COURT OF CHANCERY
OF THE
STATE OF DELAWARE

JOHN W. NOBLE
VICE CHANCELLOR

417 SOUTH STATE STREET
DOVER, DELAWARE 19901
TELEPHONE: (302) 739-4397
FACSIMILE: (302) 739-6179

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Jessica Zeldin, Esquire
Rosenthal, Monhait & Goddess, P.A.
919 North Market Street, Suite 1401
Wilmington, DE 19801

Peter J. Walsh, Jr., Esquire
Potter Anderson & Corroon LLP
1313 North Market Street
Wilmington, DE 19801

Re: *In re The Williams Companies, Inc. Stockholder Litigation*
Consolidated C.A. No. 11236-VCN
Date Submitted: December 14, 2015

Dear Counsel:

In July 2015, Plaintiff Houston Municipal Employees Pension System ("Plaintiff") brought this action to challenge the failure of The Williams Companies, Inc.'s (the "Company") board to enter into a merger with Energy Transfer Equity, L.P. ("ETE"). It alleged self-dealing and entrenchment. On September 2, 2015, the Court stayed discovery because the Company was engaged in a "strategic review," and negotiations between the Company and ETE were ongoing; thus, there was little urgency to litigate a failure to agree to a merger while the parties were seeking to reach a merger agreement. On September 28,

2015, ETE and the Company executed a merger agreement which Plaintiff endorses.

* * *

Plaintiff has filed its Amended Complaint challenging disclosures made to the Company's shareholders in the Preliminary Proxy issued by ETE in the context of soliciting their support for the merger. Plaintiff alleges that Defendant Alan Armstrong, the Chief Executive Officer and a director of the Company, has tried to frustrate ETE's merger efforts at every opportunity. It seeks details of Armstrong's conduct regarding the ETE acquisition process, even information from before the start of serious merger talks. For example, according to Plaintiff, the Company's shareholders should learn (as it alleges) that (i) Armstrong asked ETE not to submit a formal written offer; (ii) Armstrong rescheduled a dinner meeting with ETE; (iii) Armstrong did not provide sufficient information to the Company's board about his initial interactions with ETE; and (iv) Armstrong negotiated the Roll-Up Transaction hastily.[1] Although Armstrong publicly supports the merger, even though he (and four other directors) opposed it when the

[1] The Roll-Up Transaction refers to an earlier merger agreement with Williams Partners L.P.

question was put to a board vote, Plaintiff argues that the failure to disclose his role leading up to the merger and his opinions now will leave the shareholders without a full understanding of the transaction and thus may induce them to vote against the merger based on incomplete and inaccurate information provided by the Company. Plaintiff argues that Armstrong's ultimate objective is the failure of the merger effort. Plaintiff's notion that a chief executive officer would support a merger, yet mislead the shareholders into voting against the transaction is unusual.

* * *

Plaintiff now asks the Court to lift the discovery stay entered in September because, it argues, the insufficient disclosures in the Preliminary Proxy must be remedied. When the Court stayed this action, it recognized that "if a deal is reached and announced . . . vacating the stay may become appropriate."[2]

The reason for the stay—the strategic review and ongoing negotiations which should not have suffered because of the litigation—no longer applies in light of the merger agreement. Thus, the basis for the stay no longer exists; with the Amended Complaint, and Plaintiff's new theory for relief, the Court has before it

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[2] Tr. of Teleconference – Defs.' Mot. to Stay Disc. 42 (Sept. 2, 2015).

no argument that would support continuing the stay. Accordingly, the stay entered in September will be vacated.

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Plaintiff also seeks expedited discovery into its disclosure claims. Presumably, it hopes for curative disclosures or to seek a disclosure-based preliminary injunction.

As is often noted, this Court will frequently direct expedited proceedings in an effort to protect the rights of shareholders. It has been said—accurately—that the Court has "a certain solicitude" for expediting cases.[3] Yet, motions to expedite are not granted automatically. Expediting comes at a cost to the parties, to their counsel, and to the Court. To earn expedition, a plaintiff must make a good cause showing of a colorable claim and irreparable injury.[4]

Plaintiff's claims here turn on its challenge to the allegedly disloyal conduct of one director, Armstrong, who is also a corporate officer. While perhaps

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[3] *Giammargo v. Snapple Beverage Corp.*, 1994 WL 672698, at *2 (Del. Ch. Nov. 15, 1994).

[4] *See, e.g.*, *In re TriQuint Semiconductor, Inc. S'holders Litig.*, 2014 WL 2700964, at *2 (Del. Ch. June 13, 2014); Donald J. Wolfe, Jr. and Michael A. Pittenger, *Corporate and Commercial Practice in the Delaware Court of Chancery*, § 4.10[c] (2015).

individually more important than the other directors, he is but one of thirteen. There is no basis for concluding that he dominates other board members (or that they are not independent of his influence). Why (or how) that one board member can, in fact, control what happens with the disclosures is a factual shortcoming that undercuts Plaintiff's theory. Why a board that supports a merger would issue (or allow the issuance of) misleading disclosures to its shareholders in order to induce them to do something the board does not want (*i.e.*, oppose the merger) is also a mystery.

On review of the challenged disclosures, the shareholders are not being misled about the details of the transaction. At most, they are not fully informed about what Armstrong did during the course of the fairly lengthy period leading up to and including negotiations and how he may have been able to delay entry into the merger agreement. Plaintiff, however, does not explain why this information is material to the Company's shareholders.

The "law of fiduciary disclosure . . . requires full and candid disclosure of *all material facts*. It does not . . . require in addition that individual directors state (or the corporation state for them) the grounds of their judgment for or against a

proposed shareholder action."[5] Moreover, "a fiduciary is not required to disclose 'its underlying reasons for acting,' and asking why a fiduciary took certain action does not state a meritorious disclosure claim."[6] Finally, where a board has approved a transaction, the reasons for one board member's opposition to the transaction are not material, especially if the concern is that the lack of full disclosure will somehow induce shareholders to oppose the transaction.

There is no colorable claim, at least on the current allegations, that the Company's shareholders are being deprived of information material to their decision to approve (or reject) the transaction proposed by ETE.[7] With that conclusion, Plaintiff's motion to expedite is denied.[8]

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[5] *Newman v. Warren*, 684 A.2d 1239, 1246 (Del. Ch. 1996) (citations omitted).
[6] *Dias v. Purches*, 2012 WL 4503174, at *9 (Del. Ch. Oct. 1, 2012).
[7] There is no need to assess the merits of Plaintiff's irreparable harm argument. If the disclosures were materially misleading or inaccurate, a finding of irreparable harm would likely follow. Without a colorable claim regarding inadequate disclosures, there is no reason to fear irreparable harm.
[8] Defendants appear to want the discovery stay to continue, but they have not moved for a stay based on the current factual setting. If they now believe that a stay is appropriate for other reasons, they may move accordingly.

* * *

Several cases (the "Related Cases") have been filed to challenge the merger between the Company and ETE.[9] Defendants ask that this action be consolidated with the Related Cases, but that would not be appropriate because the relief sought is so different. Indeed, the plaintiffs in the Related Cases oppose the merger while this action represents Plaintiff's effort to facilitate consummation of the merger. Where the relief sought is so diametrically opposed, consolidation would provide no efficiency benefits and might be cumbersome and confusing. Thus, Defendants' motion to consolidate this action with the Related Cases is denied. However, there likely will be overlapping discovery and certain efficiencies can be achieved through coordinating discovery efforts. Accordingly, Plaintiff shall coordinate its discovery efforts with those of the plaintiffs in the Related Cases.

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[9] The Related Cases are: *Greenwald v. The Williams Companies, Inc.*, C.A. No. 11573-VCN (Del. Ch. filed Oct. 5, 2015); *Ozaki v. Armstrong*, C.A. No. 11574-VCN (Del. Ch. filed Oct. 5, 2015); *Blystone v. The Williams Companies, Inc.*, C.A. No. 11601-VCN (Del. Ch. filed Oct. 9, 2015); *Glener v. The Williams Companies, Inc.*, C.A. No. 11606-VCN (Del. Ch. filed Dec. 15, 2015); *Amaitis v. Armstrong*, C.A. No. 11809-VCN (Del. Ch. filed Dec. 15, 2015); and *State-Boston Ret. Sys. v. Armstrong*, C.A. No. 11844-VCN (Del. Ch. filed Dec. 24, 2015).

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Brian D. Long, Esquire
Peter B. Andrews, Esquire
Christine S. Azar, Esquire
Martin S. Lessner, Esquire
Raymond J. DiCamillo, Esquire
Register in Chancery-K