

LEAP WIRELESS INTERNATIONAL INC  
Form DFAN14A  
July 11, 2011

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

**SCHEDULE 14A**

Proxy Statement Pursuant to Section 14(a) of  
the Securities Exchange Act of 1934 (Amendment No. )

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

LEAP WIRELESS INTERNATIONAL, INC.  
(Name of Registrant as Specified In Its Charter)

Pentwater Capital Management LP

Pentwater Growth Fund Ltd.

Pentwater Equity Opportunities Master Fund Ltd.

Oceana Master Fund Ltd.

LMA SPC for and on behalf of MAP 98 Segregated Portfolio

Matthew C. Halbower

Robert E. Switz

Richard R. Roscitt  
(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
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(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

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Pentwater Capital Management LP, together with the other participants named in this Schedule 14A (collectively, Pentwater ) is filing materials contained in this Schedule 14A with the Securities and Exchange Commission ( SEC ) in connection with the solicitation of proxies for the election of its director nominees to the board of directors of Leap Wireless International, Inc. ( Leap ) and to vote on four other proposals at Leap s 2011 annual meeting of stockholders. Leap stockholders should read Pentwater s definitive proxy statement and its other publicly-filed proxy materials as they become available, because they contain important information. Information regarding the direct and indirect interests of each participant in the solicitation of proxies by Pentwater is included in Pentwater s proxy materials filed with the SEC. Pentwater s proxy materials and other SEC filings may be accessed without charge at the SEC s website at [www.sec.gov](http://www.sec.gov). Pentwater s proxy statement and **GOLD** proxy card are also available at [www.ViewOurMaterial.com/pentwater-leap](http://www.ViewOurMaterial.com/pentwater-leap) or by contacting Pentwater s proxy solicitor, MacKenzie Partners, Inc., at its toll-free number (800) 322-2885 or at [leap@mackenziepartners.com](mailto:leap@mackenziepartners.com).

The attached letter is a slightly modified version of the letter included in the press release that Pentwater issued on July 11, 2011. The attached letter, unlike the letter included in the press release, is accompanied by a copy of the memorandum opinion issued in September 2008 by Vice Chancellor Strine of the Delaware Chancery Court as referenced therein.

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July 11, 2011

Dear Leap Stockholders:

On July 7, Leap filed an investor presentation claiming that, Leap is led by an experienced and independent Board of Directors. Leap further claimed that Pentwater's criticisms of Leap's corporate governance are misinformed and inaccurate. These statements are misleading. The reality is that several members of Leap's board have previously acted in concert with each other in a breach of their fiduciary duties owed to shareholders in order to enrich MHR Capital (controlled by Leap's chairman) at the expense of public shareholders.

Following this letter is a copy of an opinion issued in September 2008 by Chancellor Strine of the Delaware Chancery Court, who is also the judge assigned to hear our case challenging Leap's adoption and enforcement of its advance notice bylaw. The case was brought by shareholders of Loral Space and Communications Inc., who claimed MHR Capital (which is controlled by Dr. Rachesky) used its control over the Loral board of directors to allow MHR to make a \$300 million investment in Loral on non-economic terms in breach of the fiduciary duties Loral's directors owed to all of Loral's shareholders. At the time of the actions that were the subject of the case, the chairman of the board of Loral was Dr. Rachesky, who is Leap's chairman, and both John Harkey and Michael Targoff were on the board of Loral just as they are now on the board of Leap. We strongly encourage all Leap shareholders to read the opinion.

In the opinion, Chancellor Strine found that, MHR soon used its influence at Loral to place one of its advisors, defendant Michael B. Targoff, as Loral's CEO. Targoff went into the job of CEO with the goal conceived in connection with MHR's creator, defendant Mark. H. Rachesky of having MHR make a substantial equity investment into Loral. (opinion p. 1) Almost as soon as Targoff assumed the managerial reins at Loral, he proposed that MHR make an investment of \$300 million into Loral, an investment equal to over half of Loral's existing stock market capitalization. Targoff and others affiliated with MHR argued that Loral had to raise no less than \$300 million and that it had to be in equity, despite the fact that there was no magic to the \$300 million figure and that the company's own financial advisors suggested viable options for raising capital that involved both debt and equity. (opinion p. 1)

Even though the \$300 million constituted a huge percentage of the company's existing capitalization, the Loral board eschewed any consideration of a sale of the company as a whole, a sale that would have threatened MHR's effective control position. (opinion p. 1) A special committee that had been appointed to look at the equity investment was chaired by John Harkey, a Leap board member who is a close friend of Rachesky, served on three boards at the instance of MHR, and was touted by MHR as one of its investment advisors. (opinion pp. 1-2)

Despite the fact that the process dragged on, the Special Committee never used that breathing space to subject the MHR Financing to a real market check. Similarly, even though the MHR Financing gave MHR a veto over the company's future, the Special Committee never considered

whether Loral should be exposed to a hot market for corporate control, in which private equity buyers were using the availability of easy credit to make good buys. Instead, the Special Committee simply dealt with MHR, which drove a bargain that left itself with terms that were better than market. (opinion p. 3)

Chancellor Strine concluded that the MHR Financing was unfair to Loral. Using its effective control, MHR set in motion a process in which the only option that the Special Committee considered was a deal with MHR itself. Rather than acting as an effective agent for the public stockholders by aggressively demanding a market check or seeking out better-than-market terms from MHR in exchange for no market check, the Special Committee gave MHR terms that were highly favorable to MHR, in comparison to the convertible preferred transactions its own advisor deemed comparable. These terms gave MHR a chokehold on Loral's future and 63% of its equity. Regrettably, the negotiation process was also marred by the conduct of its chairman and financial advisor, who undercut Loral's own negotiation position. Even more egregiously, during the special committee process, its chairman was seeking to have MHR invest in his own business. The behavior of MHR itself suggests that Loral had positive growth prospects that MHR wanted to capture solely for itself; growth prospects that MHR was uniquely positioned to know about and that were not known by the public markets. (opinion pp. 4-5)

The five pages in Leap's July 7 presentation dedicated to the experience and independence of Leap's board fail to provide the facts regarding their past history and connections to MHR. In Pentwater's opinion, Leap is more like Loral, where:

- Loral was effectively controlled by MHR and lacked a complement of several independent directors, from whom a larger special committee free from conflicting ties to MHR could be selected (opinion p. 17)
- Harkey and Rachesky were business school classmates [and] have maintained a long-time friendship (opinion p. 11)
- The Special Committee's narrow mandate of obtaining \$300 million in equity financing and the resulting focus on the MHR Financing persisted despite an April 18, 2006 presentation from Morgan Stanley, Loral's long-time investment banker, recommending a different approach. (opinion p. 19)

Two of Pentwater's nominees are former CEOs of multi-billion dollar telecom companies who have extensive board experience. Pentwater's CEO is the other nominee. No nominee is tied to MHR. Pentwater's nominees will uphold their fiduciary duties and act in the best interest of all of Leap's stockholders. Pentwater's nominees are the better choice for stockholders, and we urge you to vote for Mr. Roscitt, Mr. Switz, and Mr. Halbower on the GOLD proxy card.

Regards,

Pentwater Capital Management LP

Pentwater has filed a definitive proxy statement and related materials with the Securities and Exchange Commission (SEC) in connection with Pentwater's solicitation of proxies to elect its nominees to the Leap Board of Directors and to vote on four other proposals at the 2011 Annual Meeting of Stockholders. Leap stockholders should read Pentwater's definitive proxy statement and its other publicly-filed proxy



materials as they become available, because they contain important information. Information regarding the direct and indirect interests of Pentwater and each other participant in the solicitation of proxies by Pentwater is included in Pentwater's proxy materials filed with the SEC. Pentwater's proxy materials and other SEC filings may be accessed without charge at the SEC's website at [www.sec.gov](http://www.sec.gov).

If you have any questions or require any assistance with your vote, please contact MacKenzie Partners, Inc., which is assisting us, at their address and phone numbers listed below.

*If you have any questions, require assistance in voting your **GOLD** proxy card,*

*or need additional copies of Pentwater's proxy materials, please call*

*MacKenzie Partners, Inc. at the phone numbers or email listed below.*

*105 Madison Avenue*

*New York, New York 10016*

*(212) 929-5500 (Call Collect)*

*[leap@mackenziepartners.com](mailto:leap@mackenziepartners.com)*

*or*

*CALL TOLL FREE (800) 322-2885*

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