

## Reconsidering Appraisal Rights for Long Term Value Realization

Last week's ruling of the Delaware Supreme Court in the Dell appraisal case<sup>1</sup> requires our reconsideration of reliance upon rights to appraisal for realization of intrinsic value when a company is sold.

The ruling is broadly viewed as intended to end the confusion created by the development of specialized "appraisal arbitrage" funds, which had been inspired by the Dell proceeding. This new litigation investment strategy was loudly criticized as parasitic by both corporate and investment professionals concerned with negotiating buyouts, and it also discouraged the use of appraisal for its intended purpose of providing mainstream investors with a means of realizing long term intrinsic value in opportunistically priced (but fairly negotiated) mergers.

The court's solution is to officially endorse its view of the "efficient market hypothesis"<sup>2</sup> as a foundation for relying upon market pricing to define a company's "fair value." While this theory might be questioned by many investors and economists, its mandated adoption for future court appraisals can be expected to stop the circus of cases that threatened Delaware's credibility as a reliable legal home for corporations.

Unfortunately, the court's official view that fair *price* is the same as fair *value* also puts an end to reliance upon Delaware appraisal proceedings as a means of assuring an investor's realization of the long term value of capital contributions to an enterprise. But this was not, after all, something we had expected to be able to rely upon until recently, when the Dell situation stimulated our development of processes to support participation by regulated funds and individual investors. And, as long-time Forum participants will recall, we have established other marketplace solutions that remain viable to address these essential shareholder interests.<sup>3</sup>

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<sup>1</sup> See [December 14, 2017 Reuters: "Court reverses Dell buyout ruling that alarmed dealmakers."](#)

<sup>2</sup> See pages 40-41 (PDF pp.42-43), [December 14, 2017, Dell, Inc. v. Magnetar Global Event Driven Master Fund Ltd., et al \(Supreme Court of Delaware Case No. 565, 2016\): Upon appeal from the Court of Chancery. REVERSED in part, AFFIRMED in part, and REMANDED](#); for a continuing advocate's summary of Fama's 1970 economic theory, see [May 20, 2014, John H. Cochrane of the University of Chicago's Booth School of Business \(currently of the Hoover Institution and Stanford Institute for Economic Policy Research\) published in Chicago Booth Review: "Eugene F. Fama, efficient markets, and the Nobel Prize."](#)

<sup>3</sup> See examples of past Forum programs listed as "[Value Enhancement Opportunities](#)" that were "selected to demonstrate the processes by which investors, acting independently in a common interest, can influence value enhancing changes."