

Edgar Filing: SEITEL INC - Form SC 13D/A

SEITEL INC  
Form SC 13D/A  
August 29, 2006

=====

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

SCHEDULE 13D  
Under the Securities and Exchange Act of 1934

(Amendment No. 9)1

Seitel, Inc.

-----  
(Name of Issuer)

Common Stock, \$0.01 Par Value

-----  
(Title of Class of Securities)

816074405

-----  
(CUSIP Number)

Allison Bennington, Esq.  
ValueAct Capital  
435 Pacific Avenue, Fourth Floor  
San Francisco, CA 94133  
(415) 362-3700

-----  
(Name, address and telephone number of Person  
Authorized to Receive Notices and Communications)

Christopher G. Karras, Esq.  
Dechert LLP  
Cira Centre  
2929 Arch Street  
Philadelphia, PA 19104-2808  
(215) 994-4000

August 27, 2006

-----  
(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of 240.13d.1(e), 240.13d.1(f) or 240.13d.1(g), check the following box [ ].

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 240.13d.7 for other parties to whom copies are to be sent.

1The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

This information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of

Edgar Filing: SEITEL INC - Form SC 13D/A

the Act but shall be subject to all other provisions of the Act (however, see the Notes).

SCHEDULE 13D

CUSIP NO. 816074405

Page 2 of 17

1. NAME OF REPORTING PERSON/S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON (entities only)

ValueAct Capital Master Fund, L.P.

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\* (a) [X] (b) [ ]

3. SEC USE ONLY

4. SOURCE OF FUNDS (See Instructions)\*

WC\*

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) [ ]

6. CITIZENSHIP OR PLACE OF ORGANIZATION British Virgin Islands

7. SOLE VOTING POWER 0

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH PERSON WITH 8. SHARED VOTING POWER 66,238,914\*\*

9. SOLE DISPOSITIVE POWER 0

10. SHARED DISPOSITIVE POWER 66,238,914\*\*

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

66,238,914\*\*

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES [ ]

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

38.9%

14. TYPE OF REPORTING PERSON

PN

\*See Item 3

\*\*See Item 2 and 5

SCHEDULE 13D

Edgar Filing: SEITEL INC - Form SC 13D/A

-----  
CUSIP NO. 816074405

-----  
Page 3 of 17

-----  
1. NAME OF REPORTING PERSON/S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE  
PERSON (entities only)

ValueAct Capital Partners Co-Investors, L.P.

-----  
2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\* (a)   
(b)

-----  
3. SEC USE ONLY

-----  
4. SOURCE OF FUNDS\*

00\*

-----  
5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED  
PURSUANT TO ITEMS 2(d) or 2(e)

-----  
6. CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

-----  
7. SOLE VOTING POWER  
0  
-----  
NUMBER OF  
SHARES  
BENEFICIALLY  
OWNED BY EACH  
PERSON WITH  
-----  
8. SHARED VOTING POWER  
0\*\*  
-----  
9. SOLE DISPOSITIVE POWER  
0  
-----  
10. SHARED DISPOSITIVE POWER  
0\*\*

-----  
11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

0\*\*

-----  
12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES  
CERTAIN SHARES

-----  
13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

0%

-----  
14. TYPE OF REPORTING PERSON

PN

-----  
\*See Item 3

\*\*See Item 2 and 5

\*SEE INSTRUCTIONS BEFORE FILLING OUT!  
INCLUDE BOTH SIDES OF THE COVER PAGE, RESPONSES TO ITEMS 1-7  
(INCLUDING EXHIBITS) OF THE SCHEDULE, AND THE SIGNATURE  
ATTESTATION.

SCHEDULE 13D

Edgar Filing: SEITEL INC - Form SC 13D/A

-----  
CUSIP NO. 816074405

Page 4 of 17  
-----

1. NAME OF REPORTING PERSON/S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE  
PERSON (entities only)

VA Partners, L.L.C.

-----  
2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\*

(a)

(b)

-----  
3. SEC USE ONLY

-----  
4. SOURCE OF FUNDS\*

00\*

-----  
5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED  
PURSUANT TO ITEMS 2(d) or 2(e)

-----  
6. CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

-----  
7. SOLE VOTING POWER  
0

NUMBER OF  
SHARES  
BENEFICIALLY  
OWNED BY EACH  
PERSON WITH  
-----  
8. SHARED VOTING POWER  
66,238,914\*\*

-----  
9. SOLE DISPOSITIVE POWER  
0

-----  
10. SHARED DISPOSITIVE POWER  
66,238,914\*\*

-----  
11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

66,238,914\*\*

-----  
12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES  
CERTAIN SHARES

-----  
13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

38.9%

-----  
14. TYPE OF REPORTING PERSON

00 (LLC)

-----  
\*See Item 3

\*\*See Item 2 and 5

SCHEDULE 13D

-----  
CUSIP NO. 816074405

Page 5 of 17  
-----

1. NAME OF REPORTING PERSON/S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE  
PERSON (entities only)

Edgar Filing: SEITEL INC - Form SC 13D/A

ValueAct Capital Management, L.P.

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\* (a) [X]  
(b) [ ]

3. SEC USE ONLY

4. SOURCE OF FUNDS\*

00\*

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED  
PURSUANT TO ITEMS 2(d) or 2(e) [ ]

6. CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

	7. SOLE VOTING POWER
	0
NUMBER OF	8. SHARED VOTING POWER
SHARES	66,238,914**
BENEFICIALLY	
OWNED BY EACH	9. SOLE DISPOSITIVE POWER
PERSON WITH	0
	10. SHARED DISPOSITIVE POWER
	66,238,914**

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

66,238,914\*\*

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES  
CERTAIN SHARES [ ]

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

38.9%

14. TYPE OF REPORTING PERSON

PN

\*See Item 3

\*\*See Item 2 and 5

SCHEDULE 13D

CUSIP NO. 816074405

Page 6 of 17

1. NAME OF REPORTING PERSON/S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE  
PERSON (entities only)

ValueAct Capital Management, LLC

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\* (a) [X]  
(b) [ ]

Edgar Filing: SEITEL INC - Form SC 13D/A

3. SEC USE ONLY

4. SOURCE OF FUNDS\*

00\*

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED  
PURSUANT TO ITEMS 2(d) or 2(e) [ ]

6. CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

	7. SOLE VOTING POWER	0
NUMBER OF	8. SHARED VOTING POWER	66,238,914**
SHARES		
BENEFICIALLY	9. SOLE DISPOSITIVE POWER	0
OWNED BY EACH		
PERSON WITH	10. SHARED DISPOSITIVE POWER	66,238,914**

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

66,238,914\*\*

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES  
CERTAIN SHARES [ ]

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

38.9%

14. TYPE OF REPORTING PERSON

00 (LLC)

\*See Item 3

\*\*See Item 2 and 5

SCHEDULE 13D

CUSIP NO. 816074405

Page 7 of 17

1. NAME OF REPORTING PERSON/S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE  
PERSON (entities only)

Jeffrey W. Ubben

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\* (a) [X]  
(b) [ ]

3. SEC USE ONLY

4. SOURCE OF FUNDS\*

Edgar Filing: SEITEL INC - Form SC 13D/A

00\*

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED  
PURSUANT TO ITEMS 2(d) or 2(e) [ ]

6. CITIZENSHIP OR PLACE OF ORGANIZATION

United States

7. SOLE VOTING POWER  
0

NUMBER OF  
SHARES  
BENEFICIALLY  
OWNED BY EACH  
PERSON WITH  
8. SHARED VOTING POWER  
66,238,914\*\*

9. SOLE DISPOSITIVE POWER  
0

10. SHARED DISPOSITIVE POWER  
66,238,914\*\*

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

66,238,914\*\*

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES  
CERTAIN SHARES [ ]

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

38.9%

14. TYPE OF REPORTING PERSON

IN

\*See Item 3

\*\*See Item 2 and 5

SCHEDULE 13D

CUSIP NO. 816074405

Page 8 of 17

1. NAME OF REPORTING PERSON/S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE  
PERSON (entities only)

George F. Hamel, Jr.

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\* (a) [X]  
(b) [ ]

3. SEC USE ONLY

4. SOURCE OF FUNDS\*

00\*

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED  
PURSUANT TO ITEMS 2(d) or 2(e) [ ]

Edgar Filing: SEITEL INC - Form SC 13D/A

6. CITIZENSHIP OR PLACE OF ORGANIZATION

United States

7. SOLE VOTING POWER  
0

NUMBER OF  
SHARES  
BENEFICIALLY  
OWNED BY EACH  
PERSON WITH

8. SHARED VOTING POWER  
66,238,914\*\*

9. SOLE DISPOSITIVE POWER  
0

10. SHARED DISPOSITIVE POWER  
66,238,914\*\*

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

66,238,914\*\*

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES  
CERTAIN SHARES

[ ]

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

38.9%

14. TYPE OF REPORTING PERSON

IN

\*See Item 3

\*\*See Item 2 and 5

SCHEDULE 13D

CUSIP NO. 816074405

Page 9 of 17

1. NAME OF REPORTING PERSON/S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE  
PERSON (entities only)

Peter H. Kamin

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\*

(a) [X]

(b) [ ]

3. SEC USE ONLY

4. SOURCE OF FUNDS\*

00\*

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED  
PURSUANT TO ITEMS 2(d) or 2(e)

[ ]

6. CITIZENSHIP OR PLACE OF ORGANIZATION

United States

Edgar Filing: SEITEL INC - Form SC 13D/A

7. SOLE VOTING POWER  
0

NUMBER OF  
SHARES -----  
BENEFICIALLY 8. SHARED VOTING POWER  
OWNED BY EACH 66,238,914\*\*  
PERSON WITH -----

9. SOLE DISPOSITIVE POWER  
0  
-----

10. SHARED DISPOSITIVE POWER  
66,238,914\*\*  
-----

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  
  
66,238,914\*\*  
-----

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES  
CERTAIN SHARES [ ]  
-----

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  
  
38.9%  
-----

14. TYPE OF REPORTING PERSON  
  
IN  
-----

\*See Item 3  
\*\*See Item 2 and 5

THE PURPOSE OF THIS AMENDMENT NO. 9 IS TO AMEND THE PURPOSE OF TRANSACTION SECTION. IN ADDITION, THE OWNERSHIP PERCENTAGES OF THE REPORTING PERSONS HAVE BEEN UPDATED TO REFLECT A CHANGE IN OWNERSHIP AMONG THE REPORTING PERSONS AND NUMBER OF OUTSTANDING SHARES OF COMMON STOCK AS SET FORTH IN THE ISSUER'S FORM 10-Q FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2006. THE INFORMATION BELOW SUPPLEMENTS THE INFORMATION PREVIOUSLY PROVIDED.

ITEM 4. PURPOSE OF TRANSACTION

On August 27, 2006, the Reporting Persons sent a letter (the "Letter") to Mr. Fred S. Zeidman, the Chairman of the Board of Directors of the Issuer, expressing an interest in acquiring at a price of \$3.65 per share all of the outstanding shares of the Issuer not already owned by the Reporting Persons. The Letter stated that the Reporting Persons are prepared to commence negotiations on a definitive agreement immediately, with a view to executing such agreement within three weeks. The Letter also stated that the Reporting Persons' financing sources are also ready to commence their due diligence with a view to providing full debt financing commitments within such three week period. Further, the Letter stated that the proposed merger agreement would include fiduciary protections, such as permitting the Company to solicit superior alternative transactions for a period of 21 days after execution of the merger agreement and, at any time prior to shareholder approval of the transaction, to terminate the merger agreement to accept a superior proposal. A copy of the Letter is attached as Exhibit B to this report and is incorporated herein by reference.

ITEM 5. INTEREST IN SECURITIES OF THE ISSUER

ValueAct Master Fund is the beneficial owner of 66,238,914 shares of

## Edgar Filing: SEITEL INC - Form SC 13D/A

Common Stock (including 15,037,568 shares issuable upon exercise of Purchase Warrants), representing approximately 38.9% of the Issuer's outstanding Common Stock. ValueAct Co-Investors is the beneficial owner of 0 shares of Common Stock, representing 0% of the Issuer's outstanding Common Stock. VA Partners, ValueAct Management L.P., ValueAct Management LLC and the Managing Members may each be deemed the beneficial owner of an aggregate of 66,238,914 shares of Common Stock (including 15,037,568 shares issuable upon exercise of Purchase Warrants), representing approximately 38.9% of the Issuer's outstanding Common Stock. All percentages set forth in this Schedule 13D assume that the Issuer has 170,381,230 outstanding shares of Common Stock. This includes 155,343,662 outstanding shares as reported in the Issuer's Form 10-Q for the quarter ended June 30, 2006 and the issuance of an additional 15,037,568 shares upon the exercise of 15,037,568 Purchase Warrants beneficially owned by the Reporting Persons. One Purchase Warrant represents the right to purchase one share of the Issuer's Common Stock, at an exercise price of \$.72 per share, exercisable at any time during the period ending on 08/12/11.

Page 10 of 17

### Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer

Other than as described elsewhere in this Report and as previously reported, the Reporting Persons have no understandings, arrangements, relationships or contracts relating to the Issuer's Common Stock which are required to be described hereunder.

### Item 7. Material to Be Filed as Exhibits

- A) Joint Filing Agreement
- B) Letter from Reporting Persons dated August 27, 2006 to the Issuer

Page 11 of 17

### SIGNATURE

After reasonable inquiry and to the best of his knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

### POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below on this Schedule 13D hereby constitutes and appoints Jeffrey W. Ubben, George F. Hamel, Jr. and Peter H. Kamin, and each of them, with full power to act without the other, his or its true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or it and in his or its name, place and stead, in any and all capacities (until revoked in writing) to sign any and all amendments to this Schedule 13D, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary fully to all intents and purposes as he or it might or could do in person, thereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

ValueAct Capital Master Fund L.P., by

Edgar Filing: SEITEL INC - Form SC 13D/A

VA Partners, L.L.C., its General Partner

By: /s/ George F. Hamel, Jr.  
-----

Dated: August 28, 2006

George F. Hamel, Jr., Managing Member

ValueAct Capital Partners Co-Investors L.P.,  
by VA Partners, L.L.C., its General Partner

By: /s/ George F. Hamel, Jr.  
-----

Dated: August 28, 2006

George F. Hamel, Jr., Managing Member

VA Partners, L.L.C.

By: /s/ George F. Hamel, Jr.  
-----

Dated: August 28, 2006

George F. Hamel, Jr., Managing Member

ValueAct Capital Management, L.P., by  
ValueAct Capital Management, LLC its  
General Partner

By: /s/ George F. Hamel, Jr.  
-----

Dated: August 28, 2006

George F. Hamel, Jr., Managing Member

Page 12 of 17

ValueAct Capital Management, LLC

By: /s/ George F. Hamel, Jr.  
-----

Dated: August 28, 2006

George F. Hamel, Jr., Managing Member

By: /s/ Jeffrey W. Ubben  
-----

Dated: August 28, 2006

Jeffrey W. Ubben, Managing Member

By: /s/ George F. Hamel, Jr.  
-----

Dated: August 28, 2006

George F. Hamel, Jr., Managing Member

By: /s/ Peter H. Kamin  
-----

Dated: August 28, 2006

Peter H. Kamin, Managing Member

Page 13 of 17

Exhibit A  
JOINT FILING UNDERTAKING

Edgar Filing: SEITEL INC - Form SC 13D/A

The undersigned parties hereby agree that the Schedule 13D filed herewith (and any amendments thereto) relating to the Common Stock of Seitel, Inc. is being filed jointly on behalf of each of them with the Securities and Exchange Commission pursuant to Section 13(d) of the Securities Exchange Act of 1934, as amended.

ValueAct Capital Master Fund L.P., by  
VA Partners, L.L.C., its General Partner

By: /s/ George F. Hamel, Jr.

-----  
George F. Hamel, Jr., Managing Member

Dated: August 28, 2006

ValueAct Capital Partners Co-Investors L.P.,  
by VA Partners, L.L.C., its General Partner

By: /s/ George F. Hamel, Jr.

-----  
George F. Hamel, Jr., Managing Member

Dated: August 28, 2006

VA Partners, L.L.C.

By: /s/ George F. Hamel, Jr.

-----  
George F. Hamel, Jr., Managing Member

Dated: August 28, 2006

ValueAct Capital Management, L.P.,  
by, ValueAct Capital Management, LLC  
its General Partner

By: /s/ George F. Hamel, Jr.

-----  
George F. Hamel, Jr., Managing Member

Dated: August 28, 2006

ValueAct Capital Management, LLC

By: /s/ George F. Hamel, Jr.

-----  
George F. Hamel, Jr., Managing Member

Dated: August 28, 2006

Page 14 of 17

By: /s/ Jeffrey W. Ubben

-----  
Jeffrey W. Ubben, Managing Member

Dated: August 28, 2006

By: /s/ George F. Hamel, Jr.

-----  
George F. Hamel, Jr., Managing Member

Dated: August 28, 2006

Edgar Filing: SEITEL INC - Form SC 13D/A

By: /s/ Peter H. Kamin

Dated: August 28, 2006

-----  
Peter H. Kamin, Managing Member

Page 15 of 17

Exhibit B  
LETTER

VAC  
ValueAct Capital

CONFIDENTIAL

August 27, 2006

Mr. Fred S. Zeidman  
Chairman of the Board  
Seitel, Inc.  
10811 S. Westview Circle Drive  
Building C, Suite 100  
Houston, TX 77043

Dear Fred,

ValueAct Capital Master Fund, L.P. ("ValueAct Capital") is pleased to submit to the Board of Directors of Seitel, Inc. (the "Company") an offer to acquire by merger 100% of the outstanding equity interests that it does not already own for \$3.65 per share in cash. We intend to finance the transaction with a combination of an additional equity investment from ValueAct Capital and third-party debt financing to be underwritten by a group of investment banks.

As a result of our existing sizable minority investment and two board seats, ValueAct Capital is thoroughly knowledgeable about the business and its prospects and maintains a good relationship with Seitel's management team. We believe this familiarity uniquely positions us to complete the transaction expeditiously and should provide great certainty of completion to the Seitel Inc. board of directors.

We are prepared to commence negotiations on a definitive agreement immediately, with a view to executing such agreement within three weeks. Our financing sources are also ready to commence their due diligence with a view to providing full debt financing commitments within such three week period.

Our proposed merger agreement would include customary fiduciary protections, such as permitting the Company to solicit superior alternative transactions for a period of 21 days after execution of the merger agreement (the "Go Shop Period") and, at any time prior to shareholder approval of the transaction, to terminate our merger agreement to accept a superior proposal. If the Company terminates our merger agreement to accept a superior proposal that was received during the Go Shop Period, the Company would be required to pay a break up fee equal to only 1% of the transaction value, plus reimbursement of actual expenses. If the Company terminates our merger agreement to accept a

Edgar Filing: SEITEL INC - Form SC 13D/A

superior proposal received after the Go Shop Period, the Company would be required to pay a break up fee of 3% of the transaction value, plus reimbursement of actual expenses. Under this arrangement, the Company

Page 16 of 17

will be able to guarantee a high premium value for the Company without foreclosing the possibility of obtaining an even greater value from a third party.

ValueAct Capital does not require any limited partner, shareholder or board approvals to consummate the transaction. Investment decisions are made by the members of our general partner. We would not anticipate any issues with receiving any regulatory approvals required to complete this transaction.

Of course, no binding obligation shall arise with respect to the proposal or any transaction unless and until definitive documentation has been appropriately approved, executed and delivered by the parties.

Sincerely,

ValueAct Capital Master Fund, L.P.

By its General Partner, VA Partners, LLC

/s/ Peter H. Kamin

-----

Peter H. Kamin  
Managing Member

Page 17 of 17