

No. 10342-CM

IN THE SUPREME COURT OF DELAWARE

LONGPOINT INVESTMENTS TRUST and
ALEXIS LARGE CAP EQUITY FUND LP,

Petitioner,

v.

PRELIX THERAPEUTICS, INC.
A Delaware Corporation

Respondents,

ON APPEAL FROM THE
CHANCERY COURT
OF THE STATE OF DELAWARE

BRIEF FOR THE PETITIONERS

TEAM L

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NATURE OF THE PROCEEDINGS

This appeal challenges the trial court's order granting appellee Prelix's motion for summary judgment against appellants Longpoint and Alexis. Prelix contends that neither Longpoint nor Alexis is entitled to an appraisal of their shares. Although appellees' are unable to prove that some previous owner in favor of the merger did not vote their shares, it does not preclude them from seeking appraisal. The trial court granted summary judgment for Prelix. Appellants were precluded from seeking appraisal. Appellant are not entitled to appraisal of their shares because the stockholder of record of those shares did not continuously hold such shares through the effective date of the merger. Appellants now appeal to this Court.

SUMMARY OF ARGUMENT

As to issue one, the appraisal requirements of Section 262(a) are directed solely at the shareholder of record. *Merion Capital Lp, v. BMC Software, Inc.*, 2015 WL 67586 at 2 (Del. Ch.). In *Ancestry*, the court held that the plain language of the statute does not enact any burden on the beneficial shareholder to show that the shares were not voted in favor of the merger. *In re Ancestry.Com, Inc.*, 2015 WL 66825 at 2. As such, a plain language interpretation of D.G.C.L. Section 262 does not impose burden to perfect standing or a voter-tracing burden on the beneficial shareholder. Furthermore, "the courts may not engraft upon a statute language which has been clearly excluded therefrom

by the legislature.” *Giuricich*, 449 A.2d 232, 238. Thus any shortcomings of the statute are better suited to be dealt with in the legislature and are not within the scope of this matter.

As to issue two, under federal law, a corporation record holder is determined through the DTC participant list. *In re Appraisal of Dell Inc.*, 2015 WL 4313206, at 11. Participants such as custodial banks and brokers are considered to be holders of record. *Id.* at 11. Specifically, federal law defines record holder to be any broker or entity that holds shares on behalf of a beneficial owner or in a nominee’s name. Cede is not the only holder of record that can meet the “Continued Holder Requirement” or “Record Holder Requirement”. *Id.*

J.P. Morgan Chase and Bank of New York Mellon appear on the DTC participant list. (R. 3). Therefore, they are stockholders of record for purposes of Delaware law. *In re Appraisal of Dell Inc.*, 2015 WL 4313206, at 11. Appellee’s motion for summary judgment should be denied as “there would be no change in ownership at the DTC participant level.”*Id.*

Kurz v. Holbrook, 989 A.2d 140, 162 (Del.2010)held that DTC participating banks and brokers who appear on the Cede breakdown [are] stockholders of record” under Delaware law. Moreover, Cede breakdowns are readily accessible and allow corporations to address “concerns efficiency, certainty, and predictability of

application.” *Id.* at 174. Viewing banks as record owners “enhances the legitimacy of [Delaware] law”. *Id.* at 175.

In re Appraisal of Dell Inc., the judge stated that adoption of a new interpretation of “stockholder of record” would be an improvement. *Id.* at 24. “Cede’s dominant holdings and the current one-size-fits-all interpretation of the Record Holder Requirement prevent courts from applying” the requirements under the Section 262 appraisal statute effectively.” The Delaware Supreme Court has the opportunity to reexamine how we define “stockholder of record”.

STATEMENT OF THE FACTS

A. Summary of the Merger

On October 15, 2014 Respondant announced a proposed acquisition by Radius Health Systems, Inc. at which time the open market share price was at \$12.75. (R. 1) The initial proposed price per share was \$14.50 but was raised to \$15.00 per share on December 18, 2014 after a revised merger agreement. *Id.* Even after the revised per share price the merger agreement was relatively unpopular. On February 17, 2015 a Prelix stockholders meeting was held with a vote of just over 53% approving the merger. *Id.*

B. Summary of the Appraisal Rights

On April 16, 2015, the date Respondant was acquired by Radius Health Systems Corp., Petitioners owned 5.4% of the

approximately 49 million outstanding shares of Respondant common stock. (R.2) Petitioner originally acquired the relevant shares between the dates of December 4, 2014 and December 18, 2014. (R. 2) The purchase of shares fell between the record date for determining entitlement to vote and, as later discussed the increased per share offer. (R. 3) On January 13, 2015 Petitioners exercised their rights pursuant to D.G.C.L. Section 262(d)(1) and delivered written demand for appraisal of their shares. Cede & Co., the registered shareholder of record made this demand, on Petitioner's behalf. *Id.*

Shortly after demand was made for appraisal, the appropriate number of shares were moved from a fungible pool of shares and given uniquely numbered certificates. These certificates were issued in the name of Cede & Co. on January 23, 2015. *Id.* On February 5, 2015, Cede & Co endorsed the certificates so that they may be reissued in the names of Cudd & Co. and Mac & Co. *Id.* This caused a holder of record change from Cede & Co. to Cudd & Co. and Mac & Co. prior to the time of merger on April 16, 2015. (R. 4) Petitioners had no knowledge of the issuance and subsequent change in ownership. Petitioners brought appraisal action on May 6, 2015 under their own names. *Id.*

ARGUMENT

Question Presented

Whether Longpoint is required by Section 262 of the Delaware General Corporate Law to show that the shares for which it seeks appraisal have never been voted affirmatively for the relevant merger?

Whether Longpoint and Alexis are entitled to appraisal of their shares pursuant to Sec 262(a) of the Delaware General Corporate Law.

Scope of Review

"The scope of review on appeal of a decision on summary judgment is *de novo* consideration, pursuant to which the Supreme Court may review the entire record, including the pleadings and any issues such pleadings may raise, affidavits and other evidence in the record, as well as the trial court's order and opinion." *Pike Creek Chiropractic Ctr. v. Robinson, Del. Supr.*, 637 A.2d 418 (1994)

Merits of the Argument

I. THE TRIAL COURT CORRECTLY HELD THAT SEC 262 DOES NOT CREATE A SHARE TRACING BURDEN.

a. Brief Overview

In order to move from a system requiring major votes to be unanimous, the Delaware General Corporation Law sought to protect minority shareholder rights through appraisal rights. As such, in order to maintain standing to exercise one's appraisal rights a shareholder must not vote in support of the proposed merger. With

the relevant language being found in Section 262 of the Delaware General Corporation Law.

(a) Any stockholder of a corporation of this State who holds shares of stock ... who has otherwise complied with subsection (d) of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing ... shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder's shares of stock". Also 262 (e) 2007 amendment ...

8 Del. C. §§ 262(a).

(e) Within 120 days after the effective date of the merger or consolidation, any stockholder who has complied with the requirements of subsections (a) and (d) of this section hereof, upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares...

8 Del. C. §§ 262(e).

In order to perfect standing, the above statutory language has four distinct requirements for the holder of record to fulfill: "(1) held those shares on the date it made a statutorily compliant demand for appraisal on the corporation; (2) continuously held those shares through the effective date of the

merger; (3) has otherwise complied with subsection (d) of the statute, concerning the form and timeliness of the appraisal demand; and (4) has not voted in favor of or consented to the merger with regard to those shares." *Merion Capital Lp, v. BMC Software, Inc.*, 2015 WL 67586 at 3 (Del. Ch.). The fourth requirement being the main contention in the issue presented here. Additionally, in the interest of maintaining certainty throughout the appraisal process the courts have determined that "shareholder" as used in Section 262(a, e) refers to the shareholder **of record**. *Enstar Corp. v. Senouf*, 535 A.2d 1351, 1354 (Del. Ch. 2015) (emphasis added). As a result of this move to a system that allows for appraisal rights the investment markets have changed and adapted as well. It is now common practice to pursue investments known as appraisal arbitrage. This is an investment strategy implemented to buy perceived undervalued stock with the intention of exercising appraisal rights. *Merion Capital Lp*, 2015 WL 67586 at 1.

b. Statutory construction and plain language interpretation of Section 262(a) and (e) require only that the shareholder of record seeking appraisal must not vote in support of the relevant merger.

The Chancery Court rightly held that this is an issue that is well decided within the case law. The statute requires that the "record holder of the stock for which appraisal is sought ... has not voted in favor of or consented to the merger with regard to those shares." *Merion Capital Lp*, 2015 WL 67586 at 1. When

interpreting statutes, the court must determine the legislative intent behind the relevant statute. *In re Krafft-Murphy Co., Inc.*, 62 A.3d 94, 100 (Del. Ch.2013). A mere disagreement over interpretation does not rise to ambiguity. Rather, multiple reasonable interpretations must exist or a plain reading of the statute would result in an absurd result. *Id.* When interpreting statutes that are deemed to be ambiguous courts should address the statute as a whole. *Id.*

The direct language of Section 262(a) states: the stockholder who holds shares of stock and has not voted in favor of merger or consented in writing. 8 Del. C. §§ 262(a). Which in turn creates a burden to show that the shareholder of record has not voted in favor of the relevant merger. However, this clear unambiguous language does not impose any tracing of the shares themselves. Even when looked at in conjunction with Section 262(e), which states: any stockholder shall be entitled to receive an aggregate number of shares voting against and the aggregate number of holders of such shares. 8 Del. C. §§ 262(e). No conclusion of share tracing can be drawn. Although the language of Section 262(e) clearly places focus on the shares themselves it cannot be read in a manner of expanding the burden derived in Section 262(a). In fact it is clear that the intention of the legislature was the opposite as demonstrated by Section(e) which expands the rights of shareholders to seek other shareholders in order to mitigate cost of litigation. If the legislatures intent was for Section 262(e) to both expand the

rights of shareholders, while at the same time limiting or in many cases eliminating appraisal rights the result would be irreconcilable.

As to the requirement the statute does instate, the "literal terms of the statutory text ... only the record holder can perfect appraisal rights. *In re Appraisal of Transkaryotic Therapies Inc.*, 2007 WL 1378345, 3 (Del.Ch. 2007). Furthermore, a shareholder of record can vote a portion of its shares in favor of the merger and a portion against the merger, and seek appraisal as to the dissenting shares. *In re Appraisal of Transkaryotic*, 2007 WL 1378345 at 4. This falls in line with the standard practices of the current market, as multiple shareholder beneficiaries may utilize a single shareholder of record. In order to fulfill the intent of protecting dissenters, the shareholder of record must be allowed to pursue both actions.

In the case of *Merion Capital Lp, v. BMC Software, Inc.*, Merion Capital LP ("Merion") began purchasing shares of BMC Software Inc. ("BMC") on the open market in order to engage in appraisal arbitrage. *Merion Capital Lp*, 2015 WL 67586 at 3. Cede & Co. as shareholder of record held the shares purchased by Merion, similar to the shares in this case, in fungible mass. *Id.* at 2. Due to reasons inconsequential to this analysis, Merion transferred owner rights from Cede & Co. to Merion, becoming the shareholder of record. *Id.* This presented a similar issue to case at hand, whether the shares were not voted in favor of the merger. The court in Merion correctly found that Section 262 does

not create a share tracing burden on the shareholder. The court clearly reasons that the appraisal requirements of Section 262(a) are directed solely at the shareholder of record. *Id.* at 6. Which extends the voting requirement only as far as the shareholder of record seeking appraisal and not previous owners of the shares. The court addresses the language in Section 262(e) which extends information rights to "the aggregate number of shares not voted in favor of the merger ... and the number of holders of such shares". 8 Del. C. §§ 262(e). The court states, "[i]t is antithetical to that intention to interpret the language of subsection (e) to impose, on the statute as a whole, an additional hurdle for appraisal". *Merion Capital Lp*, 2015 WL 67586 at 7. The shareholder has no burden laid out by the statute to engage in share tracing, which in the case of a fungible mass would be all but impossible. Rather as reasoned in *Merion* and fulfilled in the case at hand, the shareholder of record need only show that they did not vote affirmatively for the merger.

In re Appraisal of Ancestry.Com, Inc., 2015 WL 66825 (Del. Ch. 2015), involved a beneficial shareholder pursuing litigation under the shareholder's own name as provided by Section 262(e). The court addressed a similar question as we have in this case as to whether the "beneficial owner is required to show that the specific shares for which it seeks appraisal have not been voted in favor of the merger." *In re Ancestry.Com, Inc.*, 2015 WL 66825 at 2. The court held that the plain language of the statute does not enact any burden on the beneficial shareholder to show that

the shares were not voted in favor of the merger. *Id.* at 8. Section 262(e) did expand the rights of beneficial shareholders. However, Section 262(a) and (d) requires that the shareholder of record makes written demand. Thus the burden of showing appraisal standing, including that the shareholder of record did not vote in favor of the merger, is solely placed on the shareholder of record. The Petitioners in the present matter only seek to litigate appraisal as beneficial shareholders, provided by Section 262(e). As reasoned in *In re Ancestry*, simply litigating as a beneficial shareholder does not shift the burden from the shareholder of record. Which means that Cede & Co. has fulfilled the required standing when written demand was made.

In the matter at hand, Cede & Co., as the shareholder of record is the only party who can perfect demand. As a shareholder of record Cede & Co is allowed demand appraisal even if a portion of its held share were voted in favor of the merger. Due to the shares being held in fungible mass it is impossible to determine how individual shares were voted. However the Petitioners did not vote in favor of the merger and there is no share tracing requirement or burden upon the beneficiary shareholder under the statute. Petitioners have complied with all of the requirements set forth by Section 262 and thus have perfected standing as to their appraisal rights.

c. Placing a share tracing burden on shareholders would defeat the intended purpose of appraisal rights

The clear intent of the legislature was to broaden the rights of dissenting shareholders. Placing undue restrictions such as share tracing or extending burden onto the beneficial shareholder would only serve to counteract the legislative intent. It should be assumed where an omission exist it is "reasonable to assume that the legislature was aware of the omission and intended it." *Giuricich v. Emtrol Corp.*, 449 A.2d 232, 238 (Del.1982). "The courts may not engraft upon a statute language which has been clearly excluded therefrom by the legislature." *Giuricich*, 449 A.2d 232, 238. As in the case here the legislature clearly left out requirement of share tracing while at the same time adding a provision designed to provide information on the amount of dissenting shares. This points to the intent that there was no intention to shift burden onto the beneficial shareholders. *In re Appraisal of Transkaryotic*, discusses the potential problem of limiting share tracing which could lead to the amount of shares seeking appraisal to be greater the amount of dissenting shares. However this is clearly a doomsday scenario that can easily be solved through pragmatic means. The appraisal statute incentivizes shareholders to join their appraisal claims. As such the records are easily available to all parties including the court. Thus, it stands to reason that it is highly unlikely that appraisal would ever reach a stage where this type of scenario would be likely to occur. In

this case petitioners are seeking appraisal on 5.4% of the outstanding shares, a mere fraction of the 47% of dissenting shares. It is impossible to claim that petitioners are attempting to undermine the intent of the appraisal statute.

Most importantly if a problem does exist it is better served to be addressed in the legislature than by the courts. The court should not venture, "to rewrite an unambiguous statute to address a problem that has not occurred, may not occur" *Merion Capital Lp*, 2015 WL 67586 at 7. As such placing a share-tracing burden on petitioners would go against the intent of the appraisal statute and public policy.

II. THE TRIAL COURT INCORRECTLY HELD THAT APPELLANTS WERE NOT ENTITLED TO APPRAISAL WITH RESPECT TO THEIR PRELIX SHARES.

Appraisal rights are a statutory remedy available to stockholders that allows them to dissent in disputes involving a transaction where their vote is required. *In re Appraisal of Dell Inc.*, 2015 WL 4313206, at 2 (Del Ch.). By meeting the criteria under Section 262 of the Delaware General Corporation Law ("Section 262"), stockholders may be entitled to a right of appraisal. *Id.* Under Section 262(a), "[a]ny stockholder of a corporation" who complies with its requirements "shall be entitled to an appraisal... of the fair value of the stockholder's shares." 8 *Del. C.* § 262(a). The statute defines the word "stockholder" as "a holder of record of stock in a corporation." *Id.* A stockholder who seeks an appraisal must "continuously hold[] such shares through the effective date of the merger." *In*

re Appraisal of Dell Inc., 2015 WL 4313206, at 9. Together, these statutory requirements are known as the "Record Holder Requirement" and the "Continuous Holder Requirement". *Id.* at 2.

"Under federal law, the corporation whose stockholders would vote on the merger—and who could be eligible for appraisal right—must go through the Depository Trust Company" (DTC). *Id.* at 22. Stockholders entrust a portion of the "shares they own to a custodial bank or broker, which then deposits the shares with DTC." *Ramtron and Dell: Chancery Court Provides New Defenses Against Appraisal Arbitrageurs*, Practical Law Legal Update w-000-4688. DTC then selects a nominee, Cede & Co., to become the record holder. *Id.* Through an electronic book entry, DTC tracks the number of shares it holds from custodial banks and brokers and issues them in the name of Cede and not of DTC's participants. *Id.* Instead of shares being certificated on paper or exchanged with every sale, all record ownership of publicly traded shares stays with DTC." *Id.* Under this system of "share immobilization", the boundaries between client and custodial bank were blurred and less distinguishable from the "federally mandated relationship between the custodial bank and DTC." *In re Appraisal of Dell Inc.* at 3. Instead, common law has viewed Cede to be the holder of record through a strict application of the "Continue Holder Requirement". In *Enstar Corp. v. Senouf (Enstar II)*, 535 A.2d 1351 (Del.1987). However, the Supreme Court of Delaware did not address whether DTC participants are considered record holders under Delaware law like they are under federal

law. *Id.* Under federal law, the term "record holder" is defined as "any broker,...bank... or other entity that exercises fiduciary powers which holds securities of record in nominee name or... as a participant in a clearing agency registered pursuant to section 17A of the Act." 17 C.F.R. § 240.14c-1(i). In particular, the language "entity that exercises fiduciary powers" can be defined as "any entity that holds securities in nominee name or... on behalf of a beneficial owner..." *Id.* § 240.14c-1(c). Federal law determines a corporation's record holders by looking through the DTC. *In re Appraisal of Dell Inc.*, 2015 WL 4313206, at 11. "Rule 14a-13 requires that the issuer make appropriate inquiry of DTC to identify the custodial banks and brokers who own shares through Cede..." *Id.* Whoever issues stock certifications may not solely depend on the stock ledger "maintained by its transfer agent, pretend that Cede is a single record holder". *Id.* "For purposes of federal law, Cede is not a record holder... the record holders are the banks and brokers on the DTC participant list." *Id.* at 11. See 15 U.S.C. § 78c(23)(A). Also see 17 C.F.R. § 240.14c-1(i). Here, DTC participants such as custodial banks and brokers should be considered to be holders of record.

a. Custodial banks and brokers are stockholders of record

Custodial banks and brokers like J.P. Morgan Chase and Bank of New York Mellon are "stockholders of record" and thus, have never transferred ownership and have continuously held their shares through the effective date of the merger. Appellants Longpoint Investments ("Longpoint") and Alexis Large Cap Equity

Fund LP ("Alexis") together owned shares of stock of Prelix Therapeutics, Inc. ("Prelix"). (R. 1). Appraisal rights under Section 262 were available to stockholders of Prelix and through the holder of record, Cede, both Longpoint and Alexis filed a timely demand for appraisal. *Id.* After appellants submitted their demands for appraisal, DTC moved the requested shares to issue certificates in the name of Cede. *Id.* at 3. The certificates were sent to J.P. Morgan Chase and Bank of New York Mellon, "the DTC participants holding the Prelix shares on behalf of Longpoint and Alexis". *Id.* The new certificates were issued in the names of Cudd & Co. and Mac & Co, the nominees of J.P. Morgan Chase and Bank of New York Mellon. (R. 4). Although shares were not registered in the name of Cede at the time written demands for appraisal were submitted, J.P. Morgan Chase and Bank of New York Mellon were DTC participants. (R. 3-4). Cede is not the sole stockholder of record. *In re Appraisal of Dell Inc.* at *11. J.P. Morgan Chase and Bank of New York Mellon are custodial banks that were issued share certificates by Cede in the names of Cudd & Co. and Mac & Co.. (R. 3). Under federal law, "the custodial banks who appear on the DTC participant list would be stockholders of record for purposes of Delaware law". *In re Appraisal of Dell Inc.*, 2015 WL 4313206, at 11. Under this interpretation, Appellee's motion for summary judgment should be denied as "there would be no change in ownership at the DTC participant level." *Id.* Therefore, Longpoint and Alexis' did not lose their appraisal rights when their shares were retitled to the names of their

custodial bank nominees and complied with the "Continuous Holder Requirement". *Id.* at 25.

b. Viewing Banks and Brokers as Record Owners is Beneficial for Delaware Law

Appellants' claim is supported by the holding in *Kurz v. Holbrook*, 989 A.2d 140 (Del.2010). There, shareholders clashed with a board of directors seeking consents over shares of the EMAK Corporation. *Id.* at 144-145. Shareholders sought consents to remove several directors and fill vacancies on the board. Parties fought for voting power in hopes of amending bylaws. *Id.* at 151. The court coined what is known as a "Cede breakdown". *Id.* at 153. "If DTC holds shares of a corporation on behalf of banks and brokers, then the corporation can ask DTC to provide what is... known as a participant listing...". *Id.* This Cede breakdown can be used to identify "each bank or broker that holds shares with DTC as of that date and the number of shares held" on any particular date. *Id.* The court held that "DTC participant banks and brokers who appear on the Cede breakdown [are] stockholders of record" under Delaware law. *Id.* at 162. The court reasoned that Delaware law benefits from treating the Cede breakdown as part of the stock ledger given that the same banks appear on the ledger through DTC and the Cede breakdown. *Id.* at 171. Cede breakdowns are easy to obtain and allow corporations to address "concerns efficiency, certainty, and predictability of application." *Id.* at 174. "When a Delaware corporation already generates its stock list by calling a transfer agent to get the record holder

information, it hardly seems problematic for the same corporation to call DTC to get the Cede breakdown." *Id.* at 171. The court argued that this approach "aligns Delaware law with federal regulations under which the participant banks and broker, not DTC, are the record holders of the shares held by DTC." *Id.* The court concluded that viewing banks and brokers as record owners "should enhance the legitimacy of our law". *Id.* at 175.

Here, although a Cede breakdown was not requested, appellants were denied appraisal rights because this court did not consider participant banks and brokers to be record holders of the shares by DTC. This court did not take the holding in *Kurz* into consideration in the judgment against appellants. An analysis of the facts before us under federal law would likely have resulted in a different outcome and interpretation of both the "Record Holder Requirement" and "Continuous Holder Requirement". (R. 5). If the Delaware law used here was better aligned with federal regulations, appellants would have been granted appraisal rights. Moreover, Cede breakdowns can be retrieved with relative ease and can be used to share certificates much more effectively and thoroughly. Cede breakdowns function very similarly to the DTC lists that were used in the case at hand. Both add legitimacy that DTC participant banks and brokers should be interpreted as being stockholders of record.

c. Supreme Court of Delaware can reinterpret the "Record Holder Requirement"

This case is similar yet distinguishable from *In re Appraisal of Dell Inc.* There, five petitioners sought appraisal for their shares after Dell announced a going-private merger. Prior, petitioners held shares through custodial banks. *Id.* at 1. As a result, petitioners did not possess legal title to these shares. *Id.* Their shares were registered to Cede & Co., the nominee of DTC. *Id.* After petitioners demanded appraisal, DTC issued certificate for the shares they held in Cede's name. *Id.* After DTC contacted the custodial banks, petitioners instructed the agent to transfer shares to the new nominee and issue a certificate in its name. *Id.* at 3. Once the agent completed the transfer, Dell moved for summary judgment, arguing that petitioners no longer had a right to appraise their shares. *Id.* They argued that because petitioners issued certificates under a new nominee, there was now a new record holder. The nominee "broke the chain of title" required under the "Continuous Holder Requirement". *Id.* The court granted Dell's motion for summary judgment stating that "re-titling of a certificated share after the demand but before the effective date violates the Continuous Holder Requirement by causing record ownership to change." *Id.* at 9. When the shares were issued under the new nominee, petitioners lost their appraisal rights. *Id.*

Here, the Delaware Supreme Court has a unique opportunity to reexamine how we define "stockholder of record". The lower

court conceded, "Only the Delaware Supreme Court can change how our case law interprets the Record Holder Requirement." *Id.* (R.5-6). This court expressed a preference for a different interpretation of the term "stockholder of record" to include custodial banks and brokers. *Id.* A new interpretation of the term would allow for a more flexible system. *Id.* at 24. *In re Appraisal of Dell Inc.*, the judge stated that adoption of the new interpretation of "stockholder of record" would be an improvement. "Cede's dominant holdings and the current one-size-fits-all interpretation of the Record Holder Requirement prevent courts from applying" the requirements under the Section 262 appraisal statute effectively." *Id.* at 24. Under the new and desired interpretation of "stockholder of record", appellants are entitled to appraisal with respect to their Prelix shares.

CONCLUSION

For the foregoing reasons, appellants are entitled to appraisal with respect to their Prelix shares, and as such, the decision of the Trial Court should be reversed.