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Transaction ID 65687317
Case No. 2020-0440-KSJM

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

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| KENIA LOPEZ,<br><br>Plaintiff,<br><br>v.<br><br>DELL TECHNOLOGIES INC., VMWARE, INC., MICHAEL S. DELL, ROBERT C. MEE, and CYNTHIA GAYLOR,<br><br>Defendants. | C.A. No. 2020-0440-KSJM<br><br>**PUBLIC [REDACTED] VERSION AS FILED ON JUNE 9, 2020** |

# VERIFIED CLASS ACTION COMPLAINT

Plaintiff Kenia Lopez, on behalf of herself and similarly situated former public stockholders of Pivotal Software, Inc. ("Pivotal" or the "Company"), brings this Verified Class Action Complaint asserting breach of fiduciary duty claims stemming from VMware, Inc.'s ("VMware") 2019 acquisition of Pivotal (the "Acquisition") against (i) Pivotal's controlling stockholders Michael S. Dell ("M. Dell"), Dell Technologies Inc. ("Dell"), and VMware, (ii) M. Dell and Pivotal's CEO Robert Mee in their capacity as former members of Pivotal's board of directors (the "Board"), and (iii) Mee and former Pivotal CFO Cynthia Gaylor in their capacity as former Pivotal officers; as well as (iv) a claim against VMware for aiding and abetting the foregoing breaches.

The allegations are based on Plaintiff's knowledge as to herself, and on information and belief, including counsel's investigation, review of publicly available information, and review of books and records produced by the Company in response to Plaintiff's demand made under 8 *Del. C.* § 220 (the "220 Production"), as to all other matters.

## NATURE OF THE ACTION

1. M. Dell, Dell, and VMware (together, the "Controller Defendants") exploited their fiduciary positions as Pivotal's controlling stockholders by orchestrating an opportunistic "take private" transaction to serve their self-interest at the expense of Pivotal's Class A stockholders.

2. The Controller Defendants stood on both sides of VMware's acquisition of Pivotal and owed fiduciary duties to Pivotal's Class A stockholders.

3. Dell and VMware controlled about 94.4% of Pivotal's voting power through Class B "supervoting" stock and appointed six of Pivotal's eight directors, including M. Dell (the human controller of Dell, VMware, and Pivotal) and Pivotal CEO Mee. Dell and VMware were also indispensable business partners of Pivotal, which relied on Dell and VMware to sell its subscriptions and services. Pivotal could not afford to have a material dispute with Dell or VMware.

4. Dell similarly controlled about 97.5% of VMware's voting power though its Class B supervoting stock. But Dell's economic stake in VMware

(approximately 80.8%) was significantly larger than its economic stake in Pivotal (about 62.6%). As a result, Dell and VMware had powerful incentives to favor VMware and its stockholders over the interests of Pivotal. Dell and VMware used their power to fatally undermine the Acquisition "process" for their personal benefit, at the expense of Pivotal's Class A stockholders.

5. On January 18, 2019, M. Dell informed Mee that VMware was exploring a combination with Pivotal. Four days later, Mee met with VMware CEO, Patrick Gelsinger, who expressed interest in acquiring Pivotal. M. Dell and Gelsinger did ***not*** condition the Acquisition on approval by an independent committee of the Pivotal Board or disinterested stockholders,[1] and would not do so for ***195 days***. Nor did M. Dell or Gelsinger disclose that VMware was simultaneously pursuing an acquisition of cybersecurity company Carbon Black, affecting the timing of the Acquisition and its value to Dell, which—unlike Class A stockholders—would exchange its Pivotal stock for additional VMware stock.

6. Pivotal management treated "Project [redacted]" as a foregone conclusion from inception. Mee and CFO Cynthia Gaylor began implementing M. Dell's and Gelsinger's wishes, without even discussing the approach with the Pivotal Board. VMware dictated the pace, stressing "[redacted]

[1] *See generally, Kahn v. M&F Worldwide Corp.* ("*MFW*"), 88 A.3d 635 (Del. 2014).

[redacted]" Mee and Gaylor acceded, scheduling in-depth meetings with VMware and gathering diligence materials with alacrity.

7. On March 14, 2019, Mee admitted to his management team that [redacted]

[redacted][2]

8. On March 15, 2019—almost two months after M. Dell's approach and six weeks after VMware formed ***its*** special committee—the Pivotal Board formed a special committee (the "Pivotal Committee"), consisting of the two directors not appointed directly by Dell: Marcy Klevorn and Madelyn Lankton. Both labored in the shadow of the Controller Defendants' control over Pivotal because, as discussed below, they retained electoral power over the Committee members and exerted pressure throughout the process. Furthermore, Pivotal's conflicted management pre-selected the Committee's legal and financial advisors—Morgan Stanley & Co., LLC

[2] Unless noted, all emphasis is added.

("Morgan Stanley") and Latham & Watkins LLP ("Latham")—firms with deep ties to Dell, VMware, and Pivotal management.

9. Pivotal immediately provided VMware with what it described as "[redacted]" This included access to a comprehensive data room, in-person and telephonic meetings with management and advisors, and detailed, nonpublic financial projections that fed into VMware's financial analysis. By March 29, 2019, Gaylor believed VMware had "[redacted]."

10. During this period, VMware further [redacted]. On April 10, 2019, Gelsinger met Mee for dinner so that they could discuss "[redacted]" This discussion was not disclosed to the Pivotal Committee or investors.

11. Later in April 2019, VMware postponed making a bid. [redacted]. On May 23, Mee emailed William Green (a dual Pivotal/Dell director), that the deal "[redacted]. Green responded that he [redacted]."

12. Later that day, M. Dell forwarded Mee [redacted]

[redacted]. Gelsinger responded saying, among other things, "[redacted]." On May 29, Mee committed to [redacted]."

13. On June 4, 2019, Pivotal released earnings that made the Acquisition ***much*** cheaper for Dell and VMware. Because Pivotal was a young company yet to achieve profitability, its stock price was largely driven by growth expectations, derived by analysts from noncash metrics like "remaining performance obligations" ("RPO"), *i.e.*, prospective revenue remaining on existing contracts. Pivotal management informed stockholders that it experienced disappointing results in the Company's services segment and that its RPO was growing slower than expected.

14. Management described this disruption as largely transitory, impacted by slippage, as opposed to the loss, of several key contracts. Pivotal's topline results—particularly revenue and gross margin—***exceeded*** guidance and consensus and improved materially year-over-year. Nonetheless, Pivotal cut its full-year RPO ***and*** revenue guidance. Predictably, Pivotal's Class A stock price fell off a cliff, dropping ***41%*** from $18.54 on June 4 to $10.89 on June 5, and below Pivotal's $15.00 IPO price for virtually the first time in the Company's approximately 14-month publicly traded life.

15. By early August 2019, Pivotal management, VMware, and Dell learned that Pivotal would easily beat the revised guidance and consensus expectations. Dell and VMware knew that when Pivotal disclosed its strong results in early September, the Class A stock price would increase, making the Acquisition much more expensive for Dell and VMware. Thus, only a narrow window remained to cash out Pivotal's Class A stockholders at a temporarily depressed and artificially low price.

16. On August 4, 2019, VMware offered to pay $13.75 in cash per Pivotal Class A share. VMware raised for the first time—months after M. Dell and Gelsinger informed Pivotal about the Acquisition—that the deal would be conditioned on approval from an independent Board committee and disinterested stockholders. But by this point, the process was well past the germination stage and value-driving diligence had been provided. In fact, as of July 29, "the preliminary due diligence process was substantially complete," and only "***confirmatory*** due diligence" remained outstanding.

17. In the August 4 offer, VMware made clear that Pivotal Class B stock would be exchanged for VMware stock, ensuring that Dell and VMware would enjoy the future upside of the *pro forma* company, including from Pivotal's unannounced favorable quarterly results and VMware's undisclosed Carbon Black deal (announced simultaneously with the Pivotal acquisition).

18. The Controller Defendants used their power and positions to put

enormous pressure on the Pivotal Committee to approve their desired transaction, before public stockholders could enjoy accretion from Pivotal's strong financial results. [redacted].

19. Dell added more pressure on August 9, 2019, threatening to file a Schedule 13D disclosing the negotiations between its controlled companies to the market, thereby foreclosing any opportunity for Pivotal to publish its results and have its stock price rebound before entering into a merger agreement.

20. Folding to the pressure, the Pivotal Committee agreed to forego any market check and, on August 14, accepted a proposal to cash out Pivotal's Class A stockholders at $15.00 per share. Thus, 209 days elapsed between M. Dell initiating the process and an agreement on price. The protection of mandatory independent stockholder approval was absent for ***199*** of those days (or ***95%*** of the period).

21. Dell immediately locked in the deal by filing its Schedule 13D announcing that the Pivotal Committee was "negotiat[ing] definitive agreements … to acquire all of the outstanding shares of Class A common stock of Pivotal for cash

at a per share price equal to $15.00."

22. By August 21, 2019, Dell and VMware agreed that each of Dell's Class B shares would be exchanged for 0.0550 shares of VMware Class B common stock. Dell claimed it received below-market consideration worth $8.30, based on purportedly unaffected trading prices. This calculation was based, however, on Pivotal's suppressed stock price as of August 14 and ignores the valuable benefits Dell enjoyed from its nonratable consideration.

23. Specifically, Dell increased its equity stake in Pivotal by ***29.1%*** (from 62.6% to about 81%) while reducing its equity stake in VMware by just 0.2%, all while maintaining exposure to the undisclosed upside from Pivotal's results and the Carbon Black deal, and securing substantial tax benefits from reaching +80% ownership, now for both companies. Tellingly, Morgan Stanley's analysis and fairness opinion excluded the value ***Dell*** derived from the Acquisition.

24. On November 27, 2019, Pivotal issued (and on December 27 supplemented) the its definitive proxy (the "Proxy"). The Proxy did not disclose that Pivotal's conflicted management pre-selected conflicted advisors for the Committee, [redacted]. On December 27, stockholders

approved the Acquisition based on the misleading Proxy. The Acquisition closed on December 30.

25. The Acquisition was not fair to Pivotal's Class A stockholders. The Controller Defendants exerted their influence over the Pivotal Board and leveraged their control to cash out Pivotal Class A stockholders at an unfair price following an unfair process, in pursuit of their own self-interest.

## PARTIES

26. Plaintiff Kenia Lopez was a Pivotal stockholder at all material times alleged in this Complaint.

27. Defendant Dell Technologies Inc. ("Dell") is a Delaware corporation headquartered in Texas that trades on the New York Stock Exchange ("NYSE") under the ticker symbol "DELL." Dell is a technology provider, with a portfolio of IT hardware, software, and service solutions spanning both traditional infrastructure and cloud technologies. As of 2019, Dell operated eight businesses, including two controlled and publicly traded affiliates: VMware and Pivotal.

28. Defendant VMware is a Delaware corporation headquartered in Palo Alto, California. VMware trades publicly on the NYSE under the ticker symbol "VMW." As described in ¶¶49-52, *infra*, VMware was part of the Pivotal control group at all relevant times through its ownership of Class B shares.

29. Defendant Michael Dell is the Chairman and CEO of Dell and, as of

May 29, 2019, the beneficial owner of Dell common stock representing 66.9% of the total voting power of the outstanding shares. Pivotal recognized in SEC filings that M. Dell was the beneficial owner (and controller) of all the shares of Pivotal's common stock indirectly owned by Dell, making him Pivotal's ultimate human controller. M. Dell was a Pivotal Group I director from September 2016 until the Acquisition closed.[3] M. Dell has been Chairman of the VMware Board since September 2016, when Dell acquired EMC Corporation ("EMC"), VMware's then-parent company. By 2019, M. Dell was also the CEO and Chairman of EMC.

30. Defendant Robert Mee was Pivotal's CEO and a Group I director from August 2015 until the Acquisition closed. He was part of Pivotal's founding team when it was part of EMC and its Senior Vice President of Products and Research & Development as of Pivotal's 2013 spin off. Mee received $13,544,853 in compensation in fiscal years 2018 and 2019 from the Dell-controlled Pivotal Board.

31. Defendant Cynthia Gaylor was Pivotal's CFO, having served in that role since May 2016. Gaylor previously was a Managing Director at Morgan Stanley in the Investment Banking Technology Group from March 2006 to May 2013. In

[3] As alleged *infra* at ¶54, the Board was divided into two groups: Group I directors (constituting at least 80% of the Board and elected solely by the Class B common stock held entirely by Dell and VMware) and Group II directors (elected by all common stockholders voting as a single class, for which Dell and VMware had majority voting power).

2019, the Dell-controlled Pivotal Board provided Gaylor with a base salary of $360,000, target bonus of $290,000, and a recommended equity award of $3 million. She received a $3 million equity award in 2018.

## RELEVANT NONPARTIES

32. Pivotal was a Delaware corporation headquartered in San Francisco, California. Before the Acquisition, Pivotal's Class A common shares traded publicly on the NYSE under the ticker "PVTL." As described in ¶¶49-52, *infra*, Dell controlled Pivotal at all relevant times through supervoting Class B shares held by EMC and VMware.

33. Egon Durban was a Pivotal Group I director from September 2016 until the Acquisition closed. Durban has also been a director of Dell since October 2013, publicly traded Dell-affiliate SecureWorks Corp. since 2015, and VMware since September 2016. Durban is a founding and managing partner of Silver Lake Partners ("Silver Lake"). M. Dell and Durban maintain social ties, owning houses in the same exclusive community in Hawaii and serving together on the Business Roundtable. Before joining Silver Lake, Durban worked in investment banking at Morgan Stanley.

34. William Green was a Pivotal Group I director from August 2015 until the Acquisition closed. Green was also an EMC director from July 2013 to August 2016, and a Dell director since its September 2016 acquisition of EMC. Green

received substantial compensation and expense reimbursement from his role at Dell companies, including approximately $819,986 from Dell and $436,700 from Pivotal in the two fiscal years before the Acquisition.

35. Marcy Klevorn was a Pivotal Group II director from May 2016 until the Acquisition closed. She was on the Pivotal Committee for the Acquisition. Klevorn has held various positions at the Ford Motor Company ("Ford") since 1983, most recently acting as Executive Vice President and President of Mobility. Klevorn was nominated to serve on the Pivotal Board in connection with Ford's significant pre-IPO investment in Pivotal. In July 2019, after the Company's negative guidance, Ford wrote that investment down from $351 million to $170 million.

36. Madelyn Lankton was a Pivotal Group II director. She was appointed to the Dell-controlled Board in October 2018, just three months before M. Dell raised the contemplated deal with Mee, to fill a vacancy. She was the Chair of the Pivotal Committee. From 1982 until 2018, Lankton worked in various positions at The Travelers Companies, serving most recently as Senior Vice President and Chief Information Officer. Lankton had not previously served as a director of a publicly traded company or on a special committee thereof.

37. Paul Maritz was a Pivotal Group I director and Chairman of the Board from April 2013 and September 2016, respectively, until the Acquisition closed. Maritz was Chief Strategist at EMC from September 2012 through March 2013 and

Pivotal's CEO from April 2013 through August 2015. Maritz also was a VMware director from July 2008 to December 2017, its CEO from July 2008 to August 2012, and its President from July 2008 to January 2011. Before joining VMware, Maritz was President of EMC's Cloud Infrastructure and Services Division.

38. Zane Rowe was a Pivotal Group I director from September 2016 until the Acquisition closed. Rowe has been VMware's CFO and Executive Vice President since March 2016. Rowe received approximately $21,099,470 in compensation from VMware's Dell-controlled Board in the two years before the Acquisition. Before joining VMware, he served as EMC's CFO and Executive Vice President from October 2014 until February 2016. As of November 27, 2019, Rowe also served as a director of Sabre Corporation, a majority-owned subsidiary of Dell.

39. The Proxy contends that, upon formation of the VMware Committee on February 1, 2019, Rowe recused himself from the Pivotal side of the take-private process. However, Rowe participated in diligence and other aspects of the process on the ***VMware*** side. For example, on March 13, Pivotal management allowed Rowe to participate in important diligence meetings because he was not "recused from VMW." As CFO, Rowe also was likely involved in VMware's financial analysis of Pivotal for valuation purposes.[4]

[4] While Plaintiff does not currently assert claims against the nonparty directors, the allegations herein state at least claims for the breach of the duty of care against the

40. EMC is a Massachusetts corporation and a wholly owned subsidiary of Dell since its 2016 sale.

41. Silver Lake is a private equity firm, which was instrumental to M. Dell's 2013 buyout of Dell Inc. and a critical ally to him (and significant Dell stockholder) ever since.[5] Silver Lake also participated in Dell's acquisition of EMC in 2016, providing financial backing for that deal.

## SUBSTANTIVE ALLEGATIONS

### I. DELL'S HISTORY WITH AND CONTROL OVER PIVOTAL

#### A. Pivotal's Business

42. Pivotal was an enterprise software application company that provided PaaS solutions—cloud-based platforms that allow customers to efficiently develop and launch applications without the complexity of building (*e.g.*, programming languages, libraries, services, and tools) or maintaining (*e.g.*, networks, servers, operating systems, and storage) their own technological infrastructure. Pivotal's customers were large private and public enterprises across a variety of sectors.

43. Pivotal's flagship was its cloud-native platform, Pivotal Cloud Foundry ("PCF"). The Company generated revenue from the sale of PCF subscriptions and

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entire Board in connection with the approval of the Acquisition. Plaintiff reserves the right to assert claims against additional directors if warranted.

[5] *See generally Dell, Inc. v. Magnetar Glob. Event Driven Master Fund Ltd*, 177 A.3d 1 (Del. 2017).

component services like Pivotal Application Service ("PAS") and Pivotal Container Service ("PKS"). PAS allows enterprises to operate custom software securely across clouds. PKS is Pivotal's container management platform, which allows enterprises to deploy and operate Kubernetes ("K8s"), a prevalent open-source system for packaging and isolating applications.

### B. Pivotal's Formation, Spinoff, And IPO

44. EMC and VMware (of which EMC owned 85% at the time) formed Pivotal in 2013 as a privately held spinoff.

45. In September 2016, Dell purchased EMC, backed financially by Silver Lake. When Dell acquired EMC, Pivotal and VMware were two of EMC's "federated" companies that came as part of the deal.

46. In January 2017, principals of VMware and Pivotal executed an NDA and began discussing a possible transaction. During this process, VMware received due diligence information from Pivotal through an electronic data room.

47. Discussions grew sufficiently serious to prompt the VMware Board to form a transaction committee of purportedly independent directors to review and evaluate a potential acquisition of Pivotal. In July 2017, however, the VMware transaction committee completed its work without making a proposal.

48. After these discussions concluded, Pivotal began working towards an IPO in the second half of 2017. On April 20, 2018, Pivotal completed its IPO, lead-

underwritten by Morgan Stanley, issuing 37 million Class A shares to the public for $15 per share. Pivotal's share price performed well through 2018, reaching a height of nearly $30 per share by September 2018.

### C. Dell And VMware Controlled Pivotal

#### 1. *Voting Control*

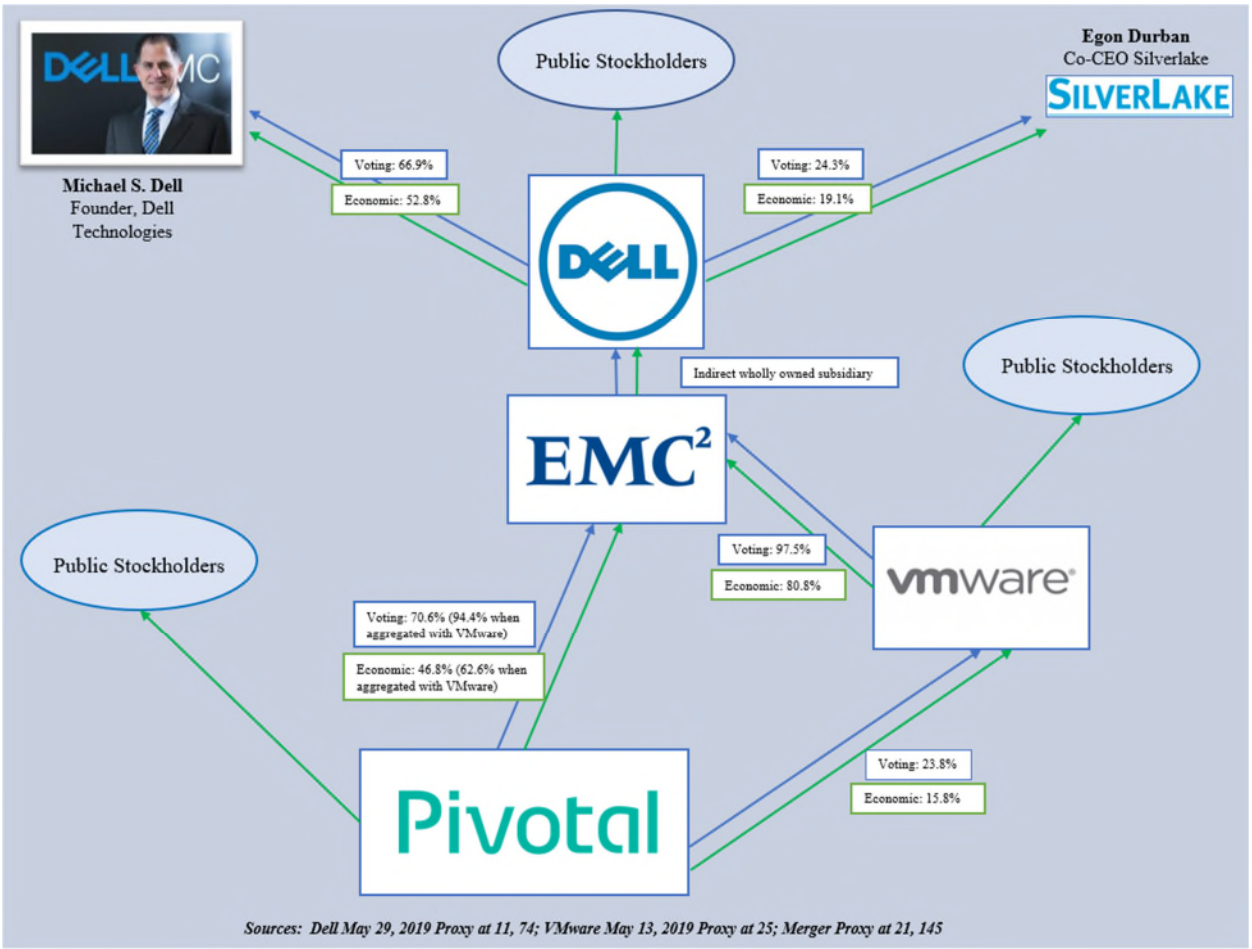
49. As conceded in its March 29, 2019 10-K, Pivotal was a "controlled company" within the meaning of the NYSE rules at all relevant times.

50. Pivotal's supervoting Class B common stock had ten votes per share and Class A common stock had just one vote per share. As of the date of the Proxy, Dell beneficially owned all the Class B common stock. It owned 131,306,110 shares of Class B stock indirectly through its wholly owned subsidiary, EMC. VMware (which Dell controlled through EMC) held another 44,208,162 Class B shares. Together, Dell and VMware had 94.4% of Pivotal's combined voting power, but just a 62.6% economic stake across both classes of Pivotal common stock.

51. Dell also beneficially owned all of VMware's supervoting Class B common stock and approximately 28.1% (or 30,678,605 shares) of its outstanding Class A common stock. This gave Dell approximately 97.5% of VMware's combined voting power and an approximately 80.8% economic stake across both classes of VMware common stock.

52. M. Dell controlled Dell as the beneficial owner of Dell common stock

representing 66.9% of its total voting power (and 52.8% of the economics).[6] As a result, Pivotal acknowledged in SEC filings that M. Dell was its ultimate, human controller. And M. Dell similarly was the human controller of VMware at all relevant times through Dell and EMC. Thus, Dell and VMware were the vehicles through which M. Dell exercised his control over Pivotal. *See* below.




[6] M. Dell's ally, Silver Lake (which was run by Pivotal director Egon Durban), owned another 19.1% of Dell's economics and controlled approximately 24.3% of its total voting power.

2. *Board Control*

53. As Pivotal admitted in its March 29, 2019 10-K, "Dell can effectively control and direct" the Board.

54. The Board was divided into "Group I" and "Group II" directors. The Group I directors (M. Dell, Durban, Green, Maritz, Mee, and Rowe) needed to comprise at least 80% of the Board and were elected solely by the Class B common stock, which was held entirely by Dell and VMware.

55. Each of the Group I directors lacked independence. Five of the six—M. Dell, Durban, Maritz, Rowe, and Mee—were concededly not "independent directors" under the NYSE rules or Pivotal's Corporate Governance Guidelines. Although Green met the NYSE's threshold for independence, his dual fiduciary role as a Dell director and a Pivotal director, and his substantial compensation from Dell and its affiliates, confirm that he lacked independence with respect to the Acquisition. *See* ¶34, *supra*.

56. Like Green, M. Dell, Durban, and Rowe were dual fiduciaries with at best conflicting loyalties, serving as directors and/or officers of Dell, Dell affiliates, and/or VMware at the time of the Acquisition. *See* ¶¶29, 33, 38-39, *supra*.[7] Pivotal

[7] While not a VMware director at the time of the Acquisition, Maritz had served as a VMware director for nearly a decade from July 2008 to December 2017, as its CEO from July 2008 to August 2012, and its President from July 2008 to January 2011.

conceded that "some of our directors are officers or directors of Dell or VMware" and that "the presence of executive officers or directors of Dell or VMware on our board of directors could create, or appear to create, conflicts of interest."

57. As Pivotal's CEO, Mee's job depended on staying in Dell's good graces. This relationship provided him substantial compensation of $13,544,853 in fiscal years 2018 and 2019 alone.

58. Dell and VMware also controlled the composition of the Group II directors, Klevorn and Lankton. The Group II directors were elected by both classes of common stock voting together and getting a single vote per share. But even so, Dell and VMware controlled an aggregate of 62.6% of the vote in any Group II election, which were determined by a simple majority. Lankton was selected and appointed by the Dell-controlled Board to fill a vacancy in October 2018 (just three months before the take-private process began). Klevorn was a Ford executive and nominated to serve on the Pivotal Board after Ford made a pre-IPO investment in Pivotal.

59. Analysts recognized the potential for abuse. Morgan Stanley, for example, noted: "[b]ecause Dell effectively controls PVTL/VMW from a voting/governance standpoint, and Dell is presumed by many investors to be burdened by its debt load, they ***worry it could take actions that may not align with VMW/PVTL shareholders***." Similarly, Credit Suisse observed that "[u]ncertainty

about Dell corporate actions, governance structure, and/or M&A presents a potential downside risk."

3. *Dell's And VMware's Control Over Pivotal's Business*

60. Dell and VMware were inexorably intertwined with Pivotal's business such that they could influence the Company's performance. Not only are Dell and VMware Pivotal's customers; Pivotal also relied on the Dell and VMware sales teams to sell its subscriptions and services via agency agreements. Per an August 15, 2019 RBC analyst report, a "[r]isk[]" to Pivotal's business was that "transactions processed through Dell-EMC and VMware accounted for ***37%*** of [Pivotal's] FY/18 revenue and could fluctuate."

61. In its most recent 10-K, Pivotal disclosed as a "Risk Factor" that it had various agreements "of varying durations" with "Dell and certain of its subsidiaries," the terms of which Dell controlled. "Dell could utilize its control over [Pivotal] to cause [Pivotal] to take or refrain from taking certain actions, including entering into relationships with … partners." Pivotal "rel[ied] on partners, including our strategic partners Dell and VMware … to increase our sales and distribution of our software and services" and disclosed that "future growth will be increasingly dependent on the success of our partner relationships, and if those partnerships do not provide such benefits, our ability to grow our business will be harmed."

## II. MICHAEL DELL LAUNCHES VMWARE'S ACQUISITION OF PIVOTAL WITHOUT INFORMING THE PIVOTAL BOARD

62. In December 2018 and January 2019, M. Dell suggested a potential strategic transaction between VMware and Pivotal to VMware CEO Gelsinger and other members of the VMware Board (which at the time included Pivotal director Durban). M. Dell requested that the VMware Board form a special committee to review and evaluate such a transaction.[8]

63. M. Dell then contacted Mee and Maritz (Pivotal's Chairman) to convey his interest in a VMware/Pivotal deal. During a January 18, 2019 call, M. Dell informed Mee that VMware was exploring an acquisition of Pivotal.

64. Four days later, on January 22, 2019, Mee met with Gelsinger who similarly expressed interest in acquiring Pivotal. Gelsinger told Mee that VMware would need to [redacted]" and assess the strategic rationale for such an acquisition.

65. On January 28, 2019, the Pivotal Board held a regular-course meeting. Per the meeting minutes, no one (including M. Dell or Mee) informed the Pivotal Board about the Dell/VMware proposal. No one proposed forming a special committee.

[8] On February 1, 2019, the VMware Board established its special committee (the "VMware Committee"). The VMware Committee retained Gibson, Dunn & Crutcher, LLP ("Gibson Dunn") and Lazard Frères & Co. LLC ("Lazard").

66. During the January 28, 2019 meeting, the Pivotal Board reviewed its "Initial Outlook" for fiscal 2020, which included "a preliminary proposed FY20 Board financial plan" providing the basis for management's forward-looking projections.[9] Pivotal projected [redacted].

## III. VMWARE AND PIVOTAL MANAGEMENT PRESS AHEAD WITHOUT INFORMING THE PIVOTAL BOARD

67. On January 28, 2019, Gelsinger emailed Mee regarding VMware due diligence requests. Over the course of the following weeks, well before the Pivotal Board established a special committee, VMware and Pivotal management formalized the due diligence process and began executing on the Acquisition.

68. On February 7, 2019, VMware sent Pivotal a draft NDA, which the parties signed on March 7, 2019. Pivotal immediately began pulling together a data room.

69. As early as March 7, 2019, Mee was sharing information with Gelsinger about Pivotal's own acquisition strategies and deferring to VMware's priorities. That day, he emailed a colleague, saying "[redacted]

[9] Pivotal's fiscal 2020 would begin on February 2, 2019 and conclude on February 1, 2020.

[redacted]” The Proxy did not disclose this conversation between Mee and Gelsinger.

70. On March 8, 2019, VMware sent Pivotal management a diligence list seeking comprehensive information concerning core aspects of Pivotal’s business, like R&D, go-to-market (“GTM”) capability, Pivotal Labs,[10] culture, and financials. VMware “[redacted]” which included: (i) historical performance from FY 2016 to FY 2018, segmented by quarter and by product; (ii) Q1 2019 through Q4 2019 actuals segmented by product area and compared to the FY 2019 Board plan; and (iii) Pivotal’s most recent long range plan (“LRP”) for FY 2020 through FY 2022, including its key assumptions. Pivotal determined it would “[redacted].

71. Throughout this period, VMware dictated the pace, stressing “[redacted]” Pivotal management—led by Mee and Gaylor—acceded, scheduling

[10] Pivotal Labs is the Company’s complementary strategic services business.

diligence meetings with VMware and pulling together materials immediately. On March 13, 2019, Gaylor informed [redacted].

72. On March 14, 2019, Gaylor informed Stephanie Reiter, Pivotal's Vice President of Corporate Finance, that Mee was already:

[redacted]

73. Consistent with Mee's "inclin[ation]," Gaylor coordinated with Phil Hathaway (VMware's Senior Vice President of Finance Strategy and Operations) that day to gather tens of Pivotal and VMware executives from around the country at VMware's headquarters in Palo Alto for the in-person diligence meetings. This would include a full-day meeting between the finance departments, where Pivotal would provide critical valuation inputs like:

- Details on Pivotal's "Forecast Methodology,"
- Pivotal's "Long-term target model and timeline to achieve,"
- Details on the Company's "historical performance vs. internal forecast," and

- Pivotal's "FY-20 plan by quarter by segment," along with "Key drivers."

74. Gaylor and Reiter also planned to provide the LRP for 2020 through 2022 (along with key assumptions)—a critical nonpublic indicator of the Company's value—to VMware, even though it was not yet finalized, or board approved. On March 14, Reiter wrote: "[redacted]".

75. Gaylor noted that "[redacted]" The Proxy did not disclose these conversations between Mee and Gelsinger, even though Pivotal agreed to give VMware its confidential LRP before Pivotal had formed a special committee.

76. Also on March 13, 2019, management discussed—again before any special committee was formed or approved any of this engagement—that "[redacted]" In other words, Pivotal was primed to proceed full steam ahead towards a

sale to VMware.

77. The coordinated and expedited provision of diligence to VMware reflected Mee's [redacted]" On the morning of March 14, 2019, just before Pivotal's earnings call and the day before the Board formed a special committee, Mee "[redacted]

[redacted]

## IV. PIVOTAL ANNOUNCES POSITIVE RESULTS AND GROWTH GUIDANCE

78. Pivotal's fiscal year 2019 ended on February 1, 2019. On March 14, Pivotal held its FY 2019 earnings call, touting positive results. Full year "total revenue [was] $657.5 million" and "grew 29% year-over-year." For Q4 2019, "total revenue [was] $169.2 million[,] represent[ing] growth of 27% year over year." "[S]ubscription revenue grew 55%" and "total revenue growth was higher in fiscal

2019 than the prior year." Pivotal's operating income in Q4 2019 exceeded consensus expectations, while earnings-per-share outperformed by $0.03.

79. Pivotal also provided positive forward guidance for Q1 and FY 2020. For Q1 2020, Pivotal projected total revenue "between $183 million and $185 million" and "net loss per share of $0.06 to $0.05" (the Company was "pre-profitability" and expected to reach breakeven in the first half of 2021). For FY 2020, Pivotal projected "total revenue to be in the range of $798 million and $806 million" (*i.e.*, more conservative than the $832 million in projected FY 2020 revenues in the Initial Outlook) and a "net loss per share of $0.15 to $0.13."

80. During a call with analysts, Gaylor noted that Pivotal ended the quarter with ***$990 million*** in RPO, ***up 21%*** year-over-year. Gaylor provided an upbeat outlook, assuring investors that although RPO will have "some variability quarter-to-quarter based on contract duration and the timing of renewals," Pivotal expected year-over-year RPO growth "in the mid-teens" for the next quarter (Pivotal's Q1 2020).

81. Analysts reacted positively to the announcements and expected growth. According to William Blair, Pivotal's earnings "topped expectations across most key metrics." Morgan Stanley emphasized Pivotal's "47% YoY billings growth which came in 23% above consensus" as well as "another quarter of 50%+ subscription growth." Morgan Stanley highlighted: "Pivotal is an incredibly attractive asset with

strong growth, high retention rates, 93%+ subscription gross margins, a revenue mix shifting quickly towards software and profitability just around the corner."

## V. THE PIVOTAL BOARD BELATEDLY FORMS A SPECIAL COMMITTEE

82. The Pivotal Board formed a special committee on March 15, 2019, two-and-a-half months after M. Dell first proposed that VMware acquire Pivotal; one month after the VMware Committee formed, retained advisors, and met several times; and after weeks of detailed diligence structuring. The Group II directors were apparently not even ***informed*** of the potential Acquisition until March, when Pivotal's general counsel [redacted]"

83. At 1:00 p.m. on March 15, 2019, the Pivotal Board met to discuss the "[redacted]" The Board then formed a special committee to "evaluat[e] and negotiat[e] … any Potential Transaction," and appointed Lankton and Klevorn. While the Board committed not to approve a transaction unless recommended by the Pivotal Committee, it did not require a vote of a majority of Pivotal's unaffiliated Class A stockholders. The Board meeting adjourned at 1:38 p.m.

## VI. THE PIVOTAL COMMITTEE IMMEDIATELY APPOINTS CONFLICTED, PRE-SELECTED ADVISORS

84. Shortly after the Board adjourned at 1:38 p.m. on March 15, 2019, the Pivotal Committee met for the first time. Present at the meeting (in addition to Lankton and Klevorn) were Mee, Gaylor, Pivotal's General Counsel, Andrew Cohen, and Pivotal's outside counsel, Davis Polk & Wardwell LLP. So, too, were Latham and Morgan Stanley who would immediately become the Pivotal Committee's advisors.

85. Pivotal's conflicted management and/or conflicted directors pre-selected Latham and Morgan Stanley for the Pivotal Committee. The Pivotal Committee members were not even briefed on the potential deal until half an hour earlier (despite the planning already well underway), and there is no indication Lankton and Klevorn knew the firms were attending the Pivotal Committee meeting.

86. The pre-selection of Latham was no accident. Latham had just acted as counsel to a special committee of Dell directors (including dual Pivotal/Dell director William Green) in connection with the $24 billion Dell/VMware stock swap announced in the summer of 2018. Latham continued (and continues) to represent those Dell directors in litigation pending before this Court that arose out of that transaction. Latham also frequently represents Silver Lake, which owned a little less than 20% of Dell at the time and is managed by Pivotal/Dell/VMware director Egon

Durban.[11]

87. Latham [redacted]

88. Latham [redacted]

89. Latham also [redacted]

[11] For example, in October 2019, Latham represented Silver Lake in its acquisition of TEG, Asia Pacific's leading live entertainment and ticketing company. In December 2019, Latham represented Silver Lake in connection with a $500 million equity investment City Football Group, the world's leading private owner and operator of soccer clubs.

90. After Latham's presentation, the Pivotal Committee retained Latham on the spot. [redacted]

91. Next came Morgan Stanley, whose appointment was similarly predetermined. At 2:26 p.m., Freese emailed Klevorn and Lankton:

[redacted]

92. The Pivotal Committee reconvened and met for no more than a half hour.[12] Morgan Stanley was there. [redacted]

[12] The minutes state that the March 15 meetings concluded at 3:00 p.m.

[redacted]

93. The meeting minutes reveal [redacted]

[redacted]

94. At 6:52 p.m. on March 15 (*i.e.*, fewer than four hours after the Pivotal Committee ended its meeting), Gaylor emailed the lead Morgan Stanley banker to ask if [redacted] This strongly suggests that the conflict-clearing process had started before the Pivotal Committee was even formed.

95. Like Latham, Morgan Stanley had deep ties to Dell and its affiliates. For example, Morgan Stanley received substantial fees from entities controlled by

M. Dell—***$30 million*** from Dell and its portfolio companies, $2 million from VMware, and $10 million from Pivotal itself—in the two years before rendering its fairness opinion.

96. Moreover, the specific Morgan Stanley team advising the Pivotal Committee was close with Gaylor and Dell. Before joining Pivotal, Gaylor was a Morgan Stanley managing director in its technology investment banking group out of Menlo Park from 2006 to 2013. Throughout Gaylor's time at Morgan Stanley, Michael Grimes (the lead banker advising the Pivotal Committee), was her fellow managing director in the Menlo Park office. They worked on several large transactions together. Grimes personally had deep ties to the Dell/EMC federation. For example, he led Dell's 2009 acquisition of Perot Systems for $3.9 billion and EMC's 2009 acquisition of Data Domain for $2.1 billion.

97. The Proxy disclosed Morgan Stanley's fees from Dell but was silent on Latham's conflicts. The Proxy also failed to disclose that, as discussed at ¶146 *infra*, Morgan Stanley simultaneously represented the Carbon Black special committee.

## VII. PIVOTAL SHARES "AN ENORMOUS AMOUNT OF INFORMATION" WITH VMWARE

98. Mee and Gaylor coordinated Pivotal's engagement with VMware, with limited Committee involvement, for months in the absence of Dell's or VMware's commitment to independent Pivotal Committee and disinterested stockholder

approval. Per management's and Morgan Stanley's April 2, 2019 talking points to VMware, Pivotal provided VMware with "[redacted]

99. On March 16, 2019, Gaylor asked for Morgan Stanley's "[redacted]" The information to be shared was sensitive. Mee told Grimes and others at Morgan Stanley that "[redacted]"

100. Pivotal provided information that it knew would be used to drive valuation. On March 17 and 18, 2019, Gaylor and Reiter were working to provide Pivotal's "[redacted]" A few days later, on March 21, Pivotal management opened the data room for VMware, the VMware Committee, and their respective advisors. Pivotal management told VMware that it could access the Pivotal Committee's bankers directly, saying: "[redacted]

[redacted]”

101. On March 22, 2019, the Pivotal Board met. “[redacted]

102. On March 29, 2019, the Pivotal Committee met to discuss “the current status of the diligence process being conducted by” VMware, “including next steps and outstanding diligence requests.” The Committee “also discussed whether other Companies might have an interest in a Potential Transaction with the Company” but decided against initiating a “wider sale process,” given Dell’s and VMware’s “ability to prevent an alternative transaction from being consummated.”

103. During this meeting, the Pivotal Committee “[redacted]” The Committee “also approved the use of the Initial Outlook … in Morgan Stanley’s analysis of the potential transaction,” and which was provided to VMware.

104. VMware pressured Pivotal for still more diligence, which Pivotal management provided despite recognizing that VMware had enough information to value the Company and make an offer. On March 29, 2019, Lazard sent a follow-up list of items for the meeting. [redacted]

105. Pivotal management worked with Morgan Stanley to quickly provide answers to certain of VMware's follow-up diligence requests. Pivotal focused on providing VMware with "[redacted]

106. Pivotal provided supplemental diligence to VMware on April 1, 2019. But Pivotal management felt that "[redacted]" At this time, Dell and VMware had not agreed that the Acquisition would be subject to approval by an independent committee and approval by a majority of the disinterested stockholders.

## VIII. VMWARE [redacted]

107. On April 2, 2019, Gelsinger contacted Mee, [redacted]

[redacted]

[redacted]”

108. On April 5, 2019, the Pivotal Committee met with Mee, Cohen, Gaylor, Morgan Stanley, and Latham. The Committee discussed “[a]pproaches to [n]egotiations,” “negotiation strategy[,] and potential ways of progressing discussions.” The Committee also discussed “whether other companies would have the desire and capacity to pursue a potential acquisition of the Company.” The Committee “determined not to contact other companies” because of “the Company’s governance structure and that such other companies that might otherwise be interested may also take into account that the Company had a controlling stockholder,” *i.e.*, Dell. The Committee discussed the impact of potential third-party discussions on “the ***ongoing negotiations*** with VMware,” should they leak.

109. The Pivotal Committee advised Mee and Gaylor [redacted]

[redacted]

[redacted]

[redacted]

[redacted]”

110. [redacted]

[redacted]

[redacted]

111. [redacted]

[redacted]”

112. On April 8, 2019, Mee emailed the Pivotal Committee [redacted]

[redacted]

[redacted]

113. [redacted]

[redacted]

[redacted]

[redacted]

114. [redacted]

[redacted]

[redacted]

115. The next day, on April 9, 2019, the Pivotal Board met with management. Tom Sweet, Dell's CFO, attended. The Board received a "CFO Update" regarding the Company's financial outlook for that quarter. With three weeks left in Q1 2020, Gaylor informed the Board that Pivotal was "[redacted] After Sweet left, Lankton provided a "process update" on the status of discussions between Pivotal and VMware, including VMware's progress on conducting due diligence on Pivotal.

116. On April 10, 2019, Mee and Gelsinger met for the dinner. Gelsinger informed Mee that VMware remained interested in acquiring Pivotal, but that it was slowing down the process and was also working on other matters. Unbeknownst to the Pivotal Committee, VMware was concurrently negotiating the NDA with and exploring its acquisition of Carbon Black.

117. Given that Gelsinger [redacted] The Proxy omits any description of these discussions or their substance. When the Acquisition was announced, Gelsinger noted Mee's continued role during the analyst call: "we're going to be bringing Rob, the Pivotal Labs team, their sellers together with the VMware sellers, right?" Dell's website

still lists him as CEO of Pivotal.[13]

## IX. VMWARE PAUSES THE TAKE-PRIVATE PROCESS

118. Two days later, on April 12, 2019, the Pivotal Committee met to discuss VMware's "diligence process as well as next steps." Mee informed the Committee that, although VMware "remained interested in the Potential Merger," "it did not appear that [VMware] would submit a proposal in the near term." The Committee nonetheless "[redacted]"

119. The Pivotal Committee met again on April 19, 2019 and Morgan Stanley confirmed that an offer from VMware "[redacted]" Although "the Committee discussed process and next steps that would be expected if and when [VMware] made a proposal for the potential merger," the Committee did not discuss whether to consider other potential suitors for Pivotal, as its mandate allowed. Instead "[redacted]"

120. Meanwhile, on April 24, 2019, Carbon Black and VMware executed their NDA and discussions promptly heated up. The timing suggests that VMware was managing the pace of the Pivotal take-private process to minimize the possibility that Pivotal Class A stockholders would benefit from the synergies and benefits

[13] *See* https://www.dell.com/learn/us/en/98/bios/rob_mee (last accessed June 4, 2020).

flowing from an announced Carbon Black acquisition.

## X. AS PIVOTAL PREPARES TO ANNOUNCE Q1 2020 RESULTS, [redacted]

121. Pivotal's Q1 2020 ended on May 3, 2019.

122. On May 20, 2019, Gaylor informed Pivotal's executive team that [redacted]

123. Gaylor told her colleagues that she would be "[redacted]" On May 21, Gaylor confirmed that "[redacted]

124. On May 22, 2019, Gaylor informed the Pivotal Board that the Q1 2020 actuals for "[redacted]

[redacted]

125. Meanwhile, [redacted] On May 23, 2019, Green (a dual Dell/Pivotal director) emailed Mee: "[redacted] Green responded that he "[redacted]"

126. Three hours later, M. Dell forwarded Mee an email he had sent to Gelsinger earlier in the month. "[redacted]" M. Dell wrote. "[redacted]" was VMware's codename for the contemplated Acquisition. M. Dell also [redacted] Gelsinger had commented: "[redacted]"

127. M. Dell was [redacted] As discussed at ¶¶77, 125 *supra*, Mee understood that the Acquisition was "[redacted]" He responded directly to M. Dell on May 29: "[redacted]

128. Thus, at this advanced stage in the sale process, M. Dell, Dell, and VMware had their hands in the mix. These discussions between the controller and the two controlled CEOs are not disclosed in the Proxy and do not appear to have been disclosed to the Pivotal Committee either.[14]

129. As the June 4, 2019 Q1 2020 earnings call crept closer, Gaylor recognized [redacted]. By May 29, 2019, Gaylor asked Morgan Stanley to review a draft of the earnings call script. The script noted that "[redacted]" Gaylor suggested [redacted]"

130. As management explained in a May 30, 2019 Audit Committee

[14] To the contrary, in an October 24, 2019 letter, the SEC asked Pivotal to explain "why Mr. Dell is not an affiliate of Pivotal engaged in [a] Rule 13e-3 transaction and should not be listed as a signatory to the Schedule 13E-3 signature page and included as a filing person." Pivotal responded on November 4 that the "procedural processes and structural safeguards, which were carefully implemented and followed, demonstrate the fact that Mr. Dell was not 'engaged in' the going-private transaction." The failure to disclose M. Dell's direct "engage[ment] in" the Acquisition, and that "structural safeguards" were a late-added screen door at best, may have violated Rule 13e-3.

presentation, the Q1 2020 results were also "[redacted]

131. Mee and Gaylor were [redacted]

## XI. PIVOTAL ANNOUNCES Q1 2020 RESULTS AND SLASHES TOPLINE GUIDANCE

132. On June 4, 2019, the Company held an earnings call to report Q1 2020 results and give updated guidance. [redacted] revenue was above consensus: $185.7 million versus the $183 to $185 million guided to the market in March. The Company's revenue had grown by a substantial 19% year-over-year and Pivotal had improved its gross margin from 64% to 70%.

133. The Company missed guidance on RPO: a noncash metric that estimates future expected revenue from existing contracts and is used by analysts as a proxy for future growth. RPO for the quarter was up 10% year-over-year, compared to the "mid-teens" guidance management gave only months earlier. Management warned that "[i]n Q2, we expect RPO to be flat year-over-year relative to Q2 of last year." This effectively cut the Company's projected growth rate in half.

134. Pivotal management tied the mixed results to transitory factors. Mee

explained:

> [W]e closed fewer deals than we expected in Q1 due to sales execution and a complex technology landscape that is lengthening our sales cycle. Some of the deals we expected to close in Q1 slipped. A few of those have already closed in early Q2, and we expect some to close in the remaining quarters.

135. Gaylor similarly observed that "the good news there is that we didn't lose the deals. So they're very much still in play."

136. Nonetheless, Pivotal cut its FY 2020, topline ***revenue*** guidance from the $798 to $806 million range it disclosed on March 14 to a "range of $756 million [to] $767 million." The revised guidance was about $36 to $47 million below consensus estimates. For Q2 2020, Pivotal now projected "total revenue between $185 million and $189 million"—approximately $10 million below consensus. The Company did ***not*** alter its target date for profitability breakeven.

137. Analysts understood that Pivotal management was guiding towards lower growth than expected and lowered their price targets. Barclays reduced its price target to $15/share (from $21/share), Morgan Stanley reduced its price target to $18/share (from $26/share), RBC reduced its price target to $18/share (from $27/share), and UBS reduced its price target to $15/share (from $21/share).

138. Following management's June 4, 2019 announcement, Pivotal's stock price immediately dropped ***41%*** from $18.54 on June 4, 2019 to $10.89 on June 5. This was virtually the first time since its April 2018 IPO that Pivotal stock traded

below the $15 per share IPO price.

139. In an internal email sent after the earnings call that was forwarded to Gaylor, a Pivotal manager reassured employees that "[redacted]" Moreover, Pivotal was equipped to weather a market overcorrection. As of May 3, 2019, the Company had over $850 million in cash on its balance sheet, giving it the ability to make value-enhancing acquisitions of its own or ride out a mixed quarter.

## XII. VMWARE POUNCES AFTER PIVOTAL SLASHES ITS GUIDANCE

140. The enormous stock drop created an opportunity for Dell and VMware to effectuate the Acquisition at a much-reduced (and ultimately unfair) price.

141. Fewer than two weeks after the Company lowered its RPO and revenue guidance, Dell and VMware began leveraging the opportunity presented by the precipitous stock drop. On June 13, 2019, with Pivotal's stock trading down about 45% from the time negotiations paused in early April, the VMware Committee met for the first time in over two months to discuss Pivotal's Q1 results. VMware management stated that it "was continuing to work on the financial model for Pivotal," confirming that valuation work was underway.

142. On June 25, 2019, the Pivotal Board held a regularly scheduled

meeting, part of which was attended by Dell CFO Tom Sweet. Pivotal management presented revised internal projections to the Board (the "Revised Outlook"), which were based on "the performance to date and the outlook for Pivotal at the time." Revised projected revenue for FY 2020 was [redacted] After Sweet left, the Pivotal Committee "provided an update on discussions with VMware," which were about to resume in earnest.

143. On July 3, 2019, Lazard sent additional due diligence requests to Morgan Stanley to which Pivotal responded on July 12.

144. On July 15, 2019, the Pivotal Committee discussed the remaining "due diligence requests and the progress to date." Minutes from this meeting make clear that the Committee had already "determined not to contact other companies that might have an interest in acquiring Pivotal," including because of Dell's ability to block a competing deal.

145. Over the course of the next several days, Pivotal, VMware, and their advisors exchanged more information regarding due diligence requests, requests for clarification, and prioritization. Additional due diligence meetings were held on July 19, 2019, to address follow-up questions from VMware.

146. Meanwhile, on July 23, 2019, after weeks of discussions between VMware and Carbon Black, Carbon Black's board formed a special committee (which retained Morgan Stanley on August 2).

147. The Pivotal Committee met on July 29, 2019 and noted that "the preliminary due diligence process was substantially complete." The Pivotal Committee again chose "not to contact other companies that might have an interest in acquiring Pivotal" because of Dell's influence. The Pivotal Committee determined "instead that if an agreement were reached with VMware, the Committee would request including a 'go-shop' provision such that Pivotal could solicit interest from other potential acquirers following entry into a definitive agreement with VMware." (As noted at ¶180, *infra*, the Special Committee surrendered this condition without securing any financial benefit for stockholders).

148. On July 30, 2019, the VMware Committee met with VMware management and its advisors to discuss the "integration and organizational approach with respect to Pivotal in order to align research and development teams, as well as sales, marketing and services." VMware management "outlined the ***confirmatory*** due diligence that would need to be completed." The VMware Committee highlighted that it wanted an update on Pivotal's financial performance for Q2 2020, which Lazard asked Pivotal for on August 1.

149. The Pivotal Committee also met on July 31, 2019 and approved the use of the Revised Outlook for Morgan Stanley's analysis of the Acquisition, even though the end of Pivotal's second quarter was just two days away and (as discussed at ¶¶198-99 *infra*) Pivotal materially exceeded expectations.

## XIII. DELL AND VMWARE LEARN THAT PIVOTAL IS POISED TO ANNOUNCE BETTER-THAN-EXPECTED RESULTS

150. Pivotal's Q2 2020 closed on August 2, 2019. That evening, Gaylor asked Roger Martin (Pivotal's Vice President of Finance) to confirm that "[redacted]".

151. The news quickly made its way to VMware. On August 4, 2019, Lazard informed the VMware Committee that Pivotal expected to achieve or exceed its forecasted revenue for the second fiscal quarter. Dell and VMware understood they needed to act quickly. If Pivotal announced better than expected results for Q2, analysts and Pivotal stockholders would understand that Pivotal's mixed Q1 was anomalous and the stock price would recover.

152. Thus, later that day, VMware quickly made an offer to cash out Pivotal Class A stockholders at $13.75 per share. Although this represented a premium to Pivotal's then-current stock price, it was significantly below Pivotal's stock price of $18.54 before management cut the Company's guidance on June 4, 2019, and Pivotal's volume weighted average price ("VWAP") throughout its time as a public company.

153. VMware conveyed that "the offer would be contingent on Dell's acceptance of a support agreement regarding the conversion of the shares of Class B common stock held by Dell for shares of VMware, the details of which had not yet been negotiated but such conversion would be ***at an implied value per share less than the cash being offered*** to holders of the shares of Class A common stock."

154. Despite learning by August 4, 2019, at the latest, that Dell was receiving unique consideration, the Pivotal Committee appears to have made no effort to verify this representation regarding the value to Dell. As discussed below, Pivotal conducted no reverse due diligence and did not uncover VMware's pending acquisition of Carbon Black. Morgan Stanley simultaneously advised the Pivotal ***and*** Carbon Black committees, and appears not to have informed the Pivotal Committee. Nor does it appear that the Pivotal Committee sought to understand the prospective value of the *pro forma* company to Dell or the unique tax benefits it expected to receive. Indeed, Morgan Stanley's fairness opinion declined to opine on the fairness of the value ***Dell*** derived from the Acquisition.

155. As part of its August 4, 2019 proposal, VMware ***for the first time*** conditioned the Acquisition "on the affirmative vote by the holders of a majority of Pivotal common stock unaffiliated with Dell and VMware" and on "approval of the Pivotal Special Committee." This was ***199 days*** after M. Dell raised the contemplated Acquisition with Mee.

## XIV. DELL AND VMWARE [redacted]

156. In preparation for the Pivotal Committee's August 5, 2019 meeting, Morgan Stanley drafted a proposed script for responding to VMware's offer. Morgan Stanley advised that [redacted]

157. Morgan Stanley advised that, [redacted]

158. But delay was contrary to the interests of Dell and VMware. On August 5, 2019, the Pivotal Committee met to discuss the August 4 offer, the "strategy in negotiations[,] and the appropriate response." Lankton's handwritten notes from the meeting reveal that [redacted].

159. On the front page of Morgan Stanley's presentation, Lankton wrote:

[redacted]

160. [redacted]

[redacted]

161. Lankton's notes also reveal [redacted]

162. The Pivotal Committee [redacted] made a counteroffer of $16.50 in cash for each Class A share. This was framed as a 10% premium to the 2018 IPO price. But even this was a feeble proposal, as Pivotal's stock had traded materially above $16.50 for the large majority of its publicly traded life up until the lower growth guidance, as shown at ¶211 below. The Pivotal Committee determined that it would demand "a 'go-shop' provision as part of its response to [VMware]."

163. On August 6, 2019, Lankton communicated Pivotal's counterproposal to VMware Committee member Karen Dykstra: $16.50 in cash per share of Class A common stock with a "go-shop" provision. Lankton highlighted [redacted]

[redacted]

164. Later that day, "the VMware Special Committee determined to raise its offer to $14.25 in cash per share of Class A common stock and reject the request for inclusion of a 'go-shop' provision in the potential merger agreement. At the VMware Committee's direction, Ms. Dykstra called Ms. Lankton and conveyed the revised offer."

165. The Pivotal Committee met and considered VMware's $14.25 offer and decided to counter at $15.75, again with a "go-shop" provision. Lankton delivered the counter to Dykstra on August 7, 2019.

166. Later on August 7, the VMware Committee met to consider the $15.75 offer. It "asked Lazard to analyze the aggregate consideration assuming various exchange ratios that could be utilized for the exchange of shares of Class B common stock held by Dell for VMware common stock." The VMware Committee asked "Lazard to communicate the remaining confirmatory due diligence items to Pivotal"—only two days after it proposed *MFW* conditions, confirming that the work was all but done.

167. Meanwhile, the Company was [redacted] On August 7, 2019, Gaylor emailed Mee and the Pivotal Committee with a:

[redacted]

168. The next day, on August 8, 2019, Gaylor also informed Morgan Stanley that the "[redacted]"

## XV. DELL THREATENS PUBLIC DISCLOSURE OF THE NEGOTIATIONS, FURTHER PRESSURING A DEAL BEFORE PIVOTAL COULD ANNOUNCE FAVORABLE Q2 2020 RESULTS

169. It was in the best interests of Pivotal's Class A stockholders to slow down the process until after the Company announced its better-than-expected results. When disclosed, these results would cause Pivotal's stock price to increase, making the range in which the Pivotal Committee was negotiating unattractive to stockholders. A truly independent committee would have informed Dell and VMware that further negotiations would need to wait until stockholders received current and more accurate information about the value of their stock. But this would make the Acquisition more expensive for Dell and VMware and was directly contrary to their interests. Thus, Dell and VMware used their control over Pivotal to preempt this possibility and instead, ratchet up the pressure.

170. On August 9, 2019, the VMware Committee's counsel at Gibson Dunn informed Latham that "Dell may need to file an amendment to its Schedule 13D in respect of its ownership of VMware common stock, which would likely include ***the status of negotiations between the parties***." Upon filing a Schedule 13D amendment disclosing pending negotiations between Pivotal and its controlling stockholders, Pivotal's Class A stock price would no longer be unaffected and the impact of disclosure of the better-than-expected results muted at best. Moreover, if Dell later informed the market that the parties abandoned the negotiations without a deal, Pivotal's stock price would almost certainly decline significantly.

171. On August 10, 2019, Gaylor sent Morgan Stanley a copy of the "prelim flash" that Pivotal management planned to upload to the shared data room later that night in response to VMware's late diligence demands. The document stated:

172. On August 11, 2019, Lazard discussed with the VMware Committee that "Pivotal's updated expectations for its recently completed financial quarter showed revenue and operating profits ***higher than previously communicated***."

173. On August 12, 2019, VMware and Carbon Black entered into an exclusivity agreement expiring on August 22, and both deals were now moving to their final stages.

174. On August 13, 2019, Lazard delivered VMware's proposal to Goldman Sachs (Dell's financial advisor) of 0.0550 shares of VMware Class A common stock for each share of Dell's Class B Pivotal stock. Upon receiving VMware's offer, Dell's Board authorized Dell to file the threatened Schedule 13D.

175. On August 14, 2019, the VMware Board "approved a best and final offer of $15.00 per share of [Pivotal] Class A common stock" and Lazard communicated the proposal to Morgan Stanley.

176. Later on August 14, the Pivotal Committee "determined that it would be willing to proceed with negotiating transaction documents on the basis of VMware's latest proposal [*i.e.*, $15 per share of Class A common stock], ***subject to understanding the economics*** of the exchange of shares of Class B common stock held by Dell for shares of VMware Class A common stock." This decision came just ten days after receiving the initial offer.

177. Dell filed its Schedule 13D amendment, still later on August 14. The filing stated that the VMware and Pivotal Committees "are proceeding to negotiate definitive agreements with respect to a transaction to acquire all of the outstanding share of Class A common stock of Pivotal for cash at a per share price equal to

$15.00." For the remainder of Pivotal's short public life following this filing, its share price traded on risk assessments of merger closing; not fundamentals like the favorable Q2 2020 results, announced three weeks later. *See* ¶214 *infra*.

178. Dell's 13D filing also stated that the VMware Committee had offered to exchange all of Dell's outstanding shares of Class B common stock for Class A VMware stock, and was "now discussing a to be agreed upon exchange ratio" with Dell, which would be "based on the unaffected market price of each of the Pivotal Class A common stock and the VMware common stock."

179. Between August 16 and August 22, 2019, Dell's, VMware's, and Pivotal's lawyers negotiated the text of the merger agreement and ancillary documentation. Meanwhile, VMware and Dell agreed that Dell would receive VMware supervoting Class B stock (as opposed to the VMware Class A stock initially offered) for its Pivotal Class B shares.

180. Although the Pivotal Committee had leverage to demand a market check after it told VMware to expect higher than projected earnings, and had repeatedly recognized the importance of securing this protection, the Committee folded. Per the August 20, 2019 minutes, the Committee decided "that Dell had the ability to prevent any alternative transaction from being consummated" and agreed to forego a post-signing market check. Of course, this was true since before M. Dell began the take-private process leading to the Acquisition in January.

## XVI. THE PIVOTAL BOARD APPROVES AN UNFAIR DEAL

181. On August 21, 2019, the VMware Committee and Board approved the Acquisition.

182. On August 22, 2019, the Pivotal Committee met and "resolved to recommend to the Pivotal Board that Pivotal enter into the merger agreement with VMware and the potential transaction at $15.00 per share of Class A common stock." Later that day, the full Pivotal board—except for Durban and Rowe—voted to approve the Acquisition. Thus, conflicted director defendants M. Dell and Mee participated in and voted during the meeting, as did Green and Maritz.

183. None of the Pivotal Committee, Pivotal Board, or Morgan Stanley did anything to verify the truth of VMware's August 4, 2019 representation that the conversion of Pivotal Class B stock (held by Dell and VMware) would be "at an implied value per share less than the cash being offered to holders of the shares of Class A common stock." Morgan Stanley's fairness opinion expressly declined to opine on the fairness of the consideration paid to Class A stockholders as compared to the consideration paid to Dell:

> [W]e express ***no opinion*** with respect to the fairness of the amount or nature of the consideration to be received by ***any holder of any class of securities of the Company other than the Company Class A Common Stock, relative to the Consideration to be received by the holders of shares of the Company Class A Common Stock*** in the transaction, or as to the underlying decision by the Company to engage in the transaction.

184. The Pivotal Committee never asked for or received financial modeling of the intrinsic value of the Class B shares Dell would receive, let alone modeling that reflected synergies, tax benefits, Pivotal's rebounding, or the Carbon Black acquisition. In fact, there is no indication that anyone on the Pivotal side meaningfully assessed the consideration to Dell or accounted for the upside Dell would enjoy from rolling its equity over. None of the Proxy, VMware's information statement, or the 220 Production suggest that the Pivotal Committee or Board ever sought or obtained any meaningful reverse diligence from VMware.

185. And the Pivotal Committee was apparently unaware that VMware was about to announce a $2.1 billion, synergistic deal to acquire Carbon Black—a glaring omission as that deal was announced ***the same day***, and several Pivotal directors, including M. Dell, Durban, and Rowe (each of whom were VMware directors or officers), must have known (as did Morgan Stanley).

186. As Gelsinger made clear on an August 28, 2019 analyst call, VMware saw considerable upside from its twin acquisitions of Pivotal and Carbon Black:

> [W]e're going to really have our focus over the next period of time, very focused on integrating these. We have very powerful and aggressive use of how both Pivotal and Carbon Black get deeply integrated into the VMware capabilities. We do not view these as piece parts. Our customers are looking for us to integrate them into the management planes, into the data planes, into the integrated solution offerings that we're providing and that's very much going to be our

focus for quite a number of quarters into the future.[15]

187. The foregoing underscores not only the disparate consideration to Dell, but also that the Pivotal Committee lacked sufficient information to assess whether the Acquisition maximized stockholder value for or was fair to the Pivotal Class A stockholders, given the significant benefits afforded to Dell and VMware. It also confirms that the $8.30 per share value Dell asserted it received in its filings is misleading. That valuation ignores the material upside Dell had in the deal and is based on an erroneous "unaffected" trading price for Pivotal on August 14—after the June 4 guidance cut, but ***before*** dissemination of Pivotal's rebounding Q2 2020 results, which were well known to Dell and VMware.

188. Morgan Stanley assumed the accuracy of the projections provided by Pivotal's management. The "Revised Outlook" projections Morgan Stanley used reflected the aggressive downward revisions incorporated following the mixed Q1 2020 results. Morgan Stanley did not (i) deliver a fairness opinion based on the

[15] A VMware presentation dated August 22, 2019 made the same point, explaining that "Pivotal and Carbon Black will accelerate our strategy to deliver multi-cloud application development and security cloud platforms." And in a December 30, 2019 press release, VMware's Vice President of Corporate Development, Alex Wang, explained that "Pivotal and Carbon Black both address critical IT priorities for VMware—building apps with a modern approach and protecting enterprise workloads and clients, respectively. The two acquisitions bookend VMware's strategy to deliver software solutions that enable customers to build, run, manage, connect and protect any app, on any cloud and any device."

"Initial Outlook;" (ii) analyze the impact of using the favorable Q2 2020 actuals, which were available; or (iii) consider whether the pessimistic projections still made sense considering Pivotal's obvious rebounding.

189. Morgan Stanley received $10 million for its work on the Acquisition, $2.5 million of which was due upon execution of the merger agreement and the balance of which was contingent on the Acquisition closing. In the Carbon Black transaction, Morgan Stanley was paid approximately $34 million, about $3 million of which was due upon the delivery of its fairness opinion and about $31 million of which was contingent upon consummation of the deal.

## XVII. THE ACQUISITION

### A. The Acquisition Terms

190. On August 22, 2019, Pivotal and VMware issued a joint press release announcing the deal:

> Under the terms of the transaction, Pivotal's Class A common stockholders will receive $15.00 per share cash for each share held, and Pivotal's Class B common stockholder, Dell Technologies, will receive approximately 7.2 million shares of VMware Class B common stock, at an exchange ratio of 0.0550 shares of VMware Class B common stock for each share of Pivotal Class B common stock.

### B. Dell Received Differential Consideration And Nonratable Benefits For Its Class B Shares

191. As a controlling stockholder of both VMware and Pivotal, Dell stood on both sides of the Acquisition. At the time the Acquisition was announced, Dell

held an 80.8% economic stake in VMware and a 62.6% economic stake in Pivotal. This gave Dell a powerful economic incentive to favor VMware in the price negotiations.

192. Dell's Class B common stock had identical rights to the Class A shares other than additional voting power and the right to convert to Class A stock (on a one-for-one basis). Yet rather than accept $15.00 in cash for each share of its Pivotal Class B stock, Dell elected to receive 0.0550 shares of VMware Class B common stock.

193. This is unsurprising. Dell's internal financial analysis reveals that it received greater value than Pivotal's public stockholders. By rolling its Pivotal equity into VMware, Dell increased its economic stake in Pivotal from 62.6% to 81% with a *de minimis* reduction in its VMware stake of about 0.2%. Thus, Dell was also able to maintain control of both companies, preserve its economic stake in VMware, and dramatically increase its ownership of Pivotal.

194. Dell also enjoyed the upside of the *pro forma* company that was not offered to or known by the Class A stockholders, including upside flowing from Pivotal's undisclosed Q2 2020 results and the Carbon Black acquisition.

195. Finally, by receiving VMware equity for its Pivotal Class B stock, Dell was able to preserve preferential tax treatment by maintaining VMware as an 80%-

owned subsidiary,[16] while gaining the same, valuable tax treatment for Pivotal.

196. Specifically, VMware had "U.S. federal net operating loss carryforwards of $201 million and $195 million as of February 1, 2019 and February 2, 2018, respectively, from acquisitions made since 2007." Pivotal had "gross federal [and] state … net operating loss carryforwards of $55.7 million, [and] $449.7 million … respectively, at February 1, 2019," and was projecting additional net operating losses ("NOLs") in the future. These NOLs were eligible to be "carried forward" (*i.e.*, used to reduce taxable income in future years), but under the Internal Revenue Code's "80 percent rule," Dell needed to maintain 80% or greater ownership of the combined company to file a consolidated tax return that would enable it to take full advantage of those significant tax assets (*i.e.*, by using VMware's ***and*** Pivotal's NOLs to reduce Dell's taxable earnings).[17]

197. By effectively pushing its ownership of Pivotal above 80%, Dell immediately could access these previously locked, extremely valuable tax assets.

## XVIII. PIVOTAL DISCLOSES THAT IT EXCEEDED GUIDANCE, *AFTER* ANNOUNCING THE ACQUISITION

198. On September 4, 2019—fewer than two weeks after the Acquisition was announced—Pivotal released positive results for the second quarter suggesting

[16] Per a November 4, 2019 Schedule 13e-3 filing, Dell had "sensitivity falling below 80% ownership in [VMware] due to tax consolidation reasons."

[17] *See* 26 U.S.C. §§1501, §1504(a)(2).

the dramatic guidance reductions from three months earlier were, at a minimum, overstated. The Company reported total revenue of $192.9 million for Q2 2020, substantially exceeding the guidance range of $185 to $189 million and consensus estimates of $186.57 million. Pivotal also beat consensus EPS estimates, for the sixth consecutive quarter, by $0.04 cents.

199. Pivotal's impressive performance continued in the third quarter. On December 6, 2019, Pivotal announced total revenue for Q3 2020 of $198.3 million (an 18% increase from Q3 2019). Citigroup analysts observed that Pivotal is "[o]n track to beat ***pre-collapse FY20 guidance***," explaining that "[o]ur analysis of quarterly P&L performance this year ... indicates that PVTL has performed closely with the ***original FY20 guidance***."

## XIX. THE STOCKHOLDER VOTE WAS NOT FULLY INFORMED

200. On November 27, 2019, Pivotal issued the definitive Proxy seeking stockholder approval for the Acquisition, which it supplemented on December 27, 2019. The Proxy was materially misleading and omitted material facts.

201. The Proxy misrepresented that the Pivotal Committee acted with "the advice and assistance of its ***independent*** legal and financial advisors" to evaluate the Acquisition, without fully disclosing conflicts or conflicted management's role in pre-selecting the Committee's advisors. The Proxy omitted any reference to the close personal relationship between Gaylor and the Morgan Stanley team retained

for the Acquisition, or that Morgan Stanley was simultaneously representing the Carbon Black special committee. The Proxy omitted material facts undermining Latham's purported independence, including that Latham had recently acted as counsel to a special committee of Dell directors in connection with the $24 billion Dell-VMware stock-swap and that Latham was (and is) still representing Green and a second Dell director in litigation arising from that transaction.

202. Furthermore, the Proxy omitted or misrepresented several interactions between Pivotal and the Controller Defendants, leaving investors unequipped to assess undisclosed incentives to support the Acquisition or exertion of influence:

- While the Proxy disclosed that Mee and Gelsinger "met for dinner" on April 10, 2019, it fails to discuss that [redacted]
- The Proxy omits entirely that [redacted]
- Similarly, the Proxy omits that [redacted]

203. Finally, despite disclosing the Pivotal Committee's determination that it needed to "understand[] the economics of the exchange of shares of Class B common stock held by Dell," the Proxy did not disclose: (i) the full value Dell

enjoyed from rolling its equity into the *pro forma* company, inclusive of upside like its expansion of ownership in legacy Pivotal, tax benefits, synergies from the Carbon Black acquisition, and Pivotal's undisclosed results; and (ii) that the Pivotal Committee did not, in fact, gain an appropriate "understanding of the economics" to Dell.

204. Because of these omissions, stockholders were not fully informed regarding all material facts relating to the Acquisition.

## XX. APPROVAL AND CLOSING OF THE DEAL

205. On December 27, 2019, proxy advisor ISS published its report on the Acquisition, writing that:

- "[S]hareholders might have preferred a longer-tenured director [than Lankton] to negotiate the take-private transaction on their behalf…. Given the buyer's substantial advantage over any other potential buyer due to its ownership and voting rights, a truly competitive process would have been more beneficial for unaffiliated shareholders. Instead, the committee not only failed to run a market check or negotiate a go-shop provision, but also agreed to a $95 million termination fee. ***The less than optimal process does little to assure shareholders that they are getting a fair deal***."

- "The historical variability in RPO metrics quarter to quarter and only six quarters of data since Pivotal's public listing limits shareholders' ability to evaluate the accuracy of company's projections provided in the proxy. However, the fact that the takeout price was negotiated after a significant sell-off following one quarterly miss and a guide-down that was ultimately exceeded ***raises some concern that the offer could be deemed opportunistic***."

- "The process was less than optimal, and the company has not been

> publicly traded long enough for shareholders to be able to definitively determine whether the growth slow-down guided by the company in June was a short-term blip or sign of concern over the longer term. With that said, if Pivotal remains public, it will continue to be a controlled company, limiting opportunities for a sale to a third-party down the road."

206. Flagging the "apparent downside risk of non-approval"—*i.e.*, that it would remain a controlled company with limited opportunities—ISS gave only "***cautionary*** support for the proposed transaction." When it did so, it lacked the benefit of the omitted facts regarding the Controller Defendants' repeated intercessions into the take-private process described above.

207. Based on the misleading Proxy, Pivotal stockholders approved the Acquisition on December 27, 2019.

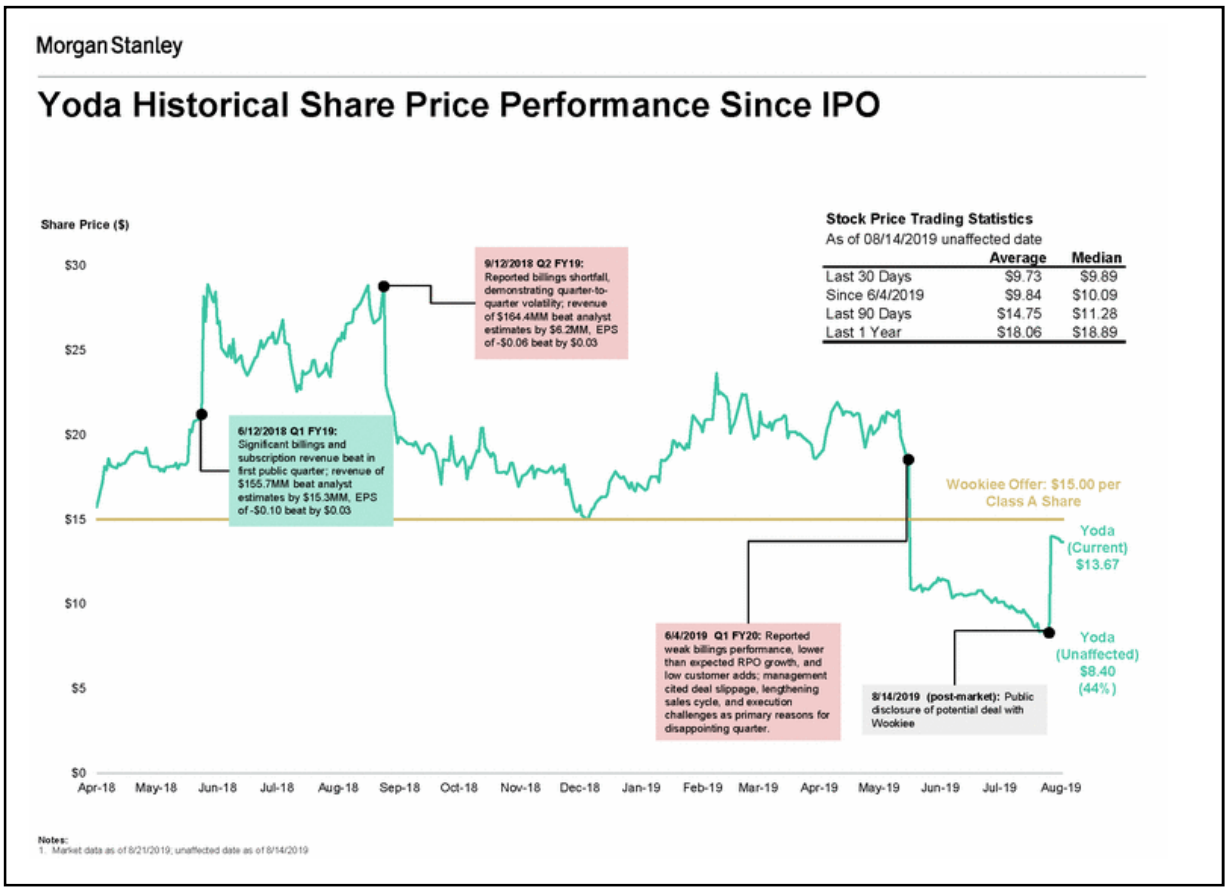
208. The Acquisition closed on December 30, 2019. Plaintiff and other Class members received $15.00 per share in cash (the "Acquisition Consideration") in exchange for their Class A shares of Pivotal, while Dell received 0.0550 shares of VMware Class B stock for each Pivotal Class B share.

## XXI. THE ACQUISITION CONSIDERATION WAS UNFAIR

209. The Acquisition Consideration was unfair for Plaintiff and other Class members.

210. The Company's Class A common shares consistently traded above $15 per share from Pivotal's IPO through the June 4, 2019 earnings call that slashed

the Company's forward guidance. *See* below.



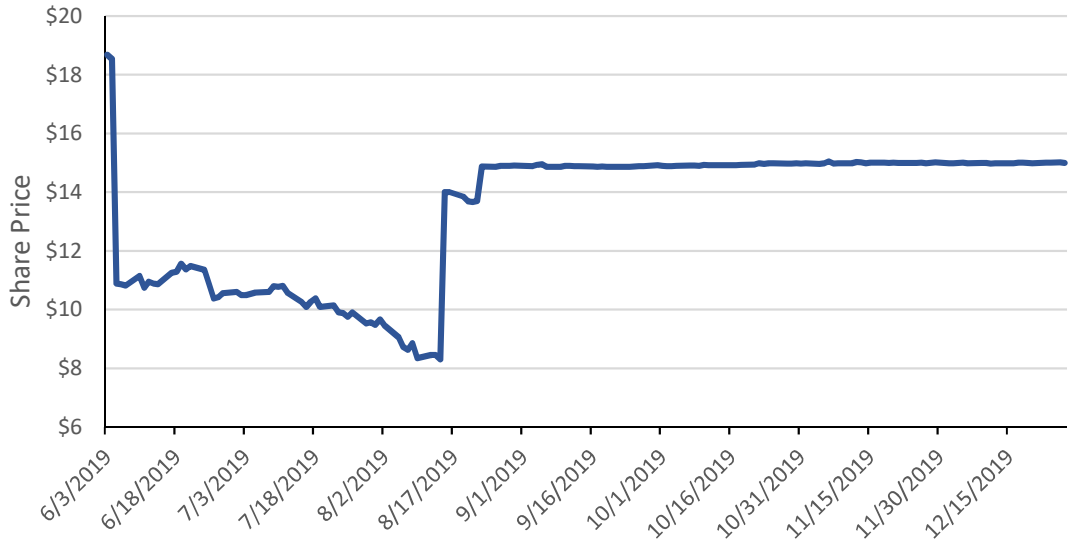

211. In fact, the $15.00 Acquisition Consideration was 36.5% below Pivotal's 52-week high, 17.2% below the VWAP from the IPO through August 14, and 11.5% below the trailing twelve-month VWAP from August 14.

212. Relatedly, Pivotal's post-announcement performance shows that it was on pace to match the original guidance, suggesting that the Company's June 4 guidance cut was, at best, an overreaction. Thus, despite Morgan Stanley's recognition on August 5, 2019 [redacted]" the Committee achieved no premium to the IPO price or to the pre-June 4 guidance.

213. Even after the Company announced revised guidance, most analysts maintained target prices substantially above $15. Citigroup's target price was $24; KeyBanc and Needham both targeted $21 per share; Credit Suisse's target price was $20/share; and RBC and Morgan Stanley both had a target price of $18. The only firms that reduced the target price to $15/share were Wedbush and Barclays. No analysts had target prices below $15.

214. Moreover, Dell and VMware made sure that Pivotal's stock price could not correct itself to account for better-than-expected results by filing a Schedule 13D disclosing an agreement on price at $15.00 per share. After Dell filed its Schedule 13D on August 14, 2019, Pivotal's stock price did not impound information affecting the Company's standalone value, like the favorable Q2 2020 results announced on September 4, 2019. *See* below.

**Pivotal Stock Price**



215. As Credit Suisse's analyst put it on September 4, 2019, "Pivotal reported a relatively solid F2Q result with most metrics beating our expectations," but "with the outstanding cash bid of $15/share …, the company's earnings report is more of a formality.

216. And as described above, Dell received unique benefits. It increased its ownership stake in Pivotal from 62.6% to 81% without surrendering a material amount of its ownership stake in VMware. It preserved its exposure to the upside of the combined companies and captured significant tax and synergy value from consolidating Pivotal and the Carbon Black deal. The Pivotal Committee did not even ***try*** to value the nonratable consideration that Dell secured.

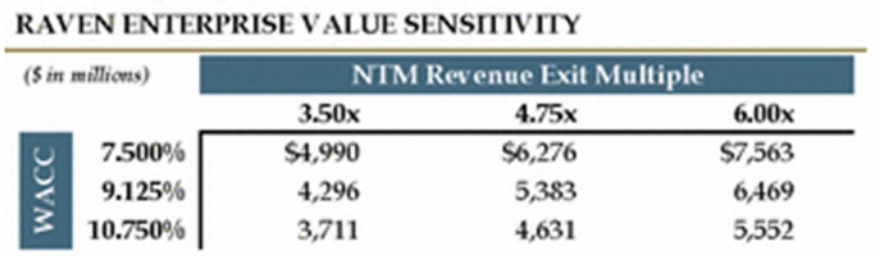
217. Analyses by Dell's and VMware's financial advisors at Moelis and Lazard also confirm that Pivotal's enterprise value was much higher than the transaction value of $2.7 billion. Moelis's discounted cash flow analysis of Pivotal's standalone value yielded an implied enterprise value ranging from $2.41 billion to $5.5 billion (a midpoint of $3.96 billion):

**RAVEN ENTERPRISE VALUE SENSITIVITY**

| *($ in millions)* | | NTM Revenue Exit Multiple | | |
|---|---|---|---|---|
| | | 3.50x | 4.75x | 6.00x |
| WACC | 9.250% | $3,345 | $4,423 | $5,501 |
| | 10.875% | 2,837 | 3,750 | 4,663 |
| | 12.500% | 2,411 | 3,186 | 3,961 |

218. Moelis's discounted cash flow analysis of Pivotal as part of VMware

yielded an implied enterprise value ranging from $3.71 billion to $7.56 billion (a midpoint of $5.64 billion):



RAVEN ENTERPRISE VALUE SENSITIVITY

| ($ in millions) | | NTM Revenue Exit Multiple | | |
|---|---|---|---|---|
| | | 3.50x | 4.75x | 6.00x |
| WACC | 7.500% | $4,990 | $6,276 | $7,563 |
| | 9.125% | 4,296 | 5,383 | 6,469 |
| | 10.750% | 3,711 | 4,631 | 5,552 |

219. And Lazard's discounted cash flow analysis of Pivotal as part of VMware[18] yielded an implied enterprise value ranging from $3.68 billion to $4.38 billion (a midpoint of $4.03 billion):

| | Enterprise Value | | |
|---|---|---|---|
| | Terminal LTM EBIT Multiple (Pre-SBC) | | |
| WACC | 17.5x | 18.8x | 20.0x |
| 9.25% | $3,864 | $4,123 | $4,383 |
| 9.88% | 3,772 | 4,026 | 4,279 |
| 10.50% | 3,683 | 3,931 | 4,179 |

220. Because they were cashed out, Pivotal Class A stockholders did not participate in any of the synergy and tax benefits of the Acquisition, which were effectively captured by Dell and VMware. If Dell believed the $15 per share price was more favorable than the VMware Class B exchange ratio, it could have converted some or all of its stake and receive cash. It chose not to.

[18] The Lazard presentation filed with the SEC did not calculate a standalone enterprise value for Pivotal.

## CLASS ACTION ALLEGATIONS

221. Plaintiff, a former stockholder in the Company, brings this action individually and as a class action pursuant to Rule 23 of the Rules of the Court of Chancery of the State of Delaware on behalf of herself and all former record and beneficial holders of Class A common stock of the Company who received the Acquisition Consideration (except the Defendants herein, and any person, firm, trust, corporation or other entity related to or affiliated with any of the Defendants) to redress the Defendants' breaches of fiduciary duties and other violations of law.

222. This action is properly maintainable as a class action.

223. A class action is superior to other available methods of fair and efficient adjudication of this controversy.

224. The Class is so numerous that joinder of all members is impracticable. The number of Class members is believed to be in the thousands and are likely scattered across the United States. Moreover, damages suffered by individual Class members may be small, making it overly expensive and burdensome for individual Class members to pursue redress on their own.

225. There are questions of law and fact which are common to all Class members and which predominate over any questions affecting only individuals, including, without limitation:

a. whether Dell and VMware controlled Pivotal and M. Dell

controlled Dell;

b. whether Defendants owed fiduciary duties to Plaintiff and the Class;

c. whether "entire fairness" is the applicable standard of review;

d. whether Defendants breached their fiduciary duties to Plaintiff and the Class;

e. whether VMware aided and abetted any breaches of duty;

f. the existence and extent of any injury to the Class or Plaintiffs caused by any breach; and

g. the proper measure of the Class's damages.

226. Plaintiff's claims and defenses are typical of the claims and defenses of other class members and Plaintiff has no interests antagonistic or adverse to the interests of other class members. Plaintiff will fairly and adequately protect the interest of the Class.

227. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature.

228. Defendants have acted in a manner that affects Plaintiff and all members of the Class alike, thereby making appropriate injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.

229. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual

members of the Class, which would establish incompatible standards of conduct for Defendants; or adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members or substantially impair or impede their ability to protect their interests.

## COUNT I

### (Direct Claim for Breach of Fiduciary Duty Against Dell, Michael Dell, and VMware)

230. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

231. The Controller Defendants (M. Dell, Dell, and VMware) were the controlling stockholders of Pivotal. Specifically, Dell and VMware were the vehicles through which M. Dell, Pivotal's ultimate human controller, exercised his control over Pivotal.

232. As such, the Controller Defendants owed Plaintiff and the Class the utmost fiduciary duties of care, loyalty, good faith, and candor.

233. At all relevant times, the Controller Defendants had the power to control, influence, and cause—and actually did control, influence, and cause—the Company to enter into the Acquisition.

234. The Acquisition and Acquisition Consideration were inadequate and unfair, reflecting an unfair price and unfair process.

235. Through the events and actions described herein, the Controller Defendants breached their fiduciary duties to Plaintiff and the Class by agreeing to and entering into the Acquisition without ensuring that it was entirely fair to Plaintiff and the Class, and by concealing material facts from the Pivotal Committee, including VMware's pursuit of a synergistic acquisition of Carbon Black.

236. As a result, Plaintiff and the Class were harmed by the failure to receive fair consideration for their Pivotal shares, the value of their investment was diminished, and they suffered damages in an amount to be determined at trial.

## COUNT II

### (Direct Claim for Breach of Fiduciary Duty Against Director Defendants Michael Dell and Robert Mee)

237. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

238. As directors of Pivotal, M. Dell and Mee (the "Director Defendants") owed Plaintiff and the Class the utmost fiduciary duties of care, loyalty, good faith, and candor in their capacity as Pivotal directors.

239. These duties required them to place the interests of Pivotal's stockholders above their personal interests and the interest of any controller, third party, Officer Defendant, and/or themselves.

240. Through the events and actions described herein, the Director

Defendants breached their fiduciary duties to Plaintiff and the Class by knowingly prioritizing their personal interests and the business, strategic, financial, or other interests of the Controller Defendants above those of the unaffiliated Pivotal stockholders, and by agreeing to and entering into the Acquisition knowing that the process and price of the Acquisition were not entirely fair to Plaintiff and the Class.

241. The Director Defendants also breached their duty of candor by issuing the false and misleading Proxy.

242. As a result, Plaintiff and the Class were harmed by the failure to receive fair consideration for their Pivotal shares, the value of their investment was diminished, and they suffered damages in an amount to be determined at trial.

## COUNT III

### (Direct Claim for Breach of Fiduciary Duty Against Officer Defendants Robert Mee and Cynthia Gaylor)

243. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

244. As the most senior executive officers of Pivotal, Mee and Gaylor (the "Officer Defendants") owed Plaintiff and the Class the utmost fiduciary duties of care, loyalty, good faith, and candor in their capacity as Pivotal officers.

245. These duties required them to place the interests of Pivotal's stockholders above the interest of any controller, third party, Director Defendant,

and/or themselves. As officers, Mee and Gaylor are not exculpated for breaches of their duty of care for actions taken in their capacity as officers (which, in Mee's case, include all actions except his formal vote to approve the Acquisition).

246. Through the events and actions described herein, the Officer Defendants breached their fiduciary duties to Plaintiff and the Class by prioritizing their own personal interests and the business, strategic, financial, or other interests of the Controller Defendants above those of the unaffiliated Pivotal stockholders, and by participating in an unfair take-private process that deprived the Pivotal Committee of independent advisors and material information for their own benefit and the benefit of the Controller Defendants, and that resulted in an unfair price.

247. The Officer Defendants also breached their duty of candor by issuing and/or contributing to a false and misleading proxy.

248. As a result, Plaintiff and the Class were harmed by the failure to receive fair consideration for their Pivotal shares, the value of their investment was diminished, and they suffered damages in an amount to be determined at trial.

## COUNT IV

### (Aiding and Abetting Claim Against VMware)

249. In the alternative to Count I with respect to VMware, Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

250. VMware was one of the entities through which Dell and M. Dell

exercised control over Pivotal. VMware was aware of the Controller Defendants', Director Defendants', and Officer Defendants' fiduciary duties of good faith, care, loyalty, and candor to Pivotal stockholders, which required the foregoing Defendants to ensure that the Acquisition was entirely fair to Plaintiff and other public stockholders before agreeing and entering into it.

251. VMware knowingly participated in the foregoing Defendants' breaches of their duties (and any exculpated care breaches by the Pivotal Board), including by coercing the Pivotal Committee to an agreement with the prospect of retribution against Pivotal's business, and colluding with other Defendants to announce a deal before Pivotal's stock price could reflect its Q2 2020 financial results.

252. VMware had a strong financial incentive to acquire Pivotal at an unfair price and pursuant to an unfair process.

253. Thus, VMware aided and abetted the foregoing Defendants' (and the Pivotal Board's) breaches of their fiduciary duties.[19]

254. As a result, Plaintiff and the Class were harmed by the failure to receive fair consideration for their Pivotal shares, the value of their investment was diminished, and they suffered damages in an amount to be determined at trial.

[19] *See* footnote 4 *supra*.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and relief in her favor and in favor of the Class, and against Defendants, as follows:

A. Declaring that this Action is properly maintainable as a class action;

B. Finding Dell and M. Dell liable for breaching their fiduciary duties in their capacity as controlling stockholders of Pivotal;

C. Finding VMware liable for breaching its fiduciary duties in its capacity as a controlling stockholder of Pivotal or, in the alternative, for aiding and abetting the fiduciary breaches of the other Defendants;

D. Finding the Director Defendants liable for breaching their fiduciary duties owed to Plaintiff and the Class;

E. Finding the Officer Defendants liable for breaching their fiduciary duties owed to Plaintiff and the Class;

F. Certifying the proposed Class;

G. Awarding Plaintiff and the other members of the Class damages in an amount which may be proven at trial, together with interest thereon;

H. Awarding Plaintiff and the members of the Class pre-judgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs; and

I. Awarding Plaintiff and the Class such other relief as this Court deems just and equitable.

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Dated: June 4, 2020