



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE APPRAISAL OF DELL, INC. :
: Consol. C.A. No. 9322-VCL

**THE MAGNETAR FUNDS' RENEWED MOTION FOR
APPOINTMENT AS CO-LEAD PETITIONERS AND FOR
APPOINTMENT OF THEIR CHOICE OF CO-LEAD COUNSEL**

Petitioners Magnetar Capital Master Fund Ltd, Magnetar Global Event Driven Master Fund Ltd, Spectrum Opportunities Master Fund Ltd, and Blackwell Partners LLC (collectively, "The Magnetar Funds"), by and through their undersigned attorneys in C.A. No. 9322-VCL (the "Dell Appraisal"), hereby renew their motion pursuant to this Court's April 10, 2014 Consolidation Order (the "Consolidation Order") for an Order directing that they be appointed as co-lead petitioners and that their selected counsel, Lowenstein Sandler LLP ("Lowenstein Sandler"), along with their Delaware counsel Proctor Heyman Enerio LLP ("Proctor Heyman"), be appointed as co-lead counsel, to serve jointly with the current Lead Counsel. The grounds for this motion are as follows:

I. BACKGROUND

1. The Magnetar Funds are holders, collectively, of 3,865,820 shares of common stock issued by Dell, Inc. ("Dell" or "the Company"). On August 19, 2015, the Magnetar Funds first moved the court for appointment as co-lead petitioners, which motion was denied following a hearing on September 28, 2015. Now that

circumstances have changed as a result of the Court's May 11, 2016 ruling in this case, and the very situation that the Magnetar Funds had feared at the time of their initial motion has now come to fruition, the Magnetar Funds hereby renew their motion for co-lead status. The Magnetar Funds will be the most affected by all valuation decisions going forward and thus have the greatest stake in the case. They should therefore be appointed as lead or co-lead petitioners with respect to all valuation issues.

2. On October 29, 2013, Michael Dell, the Company's founder, Chairman and Chief Executive Officer, together with the private equity firm Silver Lake Partners, took the Company private (the "Take Private Transaction"). Under the terms of the Take Private Transaction, each share of Dell common stock, other than those shares for which appraisal was demanded, was cancelled and converted into the right to receive \$13.75 in cash. The Magnetar Funds dissented from the Take Private Transaction. On January 15, 2015, the Magnetar Funds filed a Verified Petition for Appraisal. The Magnetar Funds have perfected their appraisal rights and are seeking a determination of the fair value of their Dell shares pursuant to Section 262(a).

3. This Court found that T. Rowe Price Equity Income Fund ("T. Rowe Price") and several affiliated funds and retirement plans were the largest petitioners and thus appointed those funds and plans to be lead plaintiffs. Furthermore, pursuant

to this Court's April 10, 2014 Consolidation Order, Grant & Eisenhofer, P.A. ("G&E"), which was the counsel of choice for T. Rowe Price, was appointed Lead Counsel in the Dell Appraisal. Pursuant to this Court's Consolidation Order, G&E was appointed Lead Counsel in the Dell Appraisal for the specific purpose of prosecuting the Dell Appraisal on behalf of all petitioning Dell shareholders, including the Magnetar Funds (collectively, "the Appraisal Class"). One of the predicates for the appointment of T. Rowe Price as lead plaintiff, as provided by the very first paragraph of that Order, is that the various appraisal actions filed against Dell "each involve common questions of law or fact, and justice can be administered more effectively as among the parties without a multiplicity of suits." Consolidation Order Par. 1. This predicate on which the Lead Counsel appointment was based is no longer valid.

4. By the Court's May 11, 2016 Opinion, the Dell shares of fourteen of the appraisal petitioners that are mutual funds sponsored by T. Rowe Price (defined therein as the "T. Rowe Petitioners") were found not to qualify for appraisal because of the T. Rowe Petitioners' failure to dissent as to the shares for which they sought appraisal, with judgment being entered against them. The T. Rowe Petitioners have thus been disallowed from pursuing an appraisal of their shares in this case. T. Rowe Price is therefore no longer the largest claimant or even a typical claimant and is thus no longer suited to be lead petitioner.

5. With their more than 3.8 million shares, the Magnetar Funds are now the largest single stockholder group in this proceeding and own over 70% of the Dell stock remaining in this case.¹ When the Magnetar Funds first moved the court for appointment as co-lead petitioners, Dell's July 30, 2015 motion for partial summary judgment concerning the T. Rowe Petitioners' entitlement to proceed with appraisal had been filed but not fully briefed and of course not yet decided. Dell's motion was directed at those petitioners, defined in the Consolidation order as the "G&E Claimants," who constituted the vast majority of the stockholders who retained G&E.

6. During the September 28, 2015 oral argument on the Magnetar Funds' initial motion, the Court recognized that if the T. Rowe Petitioners were eventually to be "knock[ed] out" of the case or decided to settle out, then the Magnetar Funds could then pick up the "litigation cudgels" and proceed with the prosecution of this action. See 9/28/15 Transcript at 21:12-21 and 31:13-21. Given the Court's May 11, 2016 ruling, one of the very eventualities discussed at that hearing has now

¹ The only G&E Claimant that was not the subject of Dell's motion was petitioner Morgan Stanley Defined Contribution Trust (Verified List No. 20), which holds 357,500 Dell shares. Accordingly, the Magnetar Funds' 3,865,820 shares are the largest single stake held by any petitioner, followed by the 826,012 shares held by Global Continuum Fund, LTD and Wakefield Partners LP, and Morgan Stanley Defined Contribution Trust's 357,000 shares. We understand that some 456,398 additional shares held by many different smaller stockholders are also at issue in this proceeding.

actualized. With the T. Rowe Petitioners now knocked out of the case, the Magnetar Funds -- having the largest stake of Dell stock -- are indeed ready, willing and able to pick up the litigation cudgels and exercise all decision-making authority as necessary and appropriate to protect themselves and the remaining stockholders.

7. Indeed, as recently as yesterday, lead counsel filed its June 6, 2016 motion to alter or amend the Court's May 31, 2016 opinion, without soliciting the Magnetar Funds' input or even simply advising that it intended to file such motion. This was especially inappropriate as it was the Magnetar Funds themselves that first raised the issue of a possible computational error and yet wanted to continue deliberating over whether and how to raise this issue with the Court. The very fact that lead counsel would file a motion to amend the judgment without consulting the Magnetar Funds regarding the strategy, timing and manner of such a motion starkly demonstrates that the largest shareholder in the case is being shut out of material strategic decisions.

8. The Magnetar Funds' counsel of choice in this matter, Lowenstein Sandler and Proctor Heyman, have been representing them in the Dell Appraisal. Lowenstein Sandler and Proctor Heyman have been closely monitoring this case and are fully up to speed. The relief sought herein is narrowly tailored: the Magnetar Funds simply need to be fully involved in all decision-making that lies ahead, including (i) assessing the Court's May 31, 2016 valuation ruling and determining

whether any motion practice or appeal would be appropriate, and (ii) determining any settlement strategy. For the sake of clarity, the Magnetar Funds do not need to be involved in any post-ruling motion practice or appeal with respect to the T. Rowe Petitioners' entitlement to proceed. As counsel to the largest petitioner remaining in this case, Lowenstein Sandler and Proctor Heyman represent over 70% of the stock at issue. In addition, Lowenstein Sandler and Proctor Heyman have substantial experience successfully prosecuting appraisal petitions on behalf of dissenting shareholders. Their adequacy to serve as representative counsel in the Dell Appraisal is unquestionable.

II. DISCUSSION

G&E No Longer Adequately Represents The Interests Of The Magnetar Funds Or The Remaining Appraisal Class as Sole Counsel

9. Magnetar is now the largest shareholder and should be entitled to direct the litigation strategy for this case, which until this time they have not been in a position to do. The Magnetar Funds have not had the opportunity or ability to direct Lead Counsel on matters of litigation strategy.

10. The Magnetar Funds are now more representative of the other remaining shareholders than the T. Rowe Petitioners, which are no longer present in the case. Likewise, the Magnetar Funds are more representative than the remaining T. Rowe shareholders that were not dismissed as the Magnetar Funds do not have

any relationship with the management company that handled the accounts of the (now dismissed) T. Rowe Petitioners as well as the remaining G&E Claimants.

11. Accordingly, the interests of the Appraisal Class and its largest stockholder will be best served by this Court appointing the Magnetar Funds as co-Lead Counsel to assist G&E in prosecuting the Dell Appraisal and ensure that the Magnetar Funds' directions are implemented. In order to provide such assistance, the Magnetar Funds and their counsel of choice must have the ability to, among other things, (i) determine whether any post-ruling motion practice or appeal is appropriate based on the May 31, 2016 valuation ruling; and (ii) be immediately informed of and participate in any settlement discussions or determine whether and how to initiate settlement discussions. The Magnetar Funds do not need to be involved in any post-ruling motion practice or appeal with respect to the T. Rowe Petitioners' entitlement to proceed.

12. The Magnetar Funds, as holders of more than 3.8 million Dell shares, hereby propose that their choice of Lowenstein Sandler and Proctor Heyman be appointed for that task. Furthermore, the Magnetar Funds reserve all rights in respect of any proposed allocation of fees and expenses as may be brought pursuant to 8 *Del. C.* § 262(j).

WHEREFORE, the Magnetar Funds respectfully request that this Court grant their motion and enter an Order directing that they be appointed as co-lead

petitioners, and that their selected counsel, Lowenstein Sandler LLP, along with their Delaware co-counsel Proctor Heyman Enerio LLP, be appointed as co-lead counsel, to serve jointly with the current Lead Counsel.

PROCTOR HEYMAN ENERIO LLP

/s/ Samuel T. Hirzel

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Dated: June 7, 2016

CERTIFICATE OF SERVICE

Samuel T. Hirzel, II, hereby certifies that on June 7, 2016, copies of the foregoing Magnetar Funds' Renewed Motion for Appointment as Co-Lead Petitioners and for Appointment of their Choice of Co-Lead Counsel were served electronically upon the following counsel:

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**ORDER GRANTING THE MAGNETAR FUNDS' RENEWED
MOTION FOR APPOINTMENT AS CO-LEAD PETITIONERS AND
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AND NOW, this ____ day of _____, 2016, this Court having considered
The Magnetar Funds' Renewed Motion for Appointment as Co-Lead Petitioners
and for Appointment of their Choice of Co-Lead Counsel (the "Motion"),

IT IS HEREBY ORDERED that the Motion is GRANTED.

Vice Chancellor