

## Some Dark Clouds Over Overland's Sale

TECH: Prior Relationship With Sphere 3D Could Draw Scrutiny  
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Friday, May 30, 2014

The proposed sale of Overland Storage Inc. to Canada-based Sphere 3D Corp. looks like a winner for the sellers, although securities lawyers claim it vastly undervalues the company's true worth.

As soon as the proposed \$81 million transaction was announced May 15, it generated a string of at least six investigations from securities law firms, claiming that Overland's board and management failed to solicit the company to get a fair price, and that there are conflicts of interest by Overland's CEO, Eric Kelly, who also is chairman of the board of Sphere 3D.

The proposed stock sale would pay Overland (Nasdaq: OVRL) shareholders 0.51 shares of Sphere 3D (OTC: SPIHF) stock for each of their shares. That would value each Overland share at \$4.43, or about 50 percent higher than the market price May 14, based on the closing prices of both companies' stock that day.

Nevertheless, several missives from securities firms seeking plaintiffs said the price was too low, and cite an analyst's forecast target price of \$15.

Overland, a maker of data storage equipment and services, has been struggling ever since it lost its biggest customer, Hewlett-Packard Co. (NYSE: HPQ), in 2006. For its last fiscal year ended June 30, 2013, it reported a net loss of \$19.6 million, compared with a net loss of \$16.2 million in the prior fiscal year. After losing HP, Overland's sales cratered from about \$236 million in fiscal 2005 to \$48 million in fiscal 2013.

The business has had problems maintaining its status on the Nasdaq stock exchange because of repeated instances of its stock falling below \$1.

### **Collaboration Precedes Sale**

Sphere 3D, based in Mississauga, Ontario, Canada is a maker of software that "allows native third-party applications to be delivered in the cloud or on premises on a multitude of endpoint devices."

The two companies have been working together since last year on "an integrated application virtualization and data storage platform" that was hailed as "an industry first solution."

According to the announcement, the combination of the two companies' products "will enable mobile device users the full functionality of any software program or application on any device, anywhere, eliminating application limitations, data management and security problems for enterprises created by the [bring your own device] phenomenon."

In an analysts' conference announcing the combination, the companies cited a Frost & Sullivan research report estimating the global market for the virtual desktop infrastructure to be \$5 billion and growing 20 percent annually.

The merger appears to be a slam-dunk since Overland's majority owner, New York-based private equity firm Cyrus Capital Partners, which owns 63 percent of the stock, entered into voting agreements committing their support for the transaction.

If the combination is approved and passes muster with regulators, Overland shareholders would own about 29 percent of the new business that would retain the Sphere 3D name.

### **Sphere 3D Stock Rising**

While it's not unusual for sales of public companies to trigger shareholder lawsuits from a slew of firms that specialize in this type of tort, the fact that this combination involves two businesses already in a partnership and sharing one board member could cause regulators to take a closer look, said Seth Kaplowitz, a professor of business law at San Diego State University.

"The regulators [in the U.S. and Canada] will look to see if those lawsuits have any merit ... and determine if there's a reasonable expectation they could win, and if so, that could potentially derail this transaction," Kaplowitz said.

Another curious aspect surrounding the sale is the ever-surging stock price of Sphere 3D. Since it began listing on the Over the Counter Stock Exchange in September at \$1.03, the stock has been steadily climbing, and passed \$8 in May. As of May 27, the closing price of \$8.65 gave the company a market capitalization of \$180 million.

Sphere 3D's stock is also traded on the Toronto Venture Exchange under the ticker ANY.

In contrast, Overland stock has hovered around \$1 for most of the past few years until the company arranged a 5-for-1 stock split that boosted the share price to just below \$4. Overland's May 27 price of \$3.87 gives it a market capitalization of \$66.5 million.

Overland Storage's most recent financial results for the quarter ended March 31 show revenue of \$20.2 million and a net loss of \$6.6 million. That compared with revenue of \$11.6 million and a net loss of \$5.1 million for the like quarter of 2013.