

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

**THE GLOBAL CONTINUUM PETITIONERS AND MAGNETAR FUNDS’  
MOTION TO EXTEND FEE PETITION BRIEFING SCHEDULE**

Petitioners Global Continuum Fund, LTD and Wakefield Partners LP (the “Global Continuum Petitioners”), and Magnetar Capital Master Fund Ltd, Magnetar Global Event Driven Master Fund Ltd, Spectrum Opportunities Master Fund Ltd, and Blackwell Partners LLC (the “Magnetar Funds”) (together, the “Moving Petitioners”), through their undersigned counsel, hereby move for an extension in which to file their oppositions to Morgan Stanley Defined Contribution Master Trust’s Motion for an Award of Attorneys’ Fees and Reimbursement of Expenses Pursuant to 8 *Del. C.* § 262(j), filed on June 2, 2016 (the “262(j) Petition”). The grounds for this motion are set forth below:

**BACKGROUND**

1. On July 2, 2016, Petitioner Morgan Stanley Defined Contribution Master Trust and legal counsel Grant & Eisenhofer (“Lead Counsel”) filed the 262(j) Petition. Remarkably, Lead Counsel’s 262(j) Petition (a) fails to allocate any responsibility for the expenses in this action to the T. Rowe Price Petitioners who pursued this action through discovery, trial and/or post-trial briefing, but who were found not to be entitled to appraisal, and instead seeks to tax the remaining

petitioners with the T. Rowe Price Petitioners' portion of the expenses and (b) seeks to impose upon the remaining petitioners a contingency fee arrangement to which they did not agree.

2. On June 3, the Court entered the Scheduling Order for Fee Petition, which set July 1, 2016 as the date on which opposition to the 262(j) Petition must be filed.

3. On June 6, the Magnetar Funds, together with the Global Continuum Fund, LTD and Wakefield Partners LP (the "Global Continuum Petitioners"), notified the Court that they intended to pursue discovery in support of their opposition to the 262(j) Petition, and noting that adjustments to the schedule may be necessary.

4. Lead Counsel promptly indicated that they would be cooperative regarding discovery, but that they may also seek some reciprocal discovery if the Magnetar Funds challenged the fees (as opposed to only the allocation of expenses).

5. On June 8, 2016, the Magnetar Funds served their discovery requests (the "Discovery Requests") on Lead Petitioners and Lead Counsel.

6. On June 9, 2016, counsel to the Magnetar Funds and Global Continuum Petitioners received a call from Chambers in which they were informed the Court was amenable to permitting discovery and suggesting they work out dates with Lead Counsel. Based on Lead Counsel's representations that they would cooperate with

the Discovery Requests, however, counsel to the Magnetar Funds indicated to the Court that hopefully that would not be necessary.

7. Upon receiving the Discovery Requests, however, Lead Counsel had a change of heart. Lead Counsel notified the Magnetar Funds that they would not provide *any responses* to the Discovery Requests unless (a) it was expressly ordered by the Court or (b) the Magnetar Funds withdrew their discovery demands and took Lead Counsel at its word that only a small fraction of the expenses related to entitlement issues. To support its second option, Lead Counsel insisted that the Magnetar Funds accept a smaller production of only the backup documents for Lead Counsel's bare-bones two-page summary expense statement that accompanied its Section 262(j) Petition.

8. On June 13, Lead Counsel provided written responses to the Discovery Requests. Those responses, however, refused to provide *any* information beyond agreeing to provide access to the backup of all expenses incurred during the prosecution of this case and a letter claiming that only a single expense in the amount of \$20,475.00 -- of the \$4,035,787.18 of aggregate expenses that sought in the 262(j) Petition. Even the limited discovery that Lead Counsel agreed to produce, however, has not been produced as of the date of this motion.

9. On June 20, the Magnetar Funds filed its Motion to Compel Discovery Relating to Lead Counsel's Section 262(J) Petition (the "Motion to Compel"). The

Motion to Compel was fully briefed as of June 27, 2014. In its Reply, the Magnetar Funds sought guidance from the Court respecting amendment to the Court's June 3, 2016 Scheduling Order, so that the requested discovery may be completed in advance of the filing of oppositions to the 262(j) Petition.

10. Lead Counsel has informed the Magnetar Funds that they oppose any change to the Court's June 3, 2016 Scheduling Order – notwithstanding their failure to provide even the discovery that they agreed to produce.

## ARGUMENT

11. It is well settled that a trial court has the discretion to control its own docket and resolve scheduling issues. *Coleman v. PricewaterhouseCoopers, LLC*, 902 A.2d 1102, 1107 (Del. 2006). Court of Chancery Rule 6(b)(1) provides that “the Court for good cause shown may, at any time in its discretion ... with or without a motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order.” Good cause may be found where “the moving party has generally been diligent, the need for more time is neither foreseeable nor its fault, and refusing to grant the continuance would create a substantial risk of unfairness to that party.” *Coleman*, 902 A.2d at 1107.

12. The Magnetar Funds have been diligent in this matter by promptly seeking discovery in connection with the 262(j) Petition, serving the Discovery Requests one week after the 262(j) Petition was filed. Additionally, the Magnetar Funds has made numerous efforts to confer with Lead Counsel respecting responses to the Discovery Requests. Nor should the Magnetar Funds be faulted for relying on Lead Counsel’s earlier representation that they would cooperate with the requested discovery.

13. Lead Counsel has not articulated any prejudice that it will suffer as a result of an extension of the Court’s June 3, 2016 Scheduling Order. Indeed, Lead

Counsel has agreed to produce certain documents but the Magnetar Funds have yet to receive them. If any party has been prejudiced, it is the Magnetar Funds.

14. Finally, because the Moving Petitioners' oppositions are necessarily dependent both on the resolution of its Motion to Compel and the receipt of documents yet to be delivered by Lead Counsel, the Moving Petitioners respectfully requests an open ended extension until the motion to compel is resolved. The Moving Petitioners do not anticipate that they will need longer than one week after receiving all discovery to file their oppositions.

### **CONCLUSION**

WHEREFORE, Petitioners respectfully requests that this Court enter an Order in the form attached hereto.

PROCTOR HEYMAN ENERIO LLP

*/s/ Samuel T. Hirzel*

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Samuel T. Hirzel (# 4415)  
Melissa N. Donimirski (# 4701)  
300 Delaware Avenue, Suite 200  
Wilmington, DE 19801  
(302) 472-7300

Dated: July 1, 2016

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

**ORDER**

Petitioners Global Continuum Fund, LTD and Wakefield Partners LP (the “Global Continuum Petitioners”), and Magnetar Capital Master Fund Ltd, Magnetar Global Event Driven Master Fund Ltd, Spectrum Opportunities Master Fund Ltd, and Blackwell Partners LLC (the “Magnetar Funds”) (together, the “Moving Petitioners”), having moved for an extension of time in which to file its opposition to Morgan Stanley Defined Contribution Master Trust’s Motion for an Award of Attorneys’ Fees and Reimbursement of Expenses Pursuant to 8 *Del. C.* § 262(j) (the “262(j) Petition”), and the Court having found good cause therefor,

IT IS HEREBY ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2016, that:

1. The Motion to Extend Fee Petition Briefing Schedule is GRANTED;
- and
2. The Moving Petitioners shall file their opposition(s) to the 262(j) Petition one week following resolution of the Motion to Compel and full compliance with any Order entered thereon.

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Vice Chancellor

**CERTIFICATE OF SERVICE**

Samuel T. Hirzel, II, hereby certifies that on July 1, 2016, copies of the foregoing Global Continuum Petitioners and Magnetar Funds' Motion to Extend Fee Petition Briefing Schedule were served electronically upon the following counsel:

Stuart M. Grant, Esq.  
Megan D. McIntyre, Esq.  
Michael J. Barry, Esq.  
Christine M. Mackintosh, Esq.  
Rebecca A. Musarra, Esq.  
GRANT & EISENHOFER P.A.  
123 Justison Street  
Wilmington, Delaware 19801

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

Jeremy D. Anderson, Esq.  
FISH & RICHARDSON P.C.  
222 Delaware Avenue, 17<sup>th</sup> Floor  
Wilmington, DE 19801

Thomas Uebler, Esq.  
COOCH & TAYLOR P.A.  
1000 West Street, 10<sup>th</sup> Floor  
Wilmington, DE 19801

/s/ Samuel T. Hirzel, II  
Samuel T. Hirzel, II (# 4415)