

Encouraging Dell's Voluntary Compliance with Investor Rights to Information

The letter copied [below](#) is being sent to Dell in response to their previously reported "four lawyer letter,"¹ encouraging their voluntary compliance with the company's obligations to provide its shareholders with same information that was made available to the advisors they engaged to provide valuations supporting their proposed buyout transaction.²

It should be noted that it is fairly common for a company's management to state objections to shareholder demands for information, at least as an initial position, but that the nature and vigor of Dell's response is unusual. Particularly, their lawyer's professed confusion about the administrative details of the "Delegate" authorization form seems especially extreme since the Forum has been using the same form for several years without any questions being raised, even by companies that fought compliance,³ and it is in any event something that could be easily resolved with some good faith suggestions of modified statements.

In the context of Forum experience with demands for records as a means of supporting investor access to information,⁴ I am confident that we will ultimately be able to provide public investors with the ability to make informed decisions about the transaction proposed by Dell's management.

GL – March 11, 2013

Gary Lutin
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¹ See [March 12, 2013 The Washington Post \(AP\): "Dell rebuffs shareholder group seeking access to internal assessments that led to buyout."](#) for a copy of the letter, see [March 12, 2013 letter from Janet B. Wright, Vice President – Corporate, Securities & Finance Counsel of Dell Inc., to Gary Lutin of The Shareholder Forum, re: Inspection of Books and Records Pursuant to 8 Del. C. § 220, copied to William D. Regner of Debevoise & Plimpton, S. Mark Hurd of Morris Nichols Arsht & Tunnell, and Gregory P. Williams of Richards Layton & Finger](#) (3 pages, 244 KB, in [PDF](#) format).

² See [March 6, 2013 Forum Report: Obtaining the Same Information as Dell's Advisors.](#)

³ For an example of a company that resisted compliance but accepted the same form of "Delegate" authorization, see a [2005 Forum report of a demand for records of CA Inc. \(f/k/a Computer Associates\).](#)

⁴ For a 2001 article addressing Forum support of investor information access during the dot-com bubble, see [April 29, 2001 New York Times: "Holding Executives Answerable to Owners."](#)

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March 13, 2013

By email and postal service

Ms. Janet B. Wright
Vice President – Corporate, Securities & Finance Counsel
Dell Inc.
One Dell Way, RR1-33
Round Rock, Texas 78682

Re: Demands for records

Dear Ms. Wright:

Responding to the letter you sent me last night shortly after its SEC filing, I will welcome informal discussions with you or any of your lawyers to clarify the demand for records so that we can proceed with a timely review of information that investors will need to consider the proposal presented by Dell's management.

It is suggested that we consider the issues you raised in three categories:

- A. Administrative: Although we have been using the same form of “Delegate” authorization for several years without any questions about its compatibility with the provisions of Section 220 that accommodate the use of lawyers, accountants, financial advisors and other professionals as agents for authorizing stockholders, I will be glad to consider your suggested refinements of any phrases you find confusing. It should be clear from the statements in the power of attorney as well as in my letter that the purpose of this process is for the Forum to report only non-confidential information for stockholder consideration, so that the stockholder can use the information to make investment decisions.
- B. Purposes of demand: Not being a lawyer, I cannot address the applicability of the cases you cite but am confident that the purposes of the demand would be considered perfectly consistent with the plain language of Section 220:

A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder.

The demand is simply for the same information that Dell provided for its own valuation experts, and those engaged by the special committee. If information was relevant to those experts' considerations of value, it must also be relevant to the considerations of a stockholder, especially if the stockholder is presented with a proposal based on the advice those experts provided to the proponents.

- C. Distinguishing board responsibilities from investor responsibilities: It should be understood, once and for all, that the Forum is not addressing the conduct of the board or its special committee, and that your defense of the special committee's performance is neither appropriate nor relevant. What concerns us is the need for each of Dell's stockholders to make its own independent decisions about its own individual interest, and that is not something that board members can or should be doing for them.

Addressing your purpose, if it is to serve Dell's stockholders I am confident we will be able to resolve any confusion about the process for providing the information they need to fairly consider the proposed transaction. Please let me know by the end of this week how you wish to proceed.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Gary Lutin", enclosed in a thin black rectangular border.

Gary Lutin

cc: S. Mark Hurd, Esquire
William D. Regner, Esquire
Gregory P. Williams, Esquire