EFiled: Aug 29 2016 03:40PM EDT
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Case No. 9322-VCL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE APPRAISAL OF DELL, INC.	: Consol. C.A. No. 9322-VCL : Public Version Filed: Aug. 29, 2016

THE MAGNETAR FUNDS' SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO PETITIONER MORGAN STANLEY DEFINED CONTRIBUTION MASTER TRUST'S MOTION FOR AN AWARD OF FEES AND EXPENSES PURSUANT TO 8 DEL. C. SECTION 262(J)

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 submit this supplemental memorandum in opposition to Petitioner Morgan Stanley Defined Contribution Master Trust's Motion For An Award Of Fees And Expenses Pursuant To 8 Del. C. Section 262(j) (the "Fee & Expense Petition").

BACKGROUND

1. This supplemental memorandum is limited to addressing newly discovered documents and information and is not intended to replace the Magnetar Funds' July 1, 2016 memorandum in opposition to the Fee & Expense Petition. At the time the Magnetar Funds filed their initial memorandum, they did not have access to the initial discovery that G&E provided, nor did they have access to the

documents and amended discovery responses that G&E and the T. Rowe Petitioners provided in response to this Court's July 14, 2016 Order Granting in Part Motion to Compel Discovery.

2. In response to the discovery requests served by the Magnetar Funds to which the Court compelled them to respond, the T. Rowe Petitioners produced 33 pages of documents, including eight pages redacted completely by block redactions marked as "non-responsive." Likewise, G&E produced 87 pages of documents. The T. Rowe Petitioners also included a privilege log containing three items, and both entities amended their written responses. Prior to this compelled production (but after the Magnetar Funds' initial July 1, 2016 opposition brief had been filed), G&E had made available at its offices a disk containing their engagement letters with the T. Rowe Petitioners and certain summary expense documentation. Annexed hereto as Exhibit A is T. Rowe Price's retainer letter with G&E. G&E did not, however, provide any allocation of these expenses between entitlement related issues and valuation related issues.

3. The amended written responses provided previously unknown information about certain key features of [redacted] In particular, the Magnetar Funds were informed that [redacted]

[redacted] G&E's Amended Responses and Objections to the Magnetar Funds' First Set of Interrogatories, Response to No. 13, at p. 4, annexed hereto as Exhibit B. The written responses further provided that "G&E did not recover any expenses in connection with this agreement because there were no expenses incurred in connection with the interest payment." *Id.* In other words, [redacted]

DISCUSSION

A. Any Expenses Awarded Pursuant to the Fee & Expense Petition Should be Allocated to the T. Rowe Petitioners as Well as the Non-G&E Petitioners

4. The Magnetar Funds do not dispute that G&E actually incurred the amount of out-of-pocket expenses that they claim to have incurred. However, the Magnetar Funds do dispute the proposed allocation of 100% of those expenses to the Non-G&E Petitioners and 0% to the T. Rowe Petitioners. The Magnetar Funds also dispute G&E's contention that none of the expenses sought by G&E related to litigation of the T. Rowe-specific entitlement issues.

5. As the moving party, G&E bears the burden of establishing the appropriateness of this allocation. They have failed to do so for several reasons:

6. ***G&E's Non-Enforcement of Their Expense-Reimbursement Rights***. The new discovery confirms that G&E voluntarily chose not to enforce their right to reimbursement of "all out of pocket expenses" from the T. Rowe Petitioners. There can be no dispute that the T. Rowe Petitioners agreed in their retainer letter with G&E to reimburse "all out of pocket expenses," with no carve-out for the instant circumstances. Yet G&E has admitted that they did not recover any such expenses. If the T. Rowe Petitioners are to be given a free pass on expenses, who should bear that portion? It hardly seems fair for the Non-G&E Petitioners to absorb the cost of G&E's choice not to enforce their rights under the retainer letter.

7. ***G&E's Failure to Provide Expense Breakdown***. Nothing in the new discovery cures G&E's complete failure to establish the portion of the claimed out-of-pocket expenses that relates solely to the valuation issues. It is Morgan Stanley that bears the burden of proving the reasonableness and propriety of the expenses for which they seek reimbursement and as a result of G&E's inability to allocate the expenses attributable to entitlement, Morgan Stanley has failed to carry their burden.

8. This Court's July 14, 2016 ruling provided that "Magnetar is entitled to understand the amounts being sought on the Fee Motion and to explore whether any of those items related to the entitlement issues." Order Granting in Part Motion to Compel Discovery, July 14, 2016, at 19. Nowhere in the discovery

responses do the responding parties provide any basis for the Magnetar Funds or the Court to determine those items that related to entitlement.

9. By way of example only, the expense documentation [redacted] These excerpts from G&E's expense document production are annexed hereto as Exhibit C. G&E nonetheless failed to identify any expenses that it excluded from their expense petition. Absent such an allocation by G&E it is impossible to see how Morgan Stanley has met their burden in shifting G&E's expenses to the Non-G&E Petitioners.

10. Accordingly, even though the Court recognized the relevance of evidence establishing the breakdown of entitlement-related expenses versus valuation-related expenses, [redacted] In light of the entitlement-specific document production and deposition testimony cited in the briefing of the entitlement issue, G&E clearly would have incurred significant expenses for, among other things, legal research, filing fees, electronic document hosting, court reporters, transcription services,

travel, and so forth. Absent any credible breakdown of the millions of dollars in expenses sought, G&E cannot show that its proposed allocation fairly insulates the Non-G&E Petitioners from entitlement-related expenses.

11. ***The T. Rowe Petitioners Benefitted from Valuation-Related Expenses***. Recent developments show that G&E's position that the T. Rowe Petitioners received no benefit from the valuation-related litigation is entirely lacking in credibility. As reflected in Dell's recent SEC filing disclosing the settlement, which was made after our July 1, 2016 brief was filed, the value of the settlement was the elimination of the risk that the entitlement decision would be reversed and the valuation decision would apply to the T. Rowe Petitioners' shares, with interest continuing to run during such an appeal. As stated in the Form 424B3 filed by Denali Holding Inc. on July 5, 2016:

> On June 29, 2016, the Company, Dell and certain investment funds affiliated with T. Rowe Price (the "Petitioners") entered into a settlement agreement ***to resolve a dispute regarding the fair value and interest due*** on approximately 31,653,905 Dell shares held by the Petitioners, representing the 30,730,930 shares subject to appraisal claims that were dismissed in May 2016 plus an additional 922,975 shares subject to appraisal claims that had been previously disqualified on other grounds. The terms of the settlement, among other matters, provide that, in exchange for a release and dismissal of all asserted claims, the Company will pay $13.75 per share for a total sum of $435,241,193.75, plus an additional $28,000,000 in interest.

Form 424B3, annexed hereto as Exhibit D (emphasis added).

12. Contrary to G&E's effort in its discovery responses to re-cast the settlement, Dell's description of the settlement in its public filing considered the agreement to resolve a dispute regarding *the fair value* as well as the interest due on the non-entitled shares.[1] There is no evidence other than G&E's self-serving discovery responses to contradict the accuracy of Dell's publicly issued description.

13. ***G&E Assumed the Risk of Non-Recovery***. G&E's amended discovery responses, in which it is revealed that the T. Rowe Petitioners did not pay *any* monies to G&E for any expenses, are particularly revealing when measured against the Magnetar Funds' historical effort to reach a negotiated resolution of the expense allocation issue. The Magnetar Funds and other Non-G&E Petitioners made repeated attempts in 2014 and again in 2015 to get ahead of the problem that is now before the Court; as evidenced in part by the July 23, 2015 and August 10, 2015 letters from the Magnetar Funds' counsel to G&E (attached as Exhibits A and B to the Magnetar Funds' July 1, 2016 memorandum), the Magnetar Funds asked G&E to facilitate an agreement among all dissenting shareholders for a fair and reasonable allocation of expenses prior to any decision

[1] Notably, Dell's position in the appraisal proceeding is that petitioners are entitled to a fair value of less than $13.75 per share.

being made on their eligibility to proceed. But G&E refused to work with the Non-G&E Petitioners in the apparent hopes that a favorable outcome on the entitlement issue would moot the problem. The Non-T. Rowe petitioners should not be required to pick up the tab for G&E's losing bet. For G&E to now advise that it did not receive any expense reimbursement from its clients despite the substantial settlement payment they received underscores the reasonableness of the Magnetar Funds' historical request to timely resolve this issue and assess expenses against all claimants, including the T. Rowe Petitioners.

14. ***Appropriate Allocation of Expenses***. Accordingly, for the foregoing reasons the Magnetar Funds and the other Non-G&E Petitioners should not be forced to bear the full freight of G&E's expense request. Leaving aside for the moment Morgan Stanley's failure to establish the aggregate dollar amount of expenses that should be allocable across all Petitioners, the Magnetar Funds believe that any such amount should be apportioned by the number of shares held by each Petitioner remaining in the litigation as of October 5, 2015, which is the date that the trial commenced. In other words, we believe that the appropriate allocation formula should be as follows:

$$\frac{\text{(Number of shares held by specific Petitioner)}}{\text{36.6 million shares}^{2}} \quad X \quad \text{(Aggregate valuation-related expenses as determined by the Court)}$$

[2] The Magnetar Funds understand that the total share count is not necessarily final and are using this estimated number for illustrative purposes only.

15. Furthermore, to determine the aggregate valuation-related expenses, the Magnetar Funds would propose the following methodology: G&E is claiming total expenses of $4,035,787.18. The experts' expenses, who were exclusively devoted to valuation issues, totaled $3,372,878.02, leaving $662,909.16 in non-expert expense as possibly being allocable to the entitlement issue. Given G&E's failure to meet its burden and come forward with any identification of those expenses that were attributable to entitlement, the Court may well choose to leave the non-expert expenses out of the amount to be assessed. Plugging in these values would lead to the following computation for the Magnetar Funds' pro rata expense allocation:

$$\frac{\text{3,865,820 shares}}{\text{36.6 million shares}} \quad X \quad \$3,372,878.02 = \$356,255.17$$

16. Accordingly, the Magnetar Funds respectfully propose the foregoing methodology in determining their *pro rata* expense allocation, leading to an allocation for them based on this example of $356,255.17.

B. The Magnetar Funds Should be Credited With an Offset Against the Fees Demanded by the Fee & Expense Petition for the Legal Fees that They Were Required to Incur to Protect Their Unique Interests

17. The T. Rowe Petitioners had the benefit of their own counsel, who also happened to be lead counsel, which was looking out for their unique interests

– including entitlement related issues – throughout this proceeding. The Magnetar Funds did not enjoy the same such protection from lead counsel. Rather, they were required to engage their own counsel, in large part to address the same unique entitlement issue[3] that threatened the viability of the T. Rowe Petitioners' appraisal claim. From the Magnetar Funds' perspective, that threat from the T. Rowe Petitioners posed the risk – which has now materialized – that their dismissal from the appraisal proceeding would unduly saddle the Non-G&E Petitioners with a disproportionate share of the vast expenses that were incurred in this case. As this very issue has come to prove, the Magnetar Funds needed their own counsel to protect their interests and they should thus be afforded a dollar-for-dollar credit against the fees that the Fee & Expense Petition is seeking. Indeed, the 2015 correspondence identified above and in the Magnetar Funds' July 1, 2016 memorandum illustrates precisely the type of advocacy that the Magnetar Funds needed but could not get from G&E; on the contrary, in that example the Magnetar Funds' position was directly at odds with that of G&E.

18. Furthermore, now that the T. Rowe Petitioners have enjoyed a substantial recovery by virtue of [redacted]

[3] G&E expressly disclaimed any obligation to fully represent the interests of all Non-G&E Petitioners by carving out any responsibility to litigate entitlement issues on behalf of other stockholders, as reflected in the Consolidation Motion. (*See* Consolidation Order ¶ 6).

[redacted] – the T. Rowe Petitioners should naturally be included among those petitioners who are required to contribute toward lead counsel's fees. Indeed, [redacted] But in any event, it would be patently unfair to require only the Non-G&E Petitioners to contribute toward G&E's fees, and [redacted] Accordingly, whatever fee may be assessed against the appraisal class, the Magnetar Funds should be credited with an offset for the fees that they were required to incur to engage counsel to protect their own interests.

19. Indeed, this argument applies with even greater force with respect to the expenses sought by the Fee & Expense Petition, as the T. Rowe Petitioners benefited from the case and yet they have apparently been excused by their counsel from contributing toward *any* expense obligation, contrary to the terms of their own engagement letter. They should be required to pay their fair share of expenses based on principles of equity and the requirements of their contract with G&E, or, alternatively, G&E can choose to forego collection of the T. Rowe Petitioners' portion without imposing that burden upon the Non-G&E Petitioners.

C. Any Payments that the Court may Award in Response to the Fee & Expense Petition Should be Suspended and Not Required to Be Made Until the Court's Valuation Decision Becomes Final and Unappealable

20. G&E's retainer agreement, as produced in discovery, provides that no fees or expenses are due to G&E in the event of a mere merger-price recovery. If Dell were to appeal this Court's valuation award and succeed in reducing the judgment down to the merger price (or less), that would result in no fees or expenses being due to G&E under the express terms of their retainer agreement. In that circumstance, the Magnetar Funds and the other Non-G&E Petitioners should not be required to pay any fees and expenses where G&E's own clients would not be so required.

21. Accordingly, the Magnetar Funds respectfully request that any payout that may be awarded in respect of the Fee & Expense Petition be suspended and not required to made pending any appeal and that no fee and expenses award be made until the valuation decision is final and unappealable. In addition, any such ruling in connection with the Fee & Expense Petition should be subject to reconsideration in the event that Dell takes an appeal in this matter.

CONCLUSION

22. The Magnetar Funds respectfully request an Order (a) allowing them to deduct from the fee component of the Fee & Expense Petition a full dollar-for-dollar credit for the amount of attorneys' fees they were required to incur in

engaging their own counsel in this case; and (b) recalculating the expense component of the Fee & Expense Petition by (i) reducing those expenses attributable solely to the entitlement issue (or absent a full allocation by G&E an estimate thereof), and (ii) allocating such net expenses to the full shareholder census, including the T. Rowe Petitioners; the net expenses (as may be reduced per item (b)(i)) should thus be allocated based on the amount of net expenses divided by the total number of approximately 36.5 million shares that had been in play in this case through trial (and settlement).

23. In addition, any payment that may be directed in connection with the Fee & Expense Petition should be suspended unless and until the Magnetar Funds have received the full amount of consideration plus interest to which it is entitled under the Court's fair-value determination pursuant to a final, non-appealable order. Moreover, any such award in respect of the Fee & Expense Petition should be subject to reconsideration in the event that Dell takes an appeal of the Court's valuation award.

PROCTOR HEYMAN ENERIO LLP

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Dated: August 22, 2016

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE APPRAISAL OF DELL INC. : Consol. C.A. No. 9322-VCL
: **CONFIDENTIAL FILING**

EXHIBITS A THROUGH C TO THE MAGNETAR FUNDS' SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO PETITIONER MORGAN STANLEY DEFINED CONTRIBUTION MASTER TRUST'S MOTION FOR AN AWARD OF FEES AND EXPENSES PURSUANT TO 8 DEL. C. SECTION 262(J)

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Dated: August 22, 2016

Pursuant to Court of Chancery Rule 5.1(d)(2) a public version of this document will not be filed.

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EXHIBIT D

THE MAGNETAR FUNDS' SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO PETITIONER MORGAN STANLEY DEFINED CONTRIBUTION MASTER TRUST'S MOTION FOR AN AWARD OF FEES AND EXPENSES PURSUANT TO 8 DEL. C. SECTION 262(J)

FILED PURSUANT TO RULE 424(B)(3)
FILE NUMBER 333-208524
DENALI HOLDING INC.
SUPPLEMENT NO. 5 TO
PROSPECTUS DATED JUNE 6, 2016
THE DATE OF THIS SUPPLEMENT IS JULY 5, 2016
ON JULY 5, 2016, DENALI HOLDING INC. FILED THE ATTACHED CURRENT REPORT ON FORM 8-K

The attached information modifies and supersedes, in part, the information in the Prospectus. Any information that is modified or superseded in the Prospectus shall not be deemed to constitute a part of the Prospectus except as modified or superseded by this Prospectus Supplement.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 or 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): June 29, 2016

Denali Holding Inc.
(Exact name of registrant as specified in charter)

Delaware	**333-208524**	**80-0890963**
(State or other jurisdiction of incorporation or organization)	**(Commission File Number)**	**(I.R.S. Employer Identification No.)**

One Dell Way **Round Rock, Texas**	**78682**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (800) 289-3355

Not applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 8.01 Other Events

Settlement of Certain Litigation

As previously reported by Denali Holding Inc. (the "Company") in connection with the Company's acquisition of Dell Inc. ("Dell") on October 29, 2013 (the "going-private transaction"), holders of shares of Dell common stock who did not vote on September 12, 2013 in favor of the proposal to adopt the going-private transaction agreement, who properly demanded appraisal of their shares and who otherwise complied with the requirements of Section 262 of the Delaware General Corporate Law ("DGCL") were entitled to seek appraisal for, and obtain payment in cash for the judicially determined "fair value" (as defined pursuant to Section 262 of the DGCL) of, their shares in lieu of receiving the going-private transaction consideration.

The Company also has previously reported that, between October 29, 2013 and February 25, 2014, former Dell stockholders filed petitions in thirteen separate matters commencing appraisal proceedings in the Delaware Court of Chancery, which proceedings were consolidated by the Court, in which the stockholders sought a determination of the fair value of a total of approximately 38 million shares of Dell common stock plus interest, costs, and attorneys' fees. By separate orders in 2014 and 2015, the Court of Chancery dismissed claims of holders of approximately 2.5 million shares for failure to comply with the statutory requirements for seeking appraisal. On July 30, 2015, Dell moved for summary judgment seeking to dismiss claims of holders of an additional 30,730,930 shares (as well as a number of shares previously disqualified on other grounds) because those shares were voted in favor of the going-private transaction, and thus failed to comply with the statutory requirements for seeking appraisal. On May 11, 2016, the Court of Chancery granted Dell's motion and dismissed the appraisal claims of the holders of the 30,730,930 shares determining that they were entitled to the merger consideration without interest. The Court of Chancery ruled on May 31, 2016 that the fair value of the Dell shares as of October 29, 2013, the date the going-private transaction became effective, was $17.62 per share. This ruling would entitle the holders of the remaining 5,505,730 shares to $17.62 per share plus interest at a statutory rate, compounded quarterly. The Court of Chancery's decisions are subject to review on appeal.

On June 29, 2016, the Company, Dell and certain investment funds affiliated with T. Rowe Price (the "Petitioners") entered into a settlement agreement to resolve a dispute regarding the fair value and interest due on approximately 31,653,905 Dell shares held by the Petitioners, representing the 30,730,930 shares subject to appraisal claims that were dismissed in May 2016 plus an additional 922,975 shares subject to appraisal claims that had been previously disqualified on other grounds. The terms of the settlement, among other matters, provide that, in exchange for a release and dismissal of all asserted claims, the Company will pay $13.75 per share for a total sum of $435,241,193.75, plus an additional $28,000,000 in interest. The terms of the settlement will not have a material adverse effect on the Company's financial position or result of operations. The remaining 5,505,730 shares not subject to the settlement agreement and owned by the other stockholders remain subject to the appraisal proceedings.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: July 5, 2016

Denali Holding Inc.

By: /s/ Janet B. Wright
Janet B. Wright
Vice President and Assistant Secretary
(Duly Authorized Officer)