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Case No. 3695-CC

IN THE COURT OF CHANCERY FOR THE STATE OF DELAWARE

STEEL PARTNERS II, L.P.,	)	
Plaintiff,	)	
v.	)	C.A. No. 3695-CC
POINT BLANK SOLUTIONS, INC., a Delaware Corporation,	)	
Defendant.	)	

MOTION TO POSTPONE ANNUAL MEETING OF STOCKHOLDERS

Defendant Point Blank Solutions, Inc. ("Point Blank" or the "Company"), by and through its attorneys, hereby applies to this Court for leave to postpone the annual meeting of stockholders, now scheduled for August 19, 2008, until November 19, 2008. With this Motion we are also submitting the July 23, 2008 Declaration of Suzanne Hopgood ("Hopgood Decl."), a member of the Company's board of directors (the "Board") and Chair of the Nominating and Corporate Governance Committee.

The May 20, 2008 Stipulation and Order entered by this Court provides that "[u]nless otherwise approved by this Court, for good cause shown and on notice to plaintiff," the Company "shall hold its annual meeting of stockholders no later than August 19, 2008." As set forth below, the Company respectfully submits that the grounds set forth herein constitute "good cause" supporting the requested postponement.

PRELIMINARY STATEMENT

This request to postpone the meeting date arises from the unique circumstances of the Company, and its need to fully consider – before holding its annual meeting – possible strategic alternatives that could benefit its stockholders, such as the sale of all or a portion of the

Company's stock. It is submitted on behalf of an independent seven-member board (only one of whose members is an employee of the Company), and whose sole interest is in protecting the rights of voting stockholders in an unusually difficult situation.

Point Blank, a leading producer of body armor for the military and law enforcement agencies, is emerging from a financial, accounting, and corporate governance crisis, which came to a head in 2006 when it was delisted by its exchange, placed in default by its principal lender, and besieged by costly government investigations and class action and derivative litigation. Its former Chairman and Chief Executive Officer, David Brooks, who was ousted from the Company's management in July 2006, has been indicted for securities fraud and other charges. Since Brooks' ouster, the Company has made substantial progress under its new Board and management, and has become current in its SEC reporting obligations, which required restating its financial statements back to 2003.

In light of that progress, Point Blank in April 2008 was able to begin an exploration of strategic alternatives that could benefit its stockholders. The Board decided to begin this exploration based on extensive consultations with major stockholders, who expressed the view that the Company should conduct such a process under the direction of Point Blank's existing Board and management. Since April, the Company has retained a leading financial advisor, Wachovia Securities, contacted nearly 90 potential investors, signed confidentiality agreements with 32, and undergone due diligence by certain interested parties.

Despite the Company's vigorous efforts, however, this process will not be complete by August 19. Among other reasons, the process was significantly slowed by a series of announced delays in the awarding of critical U.S. Army body-armor contracts during April-June, 2008, the very months when the Company was pursuing potential transactions. Finally, a key interim contract was awarded to Point Blank on July 2, and a vital long-term contract originally scheduled for earlier award is expected to be decided in September 2008.

The Board believes strongly that it is in the best interests of all stockholders that this process have the opportunity to reach fruition before a stockholder vote is held, and that cannot occur if the annual meeting is held on August 19. The Board's concern is heightened by the fact that the outcome of the vote could be heavily influenced by two stockholders – plaintiff Steel Partners II, L.P. ("Steel") and Brooks – each of whom has interests adverse to those of other stockholders.

Steel is a hedge fund which, in February 2008, announced plans to wage a proxy contest to elect its own slate of directors at the next annual meeting, and has nominated a slate of five directors for election at the August 19 meeting. That of course is a stockholder's right (assuming full disclosure and compliance with relevant laws). The problem is that in 2007, Steel made a public announcement that it was interested in acquiring all of Point Blank's stock and has continued to express interest in purchasing Point Blank, as most recently reaffirmed in its July 21 Proxy Statement. As a prospective purchaser, Steel has an interest in obtaining the lowest possible sale price for the shares of Point Blank. Its slate of directors consists of two nominees who are employed by Steel-controlled entities, while the other three also have ties to Steel. They are ill-suited to conduct a process to sell the Company for the highest price.[1]

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1 Unable to refute this clear conflict, Steel states in its Proxy Statement that the two Steel-employed candidates, James Henderson and Terry Gibson, are sufficiently affiliated with Steel that "they may be deemed to have an interest in any transaction between the Company and Steel Partners." It therefore says those two would abstain from "any vote of the Board to approve any such transaction." This would do nothing to remove the influence of these two on numerous other matters that, while not directly voting yes or no on a transaction between Point Blank and Steel, could significantly affect the likelihood of the sale process yielding a purchaser other than Steel. Further, it would have no effect at all on the other three candidates, each of whom must be keenly aware of their sponsor and supporter in the election. It is simply not realistic to believe that having five of seven Board members

(Continued . . .)

Brooks also has interests that conflict with the bulk of other stockholders. Brooks is in litigation in this Court, before Vice Chancellor Strine, over his claim to advancement by the Company of his legal fees. The Company has asserted the defense of unclean hands, as in *Tafeen v. Homestore, Inc.*, 888 A.2d 204 (Del. 2005), arising out of highly-suspicious asset transfers by Brooks of millions of dollars. This advancement litigation is vigorously contested, and involves responsibility for fees in the millions of dollars. In addition, the Company has filed a breach of contract action against Brooks in the U.S. District Court for the Eastern District of New York, contending that Brooks is in breach of contractual obligations to pay the Company certain tax-related liabilities and to return property to the Company, such as computer technology, proprietary information and valuable automobiles. This case also involves claims worth millions of dollars. Brooks has made clear his antipathy to the present Board and management, and has a powerful personal interest in removing the existing Point Blank management and directors who have authorized such litigation.

Steel owns approximately 9.6% of the Company's stock. Brooks, together with his former wife, owns approximately 29% of the Company's stock. Significantly, Brooks has voting control over 22%, though his ex-wife has beneficial economic ownership of these shares, enhancing the disparity between his interests and that of other stockholders in enhanced value. It is therefore highly likely that these parties will exercise a strong influence, if not control over, the vote, and be in a position to cut off the exploration of strategic alternatives. All stockholders, and the interests of equity, would be better served if the Company could conclude that process before an annual meeting is held to maximize the information and choices available to

(. . . continued)

nominated by Steel would have no effect on the prospect of selling the Company to a purchaser other than Steel.

stockholders. Accordingly, Point Blank requests that the annual meeting be postponed by a period of 90 days from August 19 to November 19.

STATEMENT OF FACTS

Procedural History

On April 16, 2008, Steel brought this action pursuant to 8 *Del. C.* § 211 to compel the Company to hold an annual meeting of stockholders for the purpose of electing directors. The Company had announced on April 8 that an annual meeting originally scheduled for April 22, 2008 was being postponed until August 19, 2008, in order to allow the Company time to pursue possible strategic alternatives that would benefit shareholders, such as a sale of some or all of the Company's stock.

After conferences with the Court on May 9 and May 19, 2008, the parties entered into a Stipulation and Order, signed by this Court, providing as follows: "Unless otherwise approved by this Court, for good cause shown and on notice to plaintiff, defendant Point Blank … shall hold its annual meeting of stockholders no later than August 19, 2008."

Point Blank's Progress

Point Blank's last annual meeting took place in October 2005. Since that time, as summarized above, the Company has undergone significant change. With the Company and its then-CEO under investigation by the SEC and U.S. Attorney, the Board on July 7, 2006 placed Brooks on indefinite administrative leave. On July 31, 2006, Brooks resigned as CEO and from the Board, under an agreement with the Company entered into in connection with the settlement of class and derivative actions against the Company and its then-directors and officers. The Company's Chief Financial Officer and Chief Operating Officer had also resigned earlier in the crisis. These two former executives were indicted in August 2006, while Brooks was indicted in October 2007. *See* Hopgood Decl. at ¶ 8.

Brooks was replaced as CEO by General Larry Ellis, who joined the Board in 2004 after a distinguished 35-year career in the U.S. Army. General Ellis hired a new Chief Financial Officer and Chief Operating Officer and the Company's entire internal accounting staff was replaced. *See* Hopgood Decl. at ¶ 8. All of the existing Board members in 2006 other than General Ellis and former longtime California State Senator William Campbell, who joined the Board as an independent director in May 2006, were replaced during the second half of 2006 and early 2007. *See id.* at ¶ 9. Under this new Board and management team, the Company made dramatic progress and achieved the positive governance and operational results described above, including the issuance of audited financial statements during the last quarter of 2007. *See id.* at ¶ 10.

<u>Steel's Emergence As A Buyer</u>

On August 22, 2007, Steel delivered a letter to the Company expressing a willingness to enter into negotiations to acquire all of the common stock it did not already own, for "no less than $5.50 per share," subject to adjustment after completion of due diligence and evaluation of other factors.[2] In response, the Board advised Steel that it would consider the letter and respond after consultations with a financial advisor. Following careful consideration, the Board on October 1, 2007 chose Wachovia Securities as financial advisor. Wachovia was selected for its breadth of experience generally in mergers and acquisitions, capital markets, advisory and workout matters, together with its unique depth specifically in defense sector mergers and acquisitions.

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[2] Since that time, Steel has made clear that it is not in any way committed to that price, in a manner that foreshadows its likely negotiating tactics in the event it found itself as a favored bidder negotiating with the Company.

Steel continued its efforts as buyer. On October 30, 2007, Steel issued a second letter, repeating its willingness to enter into negotiations to possibly purchase the Company's stock. (Exhibit 1)[3] After careful consultation with Wachovia, as well as with the Company's management and counsel, the Board decided not to engage in negotiations at that time, but instead to continue to focus on remedying issues from the Brooks period and working to enhance the Company's profitability and growth.

On November 9, 2007, Point Blank informed Steel of this conclusion. (Exhibit 2) In doing so, it also offered to enter into a Non-Disclosure Agreement ("NDA") with Steel, including a two-year standstill agreement which the Board viewed as customary and necessary to allow for discussions with Steel in a stable environment. Such discussions, the Board felt, would enable the Company to engage Steel's experience and expertise for the benefit of all stockholders.

Steel, however, rebuffed this effort. On November 21, it rejected the terms of the NDA as unacceptable and refused even to discuss a standstill provision, despite the Board's expressed willingness to negotiate a standstill of shorter duration.[4] (Exhibit 3)

<u>Point Blank Calls A Shareholders Meeting</u>

In light of the progress in remedying issues from the Brooks era, and particularly the completion of financial statements, in January 2008 the Company announced that it would hold its 2008 annual meeting on April 22, 2008. (Exhibit 4) Shortly thereafter, on February 8,

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[3] Exhibits referred to herein are attached to this Motion.

[4] Steel has continued to refuse to sign a NDA, even though, after the strategic process began, 32 other companies agreed to sign NDAs containing negotiated standstill provisions. Unlike these other participants in the process who negotiated and ultimately agreed to NDAs, Steel was unwilling to even discuss the terms of a NDA.

2008, Steel announced that it intended to nominate five individuals for election to the Board at the 2008 meeting. (Exhibit 5) Thereafter, each of the Company and Steel filed definitive proxy statements with the SEC in connection with the meeting, and each has communicated with stockholders through distribution of proxy statements along with other materials and conversations. In its public filings, Steel stated that if its nominees win election to the Board, it would seek to buy the Company itself or sell the Company to another party. (Exhibit 6)

<u>The Company's Meetings With Steel And Other Stockholders</u>

During the week of March 31, Company representatives had a series of meetings with Point Blank stockholders, including Steel. General Ellis and the Company's outside counsel met with Steel on March 31. General Ellis, together with Chief Financial Officer James Anderson, met in person or by telephone with 15 other stockholders, joined by either or both of Board members Suzanne Hopgood and David Bell at 9 of those meetings. *See* Hopgood Decl. at ¶ 13.

Several of the stockholders expressed a strong desire that the Company immediately undertake a process to explore strategic alternatives, rather than waiting as the Company was then contemplating. Several of these stockholders also expressed concern, however, about having such a process run by Steel in light of its interest as buyer, rather than by the existing independent Board and management. *See* Hopgood Decl. at ¶ 19.

The five men nominated by Steel to Point Blank's Board are no strangers to Steel. James Henderson is a Managing Director and Operating Partner of Steel Partners LLC, the investment manager of Steel and other funds operated by Steel, as well as Chairman of the Board of Del Global Technologies Corporation, a Steel portfolio company. Terry Gibson is Managing Director of SP Corporate Services LLC, a management services company operated by Steel. He serves as a Chief Executive Officer and a director of CoSine Communications, of which Steel owns approximately 26.1% as of a December 31, 2007, SEC filing by Steel. Henderson and Gibson are the two nominees Steel has said would abstain from voting to approve a transaction with Point Blank. (Exhibit 6)

The other three Steel nominees are also tied to Steel and to the Steel family of companies and advisors. Merrill McPeak serves as a director of Del Global, having been appointed to the board in April 2005 following the election of Steel nominees (such as Henderson) in 2003. He was also Chairman of ECC International Corp. in 1999, when Warren Lichtenstein, the founder and chief principal of Steel, and Henderson joined the board. Bernard Bailey serves as CEO in Residence for USBX Advisory Services, LLC, which was acquired by Imperial Capital Group, LLC ("Imperial Capital") in 2007. Imperial Capital's subsidiary, Imperial Capital, LLC, regularly serves as Steel's investment advisor. Robert Chefitz is a partner of John Mack III, founder and CEO of USBX Advisory Services, LLC. (Exhibit 6)

In addition to its interests as a potential buyer, according to an SEC filing on Schedule 13D, Steel also owns approximately 40% of JPS Industries, Inc. ("JPS"), a textile manufacturer that supplies products (in amounts ranging from $60 to $90 million per year from 2005 through 2007) to the Company. (Exhibit 7) Further, the Company recently announced that it had entered into a joint venture designed to reduce its materials costs that could have a significant adverse impact on JPS's sales to Point Blank. This interest creates an additional conflict for Steel. (Exhibit 8)

In its discussions with Steel, the Company also sought to explore a possible resolution of the proxy contest with Steel. Steel, however, stated a list of demands that the Board did not believe it could approve as being in the best interest of all stockholders. Accordingly, the

Board concluded it could not successfully negotiate an agreement with Steel. *See* Hopgood Decl. at ¶ 17.

Under these circumstances, the Board met on April 4, 6, and 7, 2008, with management, its advisors, and counsel to consider the best course for the stockholders with respect to the proxy contest, the annual meeting, and potential commencement of a process to explore strategic alternatives. Based on consideration of a broad array of factors, and the history described above, the Board concluded that the best course of action would be to begin the process immediately, and defer the election to allow for the necessary focus on that process. *See* Hopgood Decl. at ¶ 18.

Among the key factors in the Board's deliberations:

- Several significant stockholders favored an immediate process to explore strategic alternatives and favored postponing the meeting while that process took place;[5]

- The Company's financial advisors, while they believed there was a logic in waiting to begin the process, also believed that it would be reasonable to begin in April;

- As a professed intended purchaser of the Company, Steel would be ill-suited to have control over the Company's board during the strategic alternatives process, and other stockholders recognized that Steel would be in a conflict situation if its slate of directors were elected in a vote at an annual meeting on April 22;

- Given that Brooks owns such a large percentage of the Company, and has interests inimical to the existing management unrelated to obtaining the best value for his shares (such as his current litigation against the

[5] Indeed, as the Company noted at the time, Steel itself said it favored a postponement of the meeting. Later, Steel contended it only favored a postponement of the meeting in the context of a definitive agreement with the Company under which Steel representatives would be placed on the Point Blank board. The Company representatives at the meeting vigorously dispute Steel's account of what occurred at the meeting. However, this factual dispute is not crucial, since it is the views of the unconflicted stockholders in support of a postponement of the meeting that are relevant to the issue before this Court, because it is those stockholders whose interests would be protected by a postponement.

Company), there existed a real possibility that Steel, with Brooks' support, could win the proxy contest; and

- It was not possible, the Board believed, to reach a reasonable agreement with Steel that would allow the Company to pursue strategic alternatives in a stable and efficient manner.

Accordingly, the Board determined that the interests of all stockholders would be best served by conducting a strategic alternatives process and postponing the meeting until August 19, 2008. *See* Hopgood Decl. at ¶ 21.

Thereafter, Steel filed its lawsuit seeking to compel the meeting. After an initial conference with the Court, Steel agreed not to challenge the planned August 19 date, and the Stipulation was entered into and signed as an Order by this Court.

The Search For Strategic Alternatives And Delays In Army Contracts

With Wachovia's retention as financial advisor expanded to include a strategic alternatives search, Point Blank moved quickly to pursue strategic options. *See* Hopgood Decl. at ¶ 23. However, the process has been significantly slowed by delays in the awarding of U.S. government body armor contracts at the same time that the Company was engaged in exploring strategic alternatives. Potential investors in the Company were deterred by these delays. *See* Hopgood Decl. at ¶ 25.

Most notable were the delays in the award of a contract to produce 736,000 Improved Outer Tactical Vests ("IOTVs") and 253,000 Deltoid Auxiliary Protection System ("DAPS"), referred to as the "Base Buy." The U.S. Army released a synopsis of the Base Buy on August 31, 2007, and issued a solicitation of proposals on December 1, 2007. The planned closing of the solicitation was scheduled for January 16, 2008. However, on December 10, 2007, the Army extended the due date for Base Buy proposals until April 15, 2008, with the responses to the solicitation "good" for 120 days following the proposal due date.

With the delay in the Base Buy, on March 18, 2008, the Army requested bids for an interim supply contract, referred to as the "Bridge Buy," for 150,000 IOTVs. The Army identified the Bridge Buy bid as "urgent and compelling," and the Company expected a timely response. Point Blank submitted a proposal for the Bridge Buy on March 26, 2008, with a decision due in 30 days. On April 25, however, the Army extended awarding of that bid for up to an additional forty-five days. The Company agreed. Then, on May 29, the Army requested an additional extension to award the contract of up to 30 days, until July 9. (Exhibit 9) On June 5, the Army changed the tariff for the Bridge Buy solicitation and provided for the opportunity by bidders to change pricing. The Company responded on June 12. On June 19, the Army requested from bidders a "best and final price," which the Company responded to on June 23. It was not until July 2, 2008 that Point Blank was awarded the $86.2 million contract to produce the IOTVs for the Bridge Buy. (Exhibit 10)

With the delay to April 15 in the due date for proposals for the longer-term Base Buy, the award of that contract has still not been made. However, the federal funds authorized for that project are for the fiscal year ending September 2008, meaning that the funds must be committed by that time. Accordingly, it is expected that a decision on the Base Buy will be made before September 30, 2008. (Exhibit 11)

The delays in the Base Buy and Bridge Buy had a significant impact on the Company's financial performance during the first quarter of 2008. For the three months ended March 31, 2008, net sales were approximately $49.9 million, a decrease of 45.8% from $92.1 million for the three months ended March 31, 2007. (Exhibit 12) These delays also inevitably affected potential investors in the Company, raising uncertainty about whether, and/or when, the Company would receive these critical contracts and also depressing the Company's financial performance at the very time that potential investors were examining it. As a result, potential investors' due diligence slowed. *See* Hopgood Decl. at ¶ 25.

The Company is currently either in the midst of discussions with, or awaiting a response from, certain parties that have expressed continuing interest in a transaction with Point Blank. (As is common in such situations, these communications are confidential.) It remains quite possible that a viable transaction could emerge from this process if it is allowed to reach fruition, especially now that the Bridge Buy results are known and the Base Buy Contract is to be awarded by the end of September. *See* Hopgood Decl. at ¶ 26.

Also during the past two months, the concerns about the divergence of Brooks' interest from that of other stockholders has only intensified. On June 11, 2008, his ex-wife Terry Brooks, filed a Schedule 13D with the SEC stating that she is the beneficial owner of 11,314,391 (or 22.12%) of the Company's shares, as a result of Brooks' transfer of shares to her under their Separation Agreement. (Exhibit 13) Prior to that filing, she had reported that she owned approximately 3 million shares; she reported in the June filing that an additional 8,257,099 shares ("Separation Shares") were to be transferred to her pursuant to their Separation Agreement. However, she also reported that Brooks remains the record owner of the 8,257,099 Separation Shares because even though she has beneficial economic ownership, the formal title to those shares has not been transferred to her. As a result, Brooks has the voting rights for these shares. (He continues to own an additional 3,455,879 shares (or 6.76%) of which he remains both the beneficial and record owner.) As to why record ownership of the Separation Shares was not transferred, she indicated in the Schedule 13D that 6,757,099 of the Separation Shares were not transferred because of a Seizure Order for those shares issued by the U.S. District Court for the Eastern District of New York in the criminal case against Brooks. (Exhibit 13) She gave no indication why the other 1,500,000 shares were not transferred. In any event, the net effect is that Brooks is in a position to vote the Separation Shares even though he has no underlying economic interest in them, underscoring that his interests with respect to the Company are adverse to other stockholders.

On Monday, July 21, the Board met with its advisors, and authorized an application to this Court to seek to extend the time for the meeting. As in April, Steel is a self-described "buyer," ill-suited to have control over the Company's board during the strategic alternatives process. Brooks continues to be adverse to the Company in litigation he views as highly important and to be hostile to the existing Board and management, and thus there remains a real possibility that Steel, with Brooks' support, could win the proxy contest. In that event, there would be no opportunity for the process to reach fruition under the direction of the current independent Board and management, and the stockholders would be deprived of the potential benefits of such a process. *See* Hopgood Decl. at ¶ 27.

With the Bridge Buy contract now awarded, and the long-term Base Buy contract scheduled to be announced in September, the Company should be in a significantly better position to conclude a transaction, or know whether it will be able to conclude a transaction, by mid-November. Accordingly, the Board authorized seeking a 90-day postponement of the meeting from this Court. *See* Hopgood Decl. at ¶ 28.

ARGUMENT

Granting This Application Is In The Stockholders' Interests

Granting This Application Is In The Court's Discretion

As reflected in the parties' Stipulation and Order, signed by this Court, it is in the Court's discretion to grant this application for a postponement. Indeed, under § 211 of the DGCL, the Court has equitable discretion with respect to ordering an annual meeting. *See Clabault v. Caribbean Select, Inc.*, 805 A.2d 913, 918 (Del. Ch. 2002) ("The use of the terms '*may* summarily order' in the statute obviously reposes a discretion in the Court to be exercised in light of the existing circumstances. The discretionary nature of § 211 with regard to whether, and when, to cause a corporation to hold an annual meeting is clear from its language.") (citations and internal quotations omitted), *aff'd*, 846 A.2d 237 (Del. 2003) (TABLE). *See also MFC Bancorp Ltd. v. Equidyne Corp.*, 844 A.2d 1015, 1022 (Del. Ch. 2003) ("§ 211 does not require me to issue such an order every time a claim is stated under § 211. Instead whether an injunction should issue is left to my equitable discretion."); 2 David A. Drexler *et al.*, *Delaware Corporation Law and Practice* § 24.04, at 24-12 (2007) ("[R]elief will be denied where the equities militate against the convening of a meeting."). Further, "where a corporation shows that it is proceeding in good faith to convene a meeting on a reasonably prompt schedule and that the excuse for delay is plausible, the Court will not, in effect, allow the stockholder to fix the date." *Id.* at § 24.04, at 24-12 - 24-13 (citation omitted).

Given the Court's broad discretion in determining on which date a meeting should be held, "the Court may consider any mitigating circumstances explaining the delay" in holding a meeting. 1 R. Franklin Balotti & Jesse A. Finkelstein, *The Delaware Law of Corporations and Business Organizations* § 7.3, at 7-15 (3d ed. Supp. 2008). *See also Tweedy, Browne & Knapp* *v. Cambridge Fund, Inc.*, 318 A.2d 635, 637 (Del. Ch. 1974) ("Not all delays in holding an annual meeting are necessarily inexcusable, and certainly if there are mitigating circumstances explaining the delay or failure to act, they can be considered in fixing the time of the meeting.") (citation omitted). Moreover, when exercising its discretion to determine an appropriate meeting date, "the Court should not close its eyes" to the factual context within which a meeting would be held. *Savin Bus. Machs. Corp. v. Rapifax Corp.*, 375 A.2d 469, 472 (Del. Ch. 1977).

Reflecting this discretion, the parties agreed in their Stipulation in May 2008 that the meeting would take place on August 19, unless "otherwise approved by this Court, for good cause shown."

<u>Point Blank Has Demonstrated Good Cause</u>

Here, Point Blank has good cause for the postponement it seeks. To be sure, the Company understands that this is not a typical case. It is undisputed that the Company has not had a meeting since 2005, and the Company postponed the annual meeting from its originally scheduled date. But the confluence of Brooks' history, including his high-stakes disputes with the Company under its existing Board and management, and Steel's conflicting interest as a potential buyer is also atypical, and compels the conclusion that a delay is strongly in the best interests of stockholders.

The proposed scheduled meeting date will provide the Company with a reasonable opportunity to complete its canvas of the market without the possible taint of having an interested potential buyer infect the strategic alternatives search process or cut if off prematurely. *See MAI Basic Four, Inc. v. Prime Computer, Inc.*, 1989 Del. Ch. LEXIS 69, at *3 (Del. Ch. June 13, 1989) (permitting board to postpone annual meeting to allow it and the stockholders to evaluate a tender offer and proxy contest and to seek alternatives) (Exhibit 14);

Huffington v. Enstar Corp., 1984 Del. Ch. LEXIS 492 (Del. Ch. Apr. 25, 1984) (permitting board to postpone an annual meeting in order to ensure an orderly sale of the company) (Exhibit 15).

Further, the added time will help the board to disclose to its stockholders information material to the Company's strategic alternatives. It would substantially undermine the stockholder franchise if Steel were successful in ensuring that that the voters effectively could hear only one side of the story, since the Company's side would remain in progress and subject to the terms of confidentiality agreements with potential investors. The stockholders should have sufficient opportunity to hear both sides of the story, to receive balanced information, and to make their own choice. *See In re Topps Co. S'holders Litig.*, 926 A.2d 58, 92 (Del. Ch. 2007) (stressing the paramount concern for full and fair disclosure under Delaware law and enjoining the merger vote until defendant corporation granted waiver of standstill agreement to allow plaintiff-bidder to "tell[] [stockholders] its own side of the story," as those stockholders were otherwise threatened "with making an important decision on an uninformed basis").

Without a postponement, it is quite possible that Steel, with Brooks' support, would take control of the Company on August 19 through its five Board nominees. Steel has repeatedly stated its interest in purchasing the Company. As managers of an investment fund, Steel's managers have a duty to their investors to purchase the Company for the lowest possible price. Its five nominees to the Board include two executives of Steel-controlled companies, and three other men with ties to Steel and its family of portfolio companies and advisors. Steel plainly has confidence that these five will protect Steel's interests. Its proposed "solution" to this conflict (having two directors abstain only from a vote to approve a specific transaction with

Steel) is inadequate on its face to protect against the risk that any strategic alternatives process would be skewed toward Steel's interests. There thus exists a real danger that the process would be brought to an end before it can be determined whether there is an available transaction that would benefit all of the Company's stockholders.

In other corporations, it could be argued that the stockholders themselves should be in the best position to evaluate whether a slate of directors chosen by Steel should be entrusted with control of the Company, because those stockholders presumably are motivated by their own interests in obtaining the maximum values for their holdings. What makes this case unusual is that such a massive bloc of stock is held by one stockholder, Brooks, who cannot be presumed to be motivated by his interest in obtaining maximum value for his Company shares because he has even greater interests in his litigation and disputes with the Company, wants to punish the Company's management and Board, and has no beneficial interest in the vast majority of shares he will be voting.

Significantly, this request is made by a Company under a seven-member Board, all but one of whose members is a non-management and independent director. This Board, unlike Steel and unlike Brooks, has no interests other than ensuring that the Company's stockholders receive the greatest possible value, and Steel can point to none. While the Company understands the important role of the annual meeting of stockholders, it believes strongly that under the unique circumstances of this case, that meeting should be postponed an additional 90 days.

CONCLUSION

WHEREFORE, Point Blank respectfully requests that this Court: (i) grant Point Blank the relief requested herein; and (ii) award such other and further relief as this Court may deem just and proper.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

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