



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE APPRAISAL OF DELL, INC.)
) Consolidated
) C.A. No. 9322-VCL

**THE MAGNETAR FUNDS’ REPLY MEMORANDUM
IN FURTHER SUPPORT OF THEIR 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 submit this reply memorandum in further support of 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.

1. Regardless of the volume and magnitude of the tasks required at this stage of the proceedings, the largest shareholder in the case should have a seat at counsel’s table and meaningful control over the proceedings, all the more so if there are important decisions remaining to be made. And indeed there are, such as agreement on the form of final order to be submitted to the Court and appeal

considerations, for example. As to the final order, for example, the Magnetar Funds had material comments they wished to make on several key provisions to the draft form of order that Lead Counsel had sent to Respondent, and yet the Magnetar Funds have no confidence that their input on that order will be accepted or even acknowledged by Lead Counsel; indeed, the Magnetar Funds were shut out by Lead Counsel even from having input into the joint letter addressing the final order that the Court directed the parties to submit pursuant to the May 31, 2016 valuation ruling. Moreover, even if Lead Counsel is correct in its assertion that the litigation is largely over and nothing material remains to be done (with which proposition we disagree), then there is certainly no harm done in allowing the largest stockholder to have meaningful control over the final determinations. In any event, the Magnetar Funds have been forced to renew this motion at this time because the entitlement issue was decided not before but after trial, and Lead Counsel failed to adequately address the Magnetar Funds' initial request -- made prior to trial -- that they be given a meaningful role especially in light of the risk to the T. Rowe Petitioners of an adverse ruling on the entitlement issue. Now that that eventuality has come to pass, Lead Counsel should not be permitted to shut out the Magnetar Funds, once again, from having a chance to participate in leadership decisions.

2. The fact that the Magnetar Funds need to have a meaningful say in the case -- and currently do not have one -- was starkly demonstrated by Lead Counsel's precipitous filing of its motion to alter or amend the judgment, which Lead Counsel filed without the Magnetar Funds' knowledge or consent. The Magnetar Funds did not request Lead Counsel to seek to increase the Court's fair value determination, and on the contrary the Magnetar Funds believed that it would have been a better strategic decision to hold that argument in abeyance while possibly negotiating a resolution with Respondent. The fact that Lead Counsel filed that motion without consulting or even informing the Magnetar Funds or other significant petitioners such as the Global Continuum Petitioners not only demonstrated Lead Counsel's lack of alignment with such petitioners, but also showed that there are important decisions still to be made even at this late stage of the case.

3. Lead Counsel is wrong to suggest that this motion serves no legitimate purpose or that the Magnetar Funds are motivated by some hidden agenda such as gaining leverage on their opposition to Lead Counsel's Section 262(j) application. The Magnetar Funds are not pursuing, and do not need to pursue, co-lead counsel status to gain leverage on the fees issue, as they have already raised their opposition to Lead Counsel's Section 262(j) application and intend to brief that application pursuant to the Court's schedule (as may be

amended in response to our pending motion to compel discovery from Lead Counsel, which was necessitated by its refusal to respond at all to such discovery).

4. The Magnetar Funds remain concerned that Lead Counsel is not fully aligned with their interests and those of other petitioners in large part because Lead Counsel continues to represent the T. Rowe Petitioners, who were uniquely found to be not entitled to proceed and who may well be seeking to overcome the Court's entitlement ruling, whether by appeal or by settlement with Respondent. Furthermore, in response to Lead Counsel's accusation that the Magnetar Funds and the undersigned's correspondent counsel somehow behaved improperly in respect of Lead Counsel's settlement negotiations with Respondent, the Magnetar Funds were plainly entitled to know about the existence of any settlement discussions that Lead Counsel may have been having with Respondent; indeed, Lead Counsel represented on the record at the September 28, 2015 hearing on the Magnetar Funds' initial motion seeking co-lead status that it would so inform the Magnetar Funds of any future settlement negotiations. Furthermore, the simple fact that the Magnetar Funds pursued in discovery information concerning settlement negotiations arises not from any confidential information misappropriated from Lead Counsel but from the Magnetar Funds' (well-founded) concerns that Lead Counsel may be pursuing settlement negotiations of which the Magnetar Funds are unaware.

5. In addition, contrary to Lead Counsel's assertions, the Magnetar Funds were never afforded the opportunity to have material input in the case. If Lead Counsel had been more solicitous and receptive to the Magnetar Funds, they would have gladly provided more meaningful assistance during the prosecution of the case. Indeed, in the one instance in which Lead Counsel (begrudgingly) accepted the Magnetar Funds' input, the Magnetar Funds did provide meaningful assistance and advice by focusing on the tax issues that ultimately proved to be a substantial component of the valuation uplift. In response to Lead Counsel's initial resistance to engaging a tax expert to more fully take on Respondent's assumptions concerning Dell's tax rate for purposes of the DCF valuation in this case, the Magnetar Funds actively pushed Lead Counsel to so engage a tax expert, commented substantially on Respondent's tax expert report and also participated in the deposition of Respondent's tax expert, notwithstanding Lead Counsel's resistance to allowing the Magnetar Funds even to examine that expert on a few discrete subjects. This issue was the exception to the rule as Lead Counsel generally turned a deaf ear to the Magnetar Funds.

6. Finally, Lead Counsel's self-serving argument that it has chosen not to work cooperatively with the Magnetar Funds or their counsel fails to provide any legitimate basis to deny this motion. On the contrary, now that Lead Counsel has candidly admitted that it "will not work with the Lowenstein Sandler firm in

this matter on a going-forward basis,” the Court has all the evidence it needs to determine that the Magnetar Funds must be formally appointed as co-lead petitioner and thus be afforded the right to make leadership decisions in this case going forward. Otherwise, Lead Counsel -- by its own assertion -- will not solicit or accept any suggestions from the Magnetar Funds. Informal cooperation between Lead Counsel and counsel to the Magnetar Funds has not worked successfully thus far and the time has come for that to change, however late in the day it may be.

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

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

OF COUNSEL:

LOWENSTEIN SANDLER LLP

Lawrence M. Rolnick

Steven M. Hecht

1251 Avenue of the Americas

New York, New York 10020

Dated: June 27, 2016



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

1. This memorandum 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 Office Word 2013.

2. This memorandum complies with the type-volume limitation of Ct. Ch. R. 171(f)(1) because it contains 1,291 words, which were counted by Microsoft Office Word 2013.

PROCTOR HEYMAN ENERIO LLP

/s/ Samuel T. Hirzel, II

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

Dated: June 27, 2016



CERTIFICATE OF SERVICE

Samuel T. Hirzel, II, hereby certifies that on June 27, 2016, copies of the foregoing Magnetar Funds' Reply Memorandum in Further Support of Their 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:

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

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

Thomas Uebler, Esq.
COOCH & TAYLOR P.A.
1000 West Street, 10th Floor
Wilmington, DE 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

/s/ Samuel T. Hirzel, II

Samuel T. Hirzel, II (# 4415)