

## Progressing with Dell Example of Responsibilities for Investor Information

Responding to last week's letter inviting their leadership of an independent, peer-reviewed valuation report for the benefit of shareholders,<sup>1</sup> the special committee of Dell's board has informed me that they do not wish to explore the proposal. They asked no questions and offered no explanations, so nothing can be reported about their reasons for this disappointing decision.

We will in any event continue the new emphasis on Forum support of corporate management responsibilities to address investor information requirements,<sup>2</sup> specifically in relation to Dell and generally. While this particular project will necessarily rely upon the leadership of investors, following the practices of many past Forum programs, we should continue to encourage the collaboration of Dell's management to assure a cost-efficient, timely delivery of what investors need. My reply to the special committee's chairman included the following practical foundation for this collaboration.

Your active participation in the project will of course be welcomed whether you provide the invited leadership or not. Depending on how we decide to organize the process, it is likely that we will encourage your suggestions of candidates for the valuation engagement as well as for the peer reviews. It is assumed in any event that you will want to help establish procedures for access to company information without the administrative and cost burdens of formal demands for records.

Regarding broader issues, Forum participants' observations of the Dell situation have focused our attention on some very practical marketplace problems. In theory, investors should be able to rely upon corporate managers to provide all the information needed for their sound decisions. Regulators are supposed to oversee this management responsibility, and investors also have rights to demand management's compliance with the rules. Finally, theory assumes that everyone can rely upon fund managers as fiduciaries to make all of this work. Reality is naturally more complicated, but we must respect this theoretical framework in our development of functional solutions to the concerns we have identified:

- ***When the proponents of a transaction have access to material information that is not available to public investors, how can public investors obtain the information needed to reasonably consider the proposal without preferential access or the constraints of confidentiality obligations?***

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<sup>1</sup> See the [February 15, 2013 Forum Report: Dell Example of Supporting Management Responsibilities for Investor Information](#).

<sup>2</sup> See the [February 6, 2013 Forum Report: What Sources Should Investors Rely Upon?](#)

- *If questions are raised about management's recommendation or opposition to a proposed transaction, how can public investors be fully informed before they are required to make decisions about voting and dissenter rights?*
- *If a transaction is presented by a company's management or other parties based on current trading prices to address the immediate value realization interests of short-term investors, how can investors with interests in long term enterprise value make fully informed decisions?*

During the next week I will be inviting representatives of Dell investor interests to participate in a workshop to guide this special project, and I will appreciate suggestions of either perspectives or specific investors that should be included to assure our consideration of diverse views.

*GL – February 22, 2013*

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