural hurdles created an unwinnable game that rationally deterred putative competitive bidders from submitting topping bids no matter how much the valuation gap. As detailed in Professor Subramanian’s Rebuttal Report and trial testimony, the unlevel

¹⁸⁹*Supra*, pp.5-8.

¹⁹⁰*Supra*, pp.3-4.

¹⁹¹TT1040-1041(Court).

¹⁹²TT1046(Court).

playing field here created a dynamic in which third-party bidders could not see a path to success and thus recognized that the only winning move was not to play. The Dell MBO sales process, therefore, is simply not a valid tool for price discovery.

Second, the sales process does not rebut a 2x multiple, because there is a fundamental difference between *the price that can be paid in the context of an MBO* and the *fair value of a Company as a going concern*. As explained below, an MBO model is indifferent to the fair value of a company; it simply shows what a sponsor *can afford to pay* while still hitting an acceptable return. For this reason, the fact that a DCF valuation of Dell shows that the Company was worth *far more as a going concern* than an MBO model shows a *sponsor could afford to pay* does not mean that sophisticated private equity firms left billions of dollars on the table. The maximum price that can be paid in an MBO is simply not coextensive with the fair value of a company as a going concern.

A. STRUCTURAL HURDLES IN THE DELL MBO PROCESS PREVENT THE DEAL PRICE FROM ACCURATELY REFLECTING DELL'S FAIR VALUE AS A GOING CONCERN

As set forth at length in Professor Subramanian's Rebuttal Report, four structural hurdles inherent in an MBO prevent a post-signing market check from ensuring that a negotiated purchase price reflects the fair value of a company –

namely, informational asymmetries,¹⁹³ the ticking clock problem,¹⁹⁴ valuable management,¹⁹⁵ and financial incentives to deter a topping bid.¹⁹⁶ In the case of the Dell MBO, these factors coalesced to create a decidedly unlevel playing field that served as a substantial impediment to a topping bid. Professor Subramanian – who has devoted substantial time in his academic career to analyzing the utility of go-shops¹⁹⁷ – noted during trial that “*if there was ever a situation in an MBO where you would say this deck is stacked or this train has left the station, this is pretty much as close as you can get to that.*”¹⁹⁸ These substantial structural impediments explain why a third party rationally would be deterred from entering the Dell MBO fray, *even if* it thought substantial value was being left on the table.

1. Information Asymmetries Exposed Competing Bidders To The Winner’s Curse

Information asymmetries are a powerful deterrent to a topping bid in the context of an MBO.¹⁹⁹ This problem was particularly acute here because “it seems pretty straightforward that Michael Dell would know more about Dell ... than would a third-party bidder and equally important, he would know more about the

¹⁹³SRR¶¶82-88.

¹⁹⁴SRR¶¶89-99.

¹⁹⁵SRR¶¶100-104.

¹⁹⁶SRR¶¶105-112.

¹⁹⁷TT771-778(Subramanian).

¹⁹⁸TT895(Subramanian).

¹⁹⁹SRR¶¶82-88.

interaction between [Dell] and the computer industry than a third-party bidder. And even if he didn't, certainly third parties would assume that he does."²⁰⁰

The problem of asymmetric information gives rise to the so-called "Winner's Curse."²⁰¹ As Professor Subramanian explained:

Management knows more about the company than any third party. As a third party, the implication is if you bid and you win, you've just learned that you think this company is worth more than management. Now, maybe you're really smart. Maybe you have some source of synergy or something else that makes you smarter than management; but absent that kind of edge, ... you'd have to say to yourself 'I've almost certainly overpaid because the inside bidder, they looked at my offer and they decided not to match it. So either I'm very smart, smarter than the inside people,' which [is] unlikely to be the case, 'or I've just overpaid.'²⁰²

Equity sponsors – the most likely bidders for Dell²⁰³ – would be "much more concerned about a winner's curse" than a strategic buyer because "they're all running the same models."²⁰⁴

Compounding the "information asymmetries" problem in the Dell MBO, competing bidders were given different access to information: (1) Silver Lake

²⁰⁰TT785(Subramanian).

²⁰¹TT783(Subramanian).

²⁰²TT782(Subramanian).

²⁰³TT367-368(Hiltz)(unlikely that any strategic other than HP would want to buy Dell);JX162:29("transaction size likely a deterrent" to sale to a strategic).

²⁰⁴TT783(Subramanian).

obtained access to an electronic data room in September 2012²⁰⁵ and had access to that data room for nearly five months before the Special Committee signed the original deal;²⁰⁶ (2) Southeastern was barred completely from the sales process;²⁰⁷ (3) “[p]otential strategic purchasers did not have access to all of the documents to which financial sponsors had access;”²⁰⁸ and (4) even Blackstone, which signed a confidentiality agreement and became an “excluded party,” had to fight to get access to the documents that were voluntarily provided to Silver Lake.²⁰⁹

The information asymmetry also gives rise to the problem of opportunistic timing: Company management can use its inside knowledge to “time the MBO opportunistically and make an offer at a time when the disconnect between the intrinsic value and the market price is at its greatest.”²¹⁰ That is precisely what happened here.²¹¹

2. Competing Bidders Seeking To Top MSD Were On A Ticking Clock

Dell’s post-signing go-shop ran for 45 days. The ticking clock problem, which exists in any post-signing go-shop, was especially problematic here because

²⁰⁵PTO¶119.

²⁰⁶PTO¶176.

²⁰⁷JX892:471-472(Dell).

²⁰⁸PTO¶187.

²⁰⁹TT377-378(Hiltz);TT405(Hiltz).

²¹⁰TT779(Subramanian).

²¹¹ *Supra*, pp.5-7

of the sheer size of the Dell deal. As Professor Subramanian explained, “Larger deals generally have more of a ticking clock problem. That’s, first, for an obvious reason, that larger deals need more due diligence, but also that larger deals are more likely to have a possibility or maybe need for a consortium bidder, and that consortium takes time to line up and that exacerbates the ticking clock problem.”²¹²

The existence of a ticking clock problem in the case of Dell cannot seriously be disputed. The Dell MBO was *twenty five times larger* than any of the deals in Professor Subramanian’s sample of “jumped” deals.²¹³ And Dell’s suggestion that getting to “excluded party” status was such an easy endeavor that 45 days was more than adequate is belied by the fact that Blackstone – one of the strongest private equity sponsors in the world²¹⁴ – needed to devote such Herculean efforts to due diligence that its team filled a ballroom, needed to be microphoned to be heard,²¹⁵ and expended in excess of \$25 million.²¹⁶ That sufficient diligence “could” be done – at great expense by one of the few firms equipped to do it – does not change the fact that a third-party bidder standing at the starting line might have

²¹²TT780(Subramanian); SRR¶¶89-99.

²¹³SRR¶89.

²¹⁴TT179(Mandl)(“Blackstone is obviously one of the premier PE firms in the world”);TT399-400(Hiltz)(“Q: You would agree that Blackstone is one of the biggest, most powerful private equity firms in the country? In the world, actually. Right?; A: Yes.”).

²¹⁵TT446-447(Dell).

²¹⁶PTO¶196.

considered the path to success so treacherous and uncertain that it would wisely decide not to even start down it. As Professor Subramanian noted:

[I]n this chess game of M&A, most of these parties being very sophisticated, don't just think incrementally one step ahead. They're thinking two, three, four, five moves ahead. Any third party looking at this would say, 'What is my pathway to success?' So even if you value this thing at a very high number, you might reasonably say there's no pathway to success and, therefore, I'm not going to start on this process because there's no finish line.²¹⁷

The ticking clock created a powerful disincentive for competing bidders to enter the ring.

3. A Competing Bidder Was Not Guaranteed To Have The Substantial Value That MSD Brings To The Table

Valuable management is perhaps the most significant hurdle that can face a potential suitor when considering a bid against an MBO.²¹⁸ If management is perceived to be valuable, a potential alternative suitor would have a disincentive to overbid valuable management lest they (1) leave the company (thus removing their perceived value) or (2) wind up as a disgruntled employee and unsatisfied participant in a post-closing entity.²¹⁹

²¹⁷TT811(Subramanian).

²¹⁸TT778(Subramanian).

²¹⁹SRR ¶¶100-104.

The value added by MSD as the founder and long-time CEO of Dell cannot seriously be disputed.²²⁰ And while both Alex Mandl²²¹ and MSD²²² asserted that MSD’s “commitment” to work with other potential bidders mitigated this factor, the facts belie such self-serving testimony: MSD agreed only “to explore in good faith the *possibility* of working” with other parties and retained “*discretion*” to refuse to work with anyone but Silver Lake.²²³ Third parties considering a bid undoubtedly were aware that MSD could refuse to sever ties with Silver Lake, giving them yet another reason to decline to get involved.

4. MSD Had Financial Incentives To Deter A Topping Bid

As a net buyer in the Transaction,²²⁴ MSD had powerful financial incentives to discourage a topping bid. As Professor Subramanian explained, “[T]his creates the concern for a third party to say that ‘If I made an overbid, I am not going to be pleasing Michael Dell.’ I mean, to put it bluntly, it’s going to cost him money.

²²⁰JX894:44-45(Durban)(MSD is “an iconic figure in the technology industry”);TT790(Subramanian)(MSD is an “iconic CEO” who is “truly a visionary and a leader in the computer industry” who “brings enormous value to the table”).

²²¹TT144(Mandl).

²²²TT432-433(Dell).

²²³JX945:2.

²²⁴TT456-457(Dell).

And ‘So either I partner with him and I’m costing him money or I don’t have him in the mix, in which case I lose the value that he brings to the table.’”²²⁵

To put the “net buyer” issue into context, Professor Subramanian analyzed how much an overbid would cost MSD. For MSD to maintain his 75% ownership level,²²⁶ each \$1 increase in the deal price would cost him approximately **\$250 million** if debt and equity contributions increase proportionately, or over **\$1 billion** if debt was held constant.²²⁷ If MSD’s contribution remained fixed, he would **lose control** at a deal price of \$15.73 per share.²²⁸ A third party evaluating the deal would appreciate these economic incentives and realize that MSD would have significant economic disincentives to jettison Silver Lake.

These four factors – **standing alone** – would be sufficient to deter an interloping bidder from trying to crash the Dell MBO party. But there is an even more fundamental reason why a putative bidder would wisely choose to stay home: the eight-figure, multi-thousand hour cover charge one would have to pay to even **try** to get into the party. To illustrate this point, Blackstone had “some 200 people

²²⁵TT791(Subramanian).

²²⁶MSD admitted that he wanted to retain “significant control” in the post-closing entity (TT457(Dell)), a fact most prospective bidders would likely assume given the fact that “his name is literally on the door.” TT790(Subramanian).

²²⁷Subramanian Demonstratives:9;TT794-796(Subramanian).

²²⁸Subramanian Demonstratives:9;TT794-976(Subramanian).

working”²²⁹ on diligence, attended more than 300 hours’ worth of meetings with Dell executives²³⁰ (to say nothing of the countless hours spent combing through the massive data room),²³¹ spent an “enormous amount of money,” and hired an “enormous number of advisors”²³² in an effort to mount a competing bid. The \$25 million that Dell agreed to give Blackstone in expense reimbursement (a deal reach *only after* Blackstone made the risky choice to start down the road at all)²³³ “represented only a portion of Blackstone’s costs” and “was a lot less than they had, in fact, asked for.”²³⁴ Further, because getting to “excluded party” status required arranging for “committed financing,”²³⁵ a potential bidder faced the prospect of spending money on financing commitment fees that he might never get

²²⁹TT181(Mandl);JX454:5(data room records show access by over 450 people on Blackstone’s behalf).

²³⁰JX461:2

²³¹JX450:1(as of April 4, 2013, 103 Blackstone users had accessed the virtual data room over 1000 times).

²³²TT381(Hiltz).

²³³PTO¶183(go-shop begins on February 5, 2013);PTO¶196(reimbursement agreement reached on March 25, 2013).

²³⁴TT382(Hiltz);JX421(reimbursement to cover only external (*i.e.*, not in-house) costs and would not be used for financing commitment fees).

²³⁵TT365(Hiltz).

back in the event he was unable to “win” the deal.²³⁶ In short, the steep cover charge served as a further deterrent.

* * *

The Dell MBO was a game that third-party bidders likely believed they could not win: If they topped MSD, he could simply top their offer and they would have wasted time and money exploring a deal that they would never get; if they topped MSD and he let them win, they would have succumbed to the Winner’s Curse. Under these circumstances, rational competing bidders would choose not to play regardless of the valuation gap.

B. AN MBO PROCESS IS NOT DESIGNED TO YIELD A PRICE REFLECTIVE OF FAIR VALUE

The sales process is also insufficient to rebut the 2x multiple between DCF value and deal price, because an MBO process is not designed to yield a price reflective of fair value. An MBO model tells a sponsor what it can pay without jeopardizing its ability to exit within a few years at a high return.²³⁷ It has nothing to do with a company’s fair value. Accordingly, the fact that no one would pay a

²³⁶The exact amount of the commitment fees Silver Lake paid to Barclays was withheld in discovery(JX263:17).

²³⁷JX138:22(“Financial buyers evaluate investments with an [IRR] analysis, which measures return on equity.”);JX874:56(Rajkovic)(financial sponsors “would only pay so much for a particular business [that] will ensure them getting a specific return. And typically the return is around 20 percent.”).

price approaching what Dell was worth under a DCF analysis in the context of an MBO is no reason to question the reliability of a DCF valuation of Dell.

The price Silver Lake paid for Dell (and that other financial sponsors would have been willing to pay for Dell)²³⁸ was not based on Dell's value as a going concern. As Silver Lake testified, the price it was willing to pay was based on a financial model that set the maximum price it could pay and still hit a targeted IRR within a five-year window.²³⁹ Silver Lake, by its own admission, was “*not concerned at all ... with the intrinsic value analysis of the business*” in deciding what to pay.²⁴⁰ So while Professors Hubbard and Cornell agree that a DCF is the

²³⁸TT751(Rajkovic)(“Q: So among the big boys in private equity, and I know you don't want to hear this, they basically have the same models, the same hurdle rates, the same returns, and, in fact, often the same clients. Correct?; A: ...[T]hey come fairly close in most situations.”);JX226:22(JPMorgan recommended against soliciting a competing offer before locking up the Silver Lake deal because they were “unlikely to see any material difference, given comparable LP make-up and return hurdles”).

²³⁹JX894:13-14(Durban).

²⁴⁰JX894:11-12(Durban);JX894:72-76(Durban)(Silver Lake was not concerned with how the market was valuing Dell; “We were looking at a much different investment, where ... for every dollar we were going to invest, we were going to borrow approximately three quarters ... So your exit multiple matters; your financial performance of the business matters; how much cash you can generate ... So we don't spend a lot of time saying the business is worth this at a point level ... We are looking at a range of outcomes for the enterprise value at the time or times of exit”).

most accurate way to value a corporation *as a going concern*,²⁴¹ Silver Lake *does not even perform a DCF in evaluating an MBO target*.²⁴²

The disconnect between the price a sponsor is able to pay in an MBO and a DCF value of a company is manifest: Dell's Special Committee was told before the sale process even started that an MBO would not yield a price in excess of \$14.13, while a DCF on the *same projections*²⁴³ showed that Dell was worth between \$20 and \$27.²⁴⁴ JPMorgan's own analysis, therefore, *confirms* that a significant delta will likely exist between the fair value of Dell calculated via a DCF and an MBO deal price.

Moreover, *even if* a financial sponsor was willing to target a lower IRR such that it "could have" paid more than \$14.13 for Dell, an MBO at even \$19 per share "would not have been possible for the company" because "[i]t would have to be

²⁴¹COR¶¶86-89;TT598(Hubbard)("Q. And so you considered DCF to be the appropriate valuation methodology to use in this case? A. Yes, sir, I do.").

²⁴²JX894:10(Durban).

²⁴³The price that can be paid in an MBO does not depend on whether the sponsor "believes" in a given set of projections: A sponsor *assumes* that a given set of projections (in particular a targeted EBITDA in a projected exit year) is viable and from that starting point calculates what it can pay. JX874:111-113(Rajkovic)("So if [sponsors] assume the 9/21 case, you can get \$14.13. If they assume something higher, it is going to be higher. And lower is going to be lower."). As projections are lowered (as Dell's were via the BCG cases), so, too, is the price a sponsor can pay while still maintaining its targeted IRR.

²⁴⁴JX162:27(\$14.13 based on ability-to-pay analysis);JX162:15(\$20-\$27 based on DCF). To get an offer at even the bottom end of this range would have required a *100%+ premium*. JX874:128(Rajkovic).

leverage that you could not get in the marketplace to get to \$19 per share.”²⁴⁵ In other words, (1) if a sponsor wanted to hit a “modest-by-MBO-standards” return of 20%,²⁴⁶ it could have not paid more than \$14.13;²⁴⁷ and (2) *no sponsor* could have paid more than \$19 in the context of an MBO due to leverage constraints. Given these realities, JPMorgan told the Special Committee that it should not even bother to look for a better offer before signing the deal with Silver Lake because it was not likely to get a materially different offer.²⁴⁸ The realities of the MBO game explain why economically rational actors would “leave money on the table” when considering an MBO bid for Dell: A private equity sponsor is bidding to achieve a return that greatly exceeds what the public markets expect,²⁴⁹ in a defined time

²⁴⁵JX874:106-107(Rajkovic).

²⁴⁶JX705:96(Silver Lake targeting returns between 29.2% and 46.3%, assuming 4.5x exit multiple).

²⁴⁷Silver Lake’s modeling suggested that it would have earned no return *at all* if it paid around \$17 per share. JX894:184-189(Durban)(under the Bank Case, Silver Lake’s return would have been “low single digit to zero” at \$16; that it would have hit 0 at \$17 is a “reasonable conclusion”).

²⁴⁸JX226:22.

²⁴⁹ Silver Lake was targeting healthy rates of return, ranging from 29.2% to 46.3%, assuming 4.5x exit multiple (JX705:96), that far exceeded what Dell was achieving in the years before the MBO. TT469-470(Dell)(“Q: In the prior five years to the buyout, were Dell’s returns – if someone invested in Dell, would they have an IRR of between 29 and 46 percent?; A: No.”). That such healthy rates of return would be much easier to achieve if MSD and Silver Lake were able to buy the Company for less than its fair value is beyond peradventure.

horizon, and in a process that *by definition* does not consider fair value of the enterprise as a “going concern.”

Given a choice between (1) deferring to a deal price arrived at by an MBO that was *indifferent* to Dell’s fair value as a going concern; or (2) looking to the fair value of Dell as determined through the very DCF methodology that both parties’ experts *agree* is the proper way to value Dell as a going concern as of the Transaction,²⁵⁰ the choice is clear.

III. AN ALTERNATIVE VALUATION

While Petitioners truly believe that the fair value of Dell is \$28.61, and that the large gap between fair price and deal price is the product of structural impediments inherent in an MBO sales process and of the realities of the MBO “ability to pay” analyses, we offer the following valuation based on the various comments the Court made during the trial.²⁵¹

²⁵⁰COR¶¶86-89;TT598(Hubbard)(DCF is appropriate valuation methodology to use in this case).

²⁵¹A spreadsheet is attached hereto as Exhibit A that shows this valuation and the effects of any changes the Court might choose to make.

If one begins with the Bank Case without cost savings, it removes much of the dispute between the parties.²⁵² We then run those projections²⁵³ through Professor *Hubbard's* DCF, with two changes: (1) using Dell's historical effective tax rate (21%) in the terminal period;²⁵⁴ and (2) calculating WACC by using solely the supply-side equity risk premium,²⁵⁵ resulting in a 9.17% WACC. This yields a DCF enterprise value of \$18.99 per share.²⁵⁶

²⁵²Dell does not seriously dispute the merits of the Bank Case (p.14, *supra*). In fact, in response to questioning by the Court concerning the possibility of finding “a middle ground between the two opposing camps” on the issue of cost savings, Professor Hubbard suggested looking to the Bank Case. TT618-619(Hubbard).

²⁵³ The projections used are actually Hubbard's adjusted Bank Case, which include his adjustments to the Silver Lake forecasts.

²⁵⁴TT1045(Court).

²⁵⁵*See, e.g., Golden Telecom, Inc.*, 993 A.2d at 515-18 (supply-side equity risk premium “comports with the strong weight of professional and academic thinking” and is the most reliable practice available for use in an appraisal”); *Gearreald v. Just Care, Inc.*, 2012 WL 1569818, at *10 (Del. Ch. Apr. 30, 2012)(supply-side equity risk premium is the appropriate metric to be used to value a company); *In re Orchard Enters.*, 2012 WL 2923305, at *19 (supply-side equity risk premium is “an appropriate metric to be applied” in valuations).

²⁵⁶ *See* Exhibit B hereto.

To convert enterprise value to equity value, we add in the undisputed net cash of \$6.158 billion (\$3.49 per share).²⁵⁷ We then address the three deductions Respondent proposes: (1) working capital; (2) deferred taxes; and (3) FIN 48 reserves.

Working Capital

We explain why there should be no deduction for working capital at pages 33-34, *supra*. If the Court rejects our position, it appears that there are three alternatives for the amount of working capital that could be deducted:²⁵⁸ (1) \$2.2 billion – what Dell needs after completing its working capital overhaul;²⁵⁹ (2) \$3 billion – what Silver Lake used in its LBO model;²⁶⁰ or (3) \$3.3 billion – the

²⁵⁷At the time of closing, Dell had \$11.040 billion in cash on its balance sheet (PTO¶317), and had paid \$172 million in Transaction-related expenses that would not have been incurred but for the Transaction (PTO¶¶315-316). Deducting Dell's \$5.054 net debt (JX896A; TT45(Cornell)(adopting Professor Hubbard's \$5.054 net debt number)) from Dell's total cash at closing (*i.e.*, the \$11.040 billion balance sheet cash plus the \$172 million cash that would have been on Dell's balance sheet had it not paid these Transaction-related expenses) leaves net cash of \$6.158 billion.

²⁵⁸ Professor Hubbard's \$5 billion number includes restricted cash to which Dell did not have access and thus which could not possibly have been needed for working capital. *Supra*, n.157.

²⁵⁹TT338(Sweet).

²⁶⁰TT337(Sweet);JX701:3.

midpoint of the range Dell’s CFO claimed was the amount of working capital in the public company prior to the Transaction and the overhaul.²⁶¹

We suggest the \$2.2 billion (\$1.25 per share) needed after the working capital overhaul as representing the appropriate amount of the deduction. Although accomplished as a private company, CFO Sweet testified that this could have been done as a public company and there is no evidence that Dell would not have done this if it remained public.²⁶² We rejected the amount in the Bank Case because it was a projection when there was evidence of what Dell actually did. We rejected the public company case because the timing of the working capital overhaul was controlled by those buying the Company and occurred promptly after Dell went private.

Deferred Taxes

We explain why there should be no deduction for deferred taxes at pages 34-38, *supra*. Respondent calculated the amount of deferred taxes at \$2.2 billion. This depended on Dell repatriating overseas earnings and profits over 25 years beginning in 2023. The Court was skeptical of this assumption.²⁶³ This skepticism

²⁶¹TT277(Sweet)

²⁶²*See* n.161, *supra*.

²⁶³TT1043(Court)(“I am more skeptical ... of the respondent’s view once you get into what to do with the overseas cash hoard, since I have, you know, credible Dell people saying, ‘Nah, we don’t need to bring that back. We’re going to use that to grow our business. We’re going to do all kinds of fun things with it.’”).

is well-founded since Dell had no plans to repatriate its overseas earnings and profits,²⁶⁴ and no history of doing so at the marginal tax rate.²⁶⁵ To account for the time value of money and for the likelihood that Dell would repatriate overseas earning and profits only at a rate well below the marginal U.S. tax rate, we discounted Respondent’s calculation of deferred taxes in half, using \$1.1 billion (\$0.62 per share). In doing so, we followed the Court’s advice and tried to apply the effect of taxes “in a real world way.”²⁶⁶

FIN 48 Reserves

We explain why FIN 48 reserves should not be deducted at pages 38-40, *supra*. However, we are mindful that the Court noted that we “have the biggest uphill battle with the contingent liability for the tax positions that Dell has already taken....”²⁶⁷ We also observe that Dell’s CFO certified that Dell expected to settle \$2.35 billion of FIN 48 liabilities for \$650 million.²⁶⁸ It would, therefore, seem logical to deduct \$650 million – the amount that Dell’s CFO certified Dell would pay within five years (\$0.37 per share)²⁶⁹ – from the equity value of Dell. However, the Bank Case, as distinct from the BCG Cases, took this \$650 million

²⁶⁴*Supra*, n.170.

²⁶⁵*Supra*, n.172.

²⁶⁶TT1044-1045.

²⁶⁷TT1043.

²⁶⁸JX725:11.

²⁶⁹JX921:212-213.

outflow of cash into account as part of its projections.²⁷⁰ Therefore, no additional deduction should be taken, as it appears that anything beyond the \$650 million already accounted for is speculative and not something Dell contemplated in any of its analyses.²⁷¹

The remainder of the FIN 48 reserve is only an additional \$650 million. That amount, if paid, would be paid at a time beyond five years and should be discounted accordingly. We believe that if the Court believes that this \$650 million must be accounted for than it should subtract something less than an additional \$0.37 to account for the time value of money. To be conservative, we have included the full \$0.37 in the adjustment.

Total Adjustments

When the net cash of \$3.49 a share is added to, and the deductions of \$1.25, \$0.62 and \$0.37 are subtracted from, the enterprise value of \$18.99, the equity value of Dell is \$20.24.

²⁷⁰TT315-316(Sweet)(Bank Case “clearly had a line item for that 650” million in FIN 48 liabilities expected to be paid during the projection period).

²⁷¹JX921:215-221(Sweet).

CONCLUSION

For the reasons set forth herein, Petitioners respectfully submit that they are entitled to an award of a price of \$28.61 per share for their Dell stock, plus applicable interest at the statutory rate, compounded quarterly, pursuant to 8 *Del. C.* § 262(h).

Dated: November 18, 2015

Respectfully submitted,

/s/ Stuart M. Grant

Stuart M. Grant (#2526)

Michael J. Barry (#4368)

Christine M. Mackintosh (#5085)

Jennifer A. Williams (#5966)

Rebecca A. Musarra (#6062)

GRANT & EISENHOFER P.A.

123 Justison Street

Wilmington, DE 19801

(302) 622-7000

Counsel for Petitioners



Exhibit A

In Aggregate**Per Share**

Based on 1.765 Billion Shares*

Discounted Cash Flow (Bank Case Without Incremental Cost Savings - Hubbard Assumptions with Effective Tax rate (21%) used in Terminal Period and Supply Side Equity Risk Premium (WACC = 9.17%))		\$		18.99
Agreed to Net Cash	\$6.158 Billion	\$	3.49	\$ 3.49
Working Capital	\$0 - (\$3.3 Billion)			
No deduction - Credit Line Covers Any Seasonal Short Fall		\$	-	
\$2.2 Billion - Per CFO after Working Capital Overhaul		\$	1.25	\$ (1.25)
\$3 Billion - Amount in Bank Case		\$	1.70	
\$3.3 Billion - Per CFO in Public Company		\$	1.87	
Deferred Taxes	(\$0 - \$2.2 Billion)			
Not On balance Sheet - No deduction		\$	-	
\$1.1 Billion - Discounted in half for delay of payment		\$	0.62	\$ (0.62)
\$2.2 Billion - Requested by Respondents (begin payment in 2023 for 25 years)		\$	1.25	
FIN 48 Reserves	(\$0 - \$3 Billion)			
No deduction - Not an appropriate deduction from value		\$	-	
No deduction - Amount CFO certified Dell would pay within 5 years already accounted for in Bank Case		\$	-	
\$0.65 Billion - Amount CFO certified Dell would pay within 5 years; Balance is Speculative		\$	0.37	\$ (0.37)
\$0.65 Billion - Remaining in reserve after tax settlement accounted for in Bank Case		\$	0.37	
\$1.3 Billion - Reserve Overstated by \$1.7 Billion (\$650 Million resolution of \$2.35 Billion in Reserves)		\$	0.74	
\$1.5 Billion - Discounted in half for delay of payment		\$	0.85	
\$2.35 Billion - Requested by Respondents less amount already accounted for in Bank Case		\$	1.33	
Total		\$		20.24

* Hubbard share count

Exhibit B

Exhibit 24 - REVISED
Adjusted Bank DCF Model (\$Millions)

(As adjusted, to use a 9.17% WACC and a Terminal Tax Rate of 21%)

	Q4 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	Terminal Value
Revenue	17,236	58,552	59,912	61,526	62,480	63,389	64,245	65,038	65,758	66,400	
Gross Profits	3,506	12,403	12,939	13,486	13,835	14,114	14,372	14,608	14,818	15,001	
- Operating Expense	2,634	9,259	9,364	9,526	9,646	9,761	9,870	9,972	10,066	10,152	
= Operating Income (EBITAO)	873	3,144	3,575	3,960	4,189	4,353	4,503	4,636	4,752	4,849	4,946
+ Depreciation	162	600	600	600	600	600	600	600	600	600	
EBITDA	1,035	3,744	4,175	4,560	4,789	4,953	5,103	5,236	5,352	5,449	
+ Capex	-162	-600	-600	-600	-600	-600	-600	-600	-600	-600	
+ Acquisitions	-121	-400	-400	-400	-400	0	0	0	0	0	
+ (Incr.) Decr. in WC	142	-231	-168	-130	-59	-53	-48	-43	-37	-32	
+ Additional required investment	0	0	0	0	0	-471	-541	-612	-682	-753	-753
+ Stock-Based comp	-73	-253	-261	-270	-277	-283	-289	-294	-299	-303	-309
+ After-tax restructuring	-45	-150	-150	-150	-150	0	0	0	0	0	
+ Taxes	-155	-560	-636	-705	-746	-775	-801	-825	-846	-863	-1,039
= Free Cash Flow (FCF)	620	1,550	1,960	2,304	2,557	2,772	2,823	2,862	2,888	2,898	2,813
Terminal Value											39,234
Discount Factor	0.99	0.94	0.86	0.79	0.72	0.66	0.60	0.55	0.51	0.46	0.46
Discounted FCF	613	1,452	1,681	1,810	1,840	1,827	1,705	1,583	1,463	1,345	18,208
Enterprise Value	33,527										
Shares Outstanding	1,765										
Enterprise Value Per Share	18.99										
Key Measures:											
Revenue Growth		2.4%	2.3%	2.7%	1.5%	1.5%	1.4%	1.2%	1.1%	1.0%	
Gross Margin	20.3%	21.2%	21.6%	21.9%	22.1%	22.3%	22.4%	22.5%	22.5%	22.6%	
Operating Margin	5.1%	5.4%	6.0%	6.4%	6.7%	6.9%	7.0%	7.1%	7.2%	7.3%	
FCF as % of Revenue	3.6%	2.6%	3.3%	3.7%	4.1%	4.4%	4.4%	4.4%	4.4%	4.4%	

Notes:

[1] Discount rate is 9.17%

[2] For present value calculations mid-period convention is used.

[3] The model assumes effective operating tax rate of 17.8% for the initial and transition periods and 21% for the terminal period.

[4] Operating Income (EBITAO) does not subtract stock-based compensation.



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: APPRAISAL OF DELL INC.

Consol. C. A. No. 9322-VCL

PETITIONERS' DEPOSITION DESIGNATIONS

GRANT & EISENHOFER P.A.

Stuart M. Grant (# 2526)

Michael J. Barry (# 4368)

Christine M. Mackintosh (# 5085)

123 Justison Street

Wilmington, DE 19801

(302) 622-7000

Counsel for Petitioners

DATED: November 18, 2015

DEPONENT	BEGINNING PAGE:LINE	ENDING PAGE:LINE
Dell, Michael (5/14/15)	6:6	7:11
	9:15	10:18
	10:21	10:21
	11:25	12:5
	14:18	14:23
	16:1	17:3
	18:18	18:22
	20:1	20:4
	40:6	40:13
	47:15	47:17
	47:19	47:22
	76:3	76:8
	78:6	78:7
	84:14	85:2
	85:4	85:10
	85:14	86:1
	89:9	89:23
	90:24	91:19
	92:5	93:17
	96:4	97:10
	115:3	115:8
	117:5	118:17
	118:20	119:12
	122:13	122:19
	124:6	124:16
	126:13	127:6
	127:10	127:14
	133:3	134:19
	151:13	151:17
	152:7	152:22
	152:24	155:3
	155:6	160:11
	164:10	164:15
	170:2	170:5
	170:12	170:21
	188:4	188:18
	191:9	192:15

	192:21	193:25
	194:11	194:25
	195:9	195:10
	195:22	196:13
	208:16	208:21
	208:24	209:2
	209:11	209:24
	216:16	217:1
	229:13	229:16
	232:9	234:9
Dell, Michael (5/15/15)	264:2	264:5
	264:14	265:24
	266:19	267:18
	273:2	273:5
	276:11	277:24
	296:6	296:8
	296:24	296:25
	297:5	297:15
	301:3	301:5
	302:6	302:11
	302:16	302:17
	316:25	317:25
	318:14	319:3
	322:15	323:10
	338:12	338:18
	339:5	339:16
	339:23	340:3
	362:16	363:1
	371:25	372:3
	373:15	373:17
	383:15	384:3
	384:11	384:15
	386:10	386:24
	387:8	387:12
	387:15	388:2
	391:2	391:3
	391:12	392:1
	397:20	397:22

	398:3	398:7
	398:10	398:25
	401:6	401:11
	403:17	403:20
	404:7	404:21
	409:6	409:9
	409:25	410:22
	414:4	414:15
	416:1	416:13
	434:4	434:7
	438:19	439:5
	439:24	440:2
	465:15	465:17
	472:1	472:9

Cross Referencing Key For Deposition Exhibits Discussed During Designated Portions Of Michael Dell Deposition	
DEPOSITION EXHIBIT	JX EXHIBIT
Gladden Ex. 6	JX 94
Gladden Ex. 9	JX 97
Dell Ex. 3	JX 96
Dell Ex. 5	JX 477
Dell Ex. 7	JX 530
Dell Ex. 10	JX 834
Dell Ex. 12	JX 292
Dell Ex. 17	JX 753
Dell Ex. 20	JX 491
Dell Ex. 22	JX 515
Dell Ex. 25	JX 669
Dell Ex. 28	JX 243
Dell Ex. 31	JX 506
Dell Ex. 42	JX 842
Dell Ex. 43	JX 836
Dell Ex. 44	JX 848
Dell Ex. 45	JX 849
Dell Ex. 48	JX 815
Dell Ex. 50	JX 816

DEPONENT	BEGINNING PAGE:LINE	ENDING PAGE:LINE
Durban, Egon (5/20/15)	10:10	10:13
	10:15	10:17
	11:5	11:11
	12:3	12:25
	13:17	14:2
	19:5	19:17
	44:16	44:17
	44:23	47:18
	49:12	51:4
	51:7	51:8
	57:9	57:16
	58:2	59:14
	67:8	67:20
	67:22	68:12
	68:14	68:22
	68:25	69:2
	72:4	72:23
	72:25	73:11
	73:13	74:20
	75:4	76:24
	87:1	87:5
	88:13	88:17
	97:10	97:10
	97:12	97:15
	103:12	104:2
	104:5	104:10
	104:12	104:14
	104:18	104:22
	104:24	105:5
	109:24	110:4
	111:6	111:11
	113:3	113:7
	122:10	122:14
	130:13	130:18
	138:6	138:18
	142:4	143:1
	151:1	151:11

	152:20	153:19
	159:14	160:14
	161:7	161:21
	161:24	161:25
	162:2	162:8
	163:1	163:4
	164:4	164:4
	168:25	169:25
	171:12	173:10
	174:20	177:3
	177:8	177:11
	177:13	177:15
	177:20	177:23
	178:5	178:13
	178:15	178:16
	178:18	180:23
	182:6	183:1
	183:12	184:8
	184:12	184:14
	185:4	185:12
	185:14	186:13
	186:15	186:16
	186:18	187:4
	188:20	189:8
	189:13	189:24
	208:22	208:25
	217:14	217:22
	221:3	221:9
	223:3	224:15
	225:4	226:16
	286:24	287:4
	287:8	287:13
	288:20	289:12
	292:6	292:13
	295:24	296:2
	296:19	296:24
	297:5	297:17
	304:22	305:2
	306:19	307:7

	307:9	307:15
	307:17	308:4
	308:8	308:11
	310:7	310:12
	311:22	311:25
	312:2	312:3
	317:1	317:2
	317:5	317:9
	318:6	318:9
	318:15	318:17
	319:19	320:12
	322:4	326:16
	329:1	329:4
	329:14	332:2
	339:2	339:5
	343:18	343:22
	343:24	343:24
	344:9	345:14
	345:20	345:25
	347:8	348:9
	348:11	348:12
	348:14	348:15
	348:17	348:18
	363:18	363:19
	363:21	363:21
	363:23	363:23
	363:25	364:1
	364:3	364:20
	364:23	364:23
	364:25	365:6
	365:8	365:10
	365:18	366:20
	366:22	367:9
	367:11	367:20

Cross Referencing Key For Deposition Exhibits Discussed During Designated Portions Of Egon Durban Deposition	
DEPOSITION EXHIBIT	JX EXHIBIT
Durban Ex. 3	JX 730
Durban Ex. 8	JX 716
Durban Ex. 9	JX 293
Durban Ex. 11	JX 290
Durban Ex. 18	JX 680
Durban Ex. 19	JX 678
Durban Ex. 24	JX 815
Durban Ex. 28	JX 842

DEPONENT	BEGINNING PAGE:LINE	ENDING PAGE:LINE
Gladden, Brian (3/13/15)	36:23	36:25
	37:2	37:11
	38:2	38:9
	43:11	43:25
	44:2	44:25
	45:2	45:2
	45:22	45:25
	46:2	46:15
	49:14	49:25
	50:2	50:3
	50:15	50:17
	51:2	51:25
	52:2	52:3
	52:19	52:25
	53:2	53:2
	53:16	53:25
	54:2	54:4
	58:8	58:11
	61:17	61:25
	62:2	62:25
	63:2	63:21
	70:5	70:17
	78:5	78:25
	79:2	79:24
	98:19	98:25
	99:2	99:11
	109:17	109:23
	117:25	117:25
	118:2	118:10
	119:14	119:19
	120:21	120:25
	121:2	121:17
	122:10	122:15
	124:8	124:11
	128:12	128:24
	184:5	184:17
	184:25	184:25

	185:2	185:25
	186:2	186:6
	234:15	234:25
	235:7	235:22
	236:2	236:14
	239:15	239:23

Cross Referencing Key For Deposition Exhibits Discussed During Designated Portions Of Brian Gladden Deposition	
DEPOSITION EXHIBIT	JX EXHIBIT
Gladden Ex. 1	JX 58
Gladden Ex. 2	JX 44
Gladden Ex. 3	JX 46
Gladden Ex. 9	JX 97

DEPONENT	BEGINNING PAGE:LINE	ENDING PAGE:LINE
Hubbard, Glenn (8/5/15)	29:24	30:23
	32:10	32:18
	34:7	35:16
	39:17	41:5
	48:10	48:13
	49:3	49:6
	50:1	50:17
	58:12	59:25
	69:1	71:16
	71:23	72:2
	72:5	72:13
	72:22	72:24
	73:5	73:14
	73:20	73:21
	74:1	75:2
	75:17	76:13
	77:3	77:23
	78:1	78:5
	79:9	79:25
	80:14	84:5
	84:18	85:6
	85:14	86:2
	87:11	88:20
	97:10	98:10
	105:19	106:19
	112:16	112:23
	120:12	122:4
	123:3	123:16
	123:25	124:25
	125:8	125:16
	126:9	128:16
	128:22	129:7
	129:19	129:25
	130:5	130:21
	135:17	135:23
	142:25	143:12
	145:17	145:24

	147:21	148:5
	150:4	150:11
	153:18	155:12
	155:15	155:16
	173:4	174:22
	175:18	175:23
	178:14	180:24
	183:6	183:24
	185:8	185:21
	186:3	186:7
	191:14	192:16
	193:3	193:25
	195:15	195:18
	195:21	195:24
	196:6	196:13
	197:6	197:20
	199:3	202:3
	204:2	205:9
	207:7	208:4
	217:15	218:4
	218:13	218:24
	225:1	225:15
	283:9	284:1
	288:16	289:2
	294:5	295:2
	295:12	295:18
	299:18	300:1
	307:10	307:14
	308:9	308:12
	333:1	333:6
	349:15	350:1
	390:13	391:2
	391:17	391:20
	391:23	392:9
	408:13	408:21
	409:20	410:19
	418:23	419:5
	439:5	440:8
	442:6	442:11

	444:9	445:1
	447:3	447:16
	448:12	448:23
	490:13	490:25

Cross Referencing Key For Deposition Exhibits Discussed During Designated Portions Of Glenn Hubbard Deposition	
DEPOSITION EXHIBIT	JX EXHIBIT
Hubbard Ex. 8	JX 851
Hubbard Ex. 9	JX 853
Hubbard Ex. 10	JX 675
Hubbard Ex. 41	JX 719

DEPONENT	BEGINNING PAGE:LINE	ENDING PAGE:LINE
Mandl, Alex (4/2/15)	16:4	16:8
	16:13	17:7
	17:9	17:16
	17:18	18:16
	18:20	19:8
	19:10	19:11
	19:13	20:17
	20:21	20:24
	23:13	23:18
	24:19	25:7
	25:9	25:9
	25:11	26:5
	26:7	26:8
	26:10	26:15
	26:17	26:18
	28:4	28:8
	39:12	39:15
	39:25	40:16
	44:19	45:5
	50:13	50:19
	51:2	51:11
	59:24	60:4
	60:6	60:8
	60:10	60:21
	60:23	60:24
	96:1	96:25
	104:22	105:2
	105:7	105:9
	107:25	108:15
	108:18	108:19
	108:21	108:23
	108:25	109:6
	114:18	114:23
	115:20	116:2
	116:4	116:15
	117:5	118:2
	118:8	119:15

	119:24	119:24
	151:7	151:11
	151:13	151:13
	160:10	160:15
	160:20	160:23
	162:1	162:7
	164:8	164:13
	164:18	164:22
	165:19	165:21
	165:23	165:25
	168:8	168:11
	168:13	168:13
	170:9	170:14
	170:20	170:24
	171:5	172:12
	172:16	172:20
	172:22	173:2
	173:4	173:7
	175:20	175:25
	176:2	176:11
	177:2	177:24
	185:21	185:24
	186:13	186:25
	187:18	189:2
	190:11	190:19

Cross Referencing Key For Deposition Exhibits Discussed During Designated Portions Of Alex Mandl Deposition	
DEPOSITION EXHIBIT	JX EXHIBIT
Mandl Ex. 2	JX 229
Mandl Ex. 6	JX 231
Mandl Ex. 11	JX 299
Mandl Ex. 12	JX 300
Mandl Ex. 21	JX 333
Mandl Ex. 22	JX 287
Mandl Ex. 24	JX 411
Mandl Ex. 27	JX 189

DEPONENT	BEGINNING PAGE:LINE	ENDING PAGE:LINE
Nicol, Ron (8/13/15)	37:22	38:4
	63:5	64:7
	74:16	75:19
	75:21	75:25
	79:15	79:25
	81:12	82:7
	83:7	84:1
	100:16	101:14
	106:1	106:3
	110:23	111:4
	111:25	113:6
	113:10	113:12
	113:14	114:23
	115:4	115:5
	115:18	115:25
	116:2	116:23
	117:18	117:21
	117:24	118:11
	124:14	124:19
	125:14	126:17
	128:10	129:8
	129:14	129:21
	157:5	157:8
	161:24	162:14
	163:14	164:2
	164:5	164:16
	165:3	165:5

Cross Referencing Key For Deposition Exhibits Discussed During Designated Portions Of Ron Nicol Deposition	
DEPOSITION EXHIBIT	JX EXHIBIT
Nicol Ex. 3	JX 413
Nicol Ex. 9	JX 499
Nicol Ex. 10	JX 497
Nicol Ex. 12	JX 512
Nicol Ex. 17	JX 531

DEPONENT	BEGINNING PAGE:LINE	ENDING PAGE:LINE
Ning, Lutao (4/29/15)	43:24	44:13
	66:25	68:6
	78:20	79:1
	102:2	102:6
	102:11	102:15
	106:3	106:10
	108:17	108:19
	110:1	110:17
	111:7	111:21
	113:24	114:8
	115:2	115:5
	144:16	144:20
	144:23	144:24
	171:16	171:22
	172:1	172:11
	174:3	174:5
	174:12	175:23
	189:15	191:21
	191:25	192:10
	252:22	253:8
	268:14	268:22
	268:25	269:13

Cross Referencing Key For Deposition Exhibits Discussed During Designated Portions Of Lutao Ning Deposition	
DEPOSITION EXHIBIT	JX EXHIBIT
Ning Ex. 12	JX 344

DEPONENT	BEGINNING PAGE:LINE	ENDING PAGE:LINE
Rajkovic, Drago (4/15/15)	21:6	21:12
	21:19	21:24
	34:7	34:15
	52:22	52:25
	54:2	54:13
	55:18	57:9
	58:14	58:15
	58:24	60:12
	106:15	108:19
	111:4	113:24
	123:4	123:13
	123:20	123:23
	128:4	128:18
	129:20	130:12
	134:11	135:13
	135:17	135:20
	135:22	136:11
	154:10	154:22
	171:1	171:6
	219:16	219:23
	222:18	223:10
	225:18	228:2
	253:2	253:22
	254:1	254:5
	254:16	254:21

Cross Referencing Key For Deposition Exhibits Discussed During Designated Portions Of Drago Rajkovic Deposition	
DEPOSITION EXHIBIT	JX EXHIBIT
Rajkovic Ex. 3	JX 138
Rajkovic Ex. 22	JX 332

DEPONENT	BEGINNING PAGE:LINE	ENDING PAGE:LINE
Shay, Stephen (8/7/15)	7:4	7:8
	9:2	9:14
	15:18	15:19
	15:25	17:16
	17:19	18:16
	18:19	18:23
	19:4	19:9
	24:13	26:2
	30:16	30:19
	31:15	32:7
	32:13	32:16
	55:23	58:1
	58:4	60:3
	61:22	63:5
	63:11	65:3
	65:16	66:13
	66:16	67:13
	67:20	67:22
	68:8	69:1
	74:23	79:3
	79:21	80:4
	80:7	80:14
	80:18	80:24
	81:15	82:1
	82:23	83:15
	83:22	84:14
	85:8	85:18
	88:14	90:17
	91:18	91:24
	95:12	95:21
	98:1	99:20
	113:24	115:8
	115:17	115:25
	116:25	117:20
	118:5	118:12
	118:18	119:13
	120:14	121:17

	122:25	123:2
	123:5	123:9
	126:17	127:24
	128:4	129:7
	129:12	130:4
	130:14	130:16
	133:10	133:18
	135:11	135:23
	144:8	144:11
	146:5	147:5
	147:8	150:23
	151:1	151:16
	151:19	152:1
	152:4	153:23
	154:13	155:2
	156:16	156:22
	158:7	158:13
	169:7	171:9
	174:11	175:8
	176:3	176:16
	178:16	179:14
	180:10	181:6
	181:10	181:11
	181:24	182:23
	186:25	187:5
	188:3	188:17
	189:15	189:18
	190:3	190:18
	193:25	194:8
	194:20	195:13
	197:6	197:9
	209:14	212:13
	213:24	214:7
	217:3	218:4
	218:9	218:13
	220:13	221:12
	221:17	221:24
	223:9	223:19
	223:22	224:9

	226:13	227:6
	227:21	227:24
	228:11	228:24
	230:3	230:7
	230:16	231:11
	231:16	231:22
	235:11	237:16
	240:16	240:24
	252:12	252:20

Cross Referencing Key For Deposition Exhibits Discussed During Designated Portions Of Stephen Shay Deposition	
DEPOSITION EXHIBIT	JX EXHIBIT
Hubbard Ex. 24	JX 738
Hubbard Ex. 54	JX 757
Shay Ex. 14	JX 7
Shay Ex. 17	JX 61
Shay Ex. 40	JX 414

DEPONENT	BEGINNING PAGE:LINE	ENDING PAGE:LINE
Sweet, Thomas (8/25/15)	17:16	18:1
	40:25	41:3
	41:15	42:12
	47:4	47:6
	47:8	47:14
	48:6	48:22
	49:6	50:1
	50:5	50:7
	50:12	51:7
	51:14	51:21
	52:5	52:13
	54:22	54:25
	58:4	58:23
	59:2	59:11
	60:2	60:14
	62:19	63:7
	64:9	64:10
	64:12	64:13
	64:25	65:4
	65:13	66:20
	67:5	67:14
	68:11	68:13
	68:15	69:4
	69:6	69:8
	70:14	70:17
	74:19	78:4
	79:1	80:6
	80:23	83:9
	85:12	85:15
	85:17	86:16
	87:9	87:19
	88:12	89:8
	90:5	90:15
	90:19	91:7
	95:8	98:21
	98:25	100:2
	100:7	100:17

	101:3	101:6
	101:21	101:24
	102:11	102:15
	103:3	103:7
	103:14	103:23
	104:3	104:18
	104:24	105:8
	105:10	105:13
	106:3	106:9
	107:24	108:1
	108:3	108:12
	108:14	108:17
	109:19	111:12
	111:17	111:20
	112:10	114:19
	115:14	116:17
	117:2	118:1
	118:5	119:9
	119:12	120:1
	120:3	120:8
	120:20	121:4
	121:8	123:6
	123:10	123:13
	123:20	124:23
	127:4	127:6
	127:8	127:10
	127:22	128:2
	129:22	130:9
	131:5	132:5
	133:6	133:11
	133:16	133:22
	134:4	134:9
	134:18	135:2
	139:16	139:21
	144:5	144:10
	146:22	146:25
	147:2	147:19
	151:3	151:13
	151:19	153:18

	154:10	154:18
	155:5	156:4
	157:24	158:2
	158:5	159:2
	159:8	159:9
	159:23	160:21
	161:20	162:1
	175:2	175:7
	175:9	175:21
	176:12	176:16
	184:4	184:7
	184:10	184:22
	188:21	189:2
	191:15	192:20
	196:14	197:10
	197:15	197:19
	203:10	203:24
	205:4	205:15
	206:16	207:15
	209:4	209:6
	209:8	209:13
	209:19	210:4
	210:19	211:6
	212:20	213:5
	213:15	214:15
	215:15	216:17
	217:7	218:11
	219:18	219:25
	220:2	220:3
	220:24	221:4
	221:13	221:18
	222:10	223:7
	246:2	247:5
	248:2	249:7
	249:16	249:21
	250:1	250:15
	251:8	251:24
	253:12	253:15
	254:20	254:24

	259:23	260:16
	261:17	261:25
	264:18	264:22
	265:4	265:10
	271:16	272:9
	272:11	272:22
	275:9	275:13
	275:16	277:1
	277:12	281:6
	281:23	282:1
	291:6	291:13
	292:4	292:4
	294:2	294:12
	301:7	301:11
	301:13	302:2
	302:4	302:7
	304:14	306:9
	306:19	306:24
	307:1	307:3
	309:24	309:24
	310:2	311:12
	313:21	316:11
	317:1	318:19
	319:3	319:6
	319:14	320:17

Cross Referencing Key For Deposition Exhibits Discussed During Designated Portions Of Thomas Sweet Deposition	
DEPOSITION EXHIBIT	JX EXHIBIT
Ning Ex. 26	JX 807
Sweet Ex. 2	JX 393
Sweet Ex. 3	JX 156
Sweet Ex. 4	JX 682
Sweet Ex. 5	JX 937
Sweet Ex. 6	JX 534
Sweet Ex. 8	JX 98
Sweet Ex. 14	JX 938
Sweet Ex. 15	JX 672

Dated: November 18, 2015

Respectfully submitted,

GRANT & EISENHOFER P.A.

/s/ Christine M. Mackintosh

Stuart M. Grant (Del. No. 2526)

Michael J. Barry (Del. No. 4368)

Christine M. Mackintosh (Del. No. 5085)

Counsel for Petitioners

CERTIFICATE OF SERVICE

I, Christine M. Mackintosh, hereby certify that on November 18, 2015,
Petitioners' Deposition Designations were filed and served via File & ServeXpress
on the following counsel of record:

Jeremy D. Anderson
FISH & RICHARDSON P.C.
222 Delaware Avenue
17th Floor
Wilmington, DE. 19801

Thomas A. Uebler
COOCH & TAYLOR, P.A.
The Brandywine Building
1000 West Street, 10th Floor
Wilmington, DE 19801

John D. Hendershot
Gregory P. Williams
Susan M. Hannigan
Andrew Peach
RICHARDS LAYTON & FINGER
One Rodney Square
920 North King Street
Wilmington, DE 19801

Samuel T. Hirzel, II
Melissa N. Donimirski
PROCTOR HEYMAN ENERIO LLP
300 Delaware Avenue, Suite 200
Wilmington, DE 19807

/s/ Christine M. Mackintosh
Christine M. Mackintosh (#5085)



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: APPRAISAL OF DELL INC.

Consol. C. A. No. 9322-VCL

**CERTIFICATE OF COMPLIANCE WITH
TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION**

1. This brief complies with the typeface requirement of Ct. Ch. R. 171(d)(4) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word 2010.
2. This brief complies with the type-volume limitation of Ct. Ch. R. 171(f)(1) because it contains 13,983 words, which were counted by Microsoft Word 2010.

Date: November 18, 2015

GRANT & EISENHOFER P.A.

/s/ Christine M. Mackintosh
Christine M. Mackintosh (# 5085)
123 Justison Street
Wilmington, DE 19801
(302) 622-7000



CERTIFICATE OF SERVICE

I, Christine M. Mackintosh, hereby certify that on November 18, 2015, the *Petitioners' Post-Trial Opening Brief* was filed and served via File & ServeXpress on the following counsel of record:

Jeremy D. Anderson
FISH & RICHARDSON P.C.
222 Delaware Avenue
17th Floor
Wilmington, DE. 19801

Thomas A. Uebler
COOCH & TAYLOR, P.A.
The Brandywine Building
1000 West Street, 10th Floor
Wilmington, DE 19801

John D. Hendershot
Gregory P. Williams
Susan M. Hannigan
Andrew Peach
RICHARDS LAYTON & FINGER
One Rodney Square
920 North King Street
Wilmington, DE 19801

Samuel T. Hirzel, II
Melissa N. Donimirski
PROCTOR HEYMAN ENERIO LLP
300 Delaware Avenue, Suite 200
Wilmington, DE 19807

/s/ Christine M. Mackintosh
Christine M. Mackintosh (#5085)