

## Getting the Information Before Instead of After Investor Decisions

In the absence of any response to my March 18 letter asking Dell's legal counsel for any additional views of how the company believes a demand for records should be stated to satisfy the requirements of applicable Delaware law,<sup>1</sup> I sent the company a revised demand that accommodates all of the views that had been presented in two letters as reasons why Dell should not provide the information needed by investors.<sup>2</sup>

- [March 21, 2013 letter from Gary Lutin as Delegate to Michael S. Dell of Dell Inc., re: Revised demand for records](#) (4 pages, 197 KB, in [PDF](#) format), bookmarked for its sections addressing
  - Authority of Delegate to act on behalf of Shareholder
  - Demand for records
  - Purposes of demand
  - Confidentiality requirements

The revised demand letter does not waive any rights to enforce the original demands, of course, but it is assumed that writing a new letter that eliminates Dell's grounds for arguing will get the desired result much faster than engaging in the argument.

### Routinely provided information

Although the letter is considerably longer than the initial demand, the amount of information demanded has been cut back to easily specified records that are *routinely* provided for investor review in court proceedings involving appraisal rights. Delaware law provides Dell shareholders with appraisal rights if they elect "dissenter" status, and experts representing investors would then be expected to review the same information that is specified in today's revised demand to prepare professional valuation reports or views of what others have reported. Since it is certain in a transaction with Dell's large number of shareholders that at least some will exercise dissenter rights to appraisal, it is also certain that Dell will eventually be required to allow investor access to all of the information in the revised demand.

The revised demand will therefore require only that Dell provide access to the specified information now, rather than delay access until after the vote.

*GL – March 21, 2013*

Gary Lutin  
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<sup>1</sup> See [March 19, 2013 Forum Report: Proceeding with Fair Access to Dell Investor Information](#).

<sup>2</sup> See [March 13, 2013 Forum Report: Encouraging Dell's Voluntary Compliance with Investor Rights to Information](#) and [March 15, 2013 Forum Report: Encouraging Practical Resolution of Dell Investor Information Requirements](#).

# THE SHAREHOLDER FORUM, INC.

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March 21, 2013

By email and postal service

Mr. Michael S. Dell  
Chairman of the Board and Chief Executive Officer  
Dell Inc.  
One Dell Way  
Round Rock, Texas 78682

Re: Revised demand for records

Dear Mr. Dell:

This demand for records is a revision of demands presented in letters to Dell Inc. (the “Company”) of March 5 and March 11, 2013 (“Original Demands”), restated to accommodate the views of demand requirements presented in responding letters of March 12 and March 15, 2013 from Janet B. Wright, Vice President – Corporate, Securities & Finance Counsel of the Company. All rights relating to the Original Demands will of course be reserved pending the Company’s satisfactory response to the demand for records presented now (“Revised Demand”).

## **Authority of Delegate to act on behalf of Shareholder**

I continue to act as “Delegate” according to the accompanying copy of the March 5, 2013 powers of attorney (“Appointment”) granted by Cavan Partners, LP (“Shareholder”), which is a record holder of the Company’s common stock. (The Company’s transfer agent, American Stock Transfer & Trust, has confirmed that their record of the Shareholder’s holding of Company stock is available to you.) I have no notice or knowledge that those powers have been revoked.

My authority includes (i) determining what information of the Company may be relevant to Shareholder’s interests as a shareholder and (ii) taking such actions that Shareholder could take to obtain that information. Lines 5 to 9 of the Appointment’s first paragraph specify this authority to act on Shareholder’s behalf, with emphasis added to a phrase the Company apparently overlooked in its review of the Original Demands:

“...as the undersigned’s agent (attorney-in-fact) to take any and all actions which Shareholder, as a shareholder of the Company, could take in accordance with any applicable statutory or common law, including, without limitation, as provided for in Section 220 of the Delaware General Corporation Law, to request, demand, obtain, inspect, copy and otherwise deal with, *on Shareholder’s behalf*, any and all information of the Company deemed by the Delegate to be relevant to Shareholder’s interests as a shareholder....”

As explained in previous correspondence, this Appointment was carefully defined to provide for the Delegate's independent review of confidential information without disclosing any non-public information to the Shareholder, and for the Delegate accordingly to enter into appropriate confidentiality agreements independently of the Shareholder. The conventional provision that the Forum has been using for a decade to avoid investor exposure to inside information is presented in the following continuation of the statement quoted above, in lines 9 to 11 of the Appointment's first paragraph:

“...but specifically withholding from Delegate the authority to enter into any agreement that would impose upon Shareholder any confidentiality obligations or other conditions that would restrict Shareholder's use or disclosure of any such information for any purpose related to Shareholder's interests as a shareholder....”

Finally, to avoid any uncertainty about Delegate authority that might require burdensome confirmation processes, the first paragraph of the Appointment is concluded with these statements in lines 12 to 15:

“...[Shareholder is] otherwise granting unto said Delegate full power and authority to do and perform each and every lawful act and thing which Shareholder might or could do in person in connection with the aforesaid matters that Delegate believes necessary, proper or convenient. Shareholder ratifies and confirms all that Delegate in fact does or causes to be done under the authority granted in this Power.”

### **Demand for records**

According to my authority as Delegate to act on behalf of Shareholder, I demand pursuant to Section 220 of the Delaware General Corporation Law that you produce the following books and records of the Company for inspection and copying, or that you provide the required information by mutually acceptable alternative means:

- (1) copies of what the Company described in its February 6, 2013 SEC Form 8-K report as “fairness opinions from the Special Committee's financial advisors, J.P. Morgan Securities LLC and Evercore” that were received by the Special Committee and the Board, and that are also referenced in Section 3.19 of the February 5, 2013 Agreement and Plan of Merger attached as an exhibit to that Form 8-K report (referred to as “Fairness Opinions”);
- (2) all reports, presentations or other information received by the Company, including by its Board or the Special Committee, from Morgan or Evercore relating to the Fairness Opinions or associated valuations of the Company;

- (3) requests or specifications of information required by Morgan and Evercore relating to the development of their Fairness Opinions or associated valuations of the Company;
- (4) information provided or made available to Morgan and Evercore relating to the development of their Fairness Opinions or associated valuations of the Company;
- (5) agreements, including any modifications or clarifications, establishing the conditions according to which Morgan and Evercore were to provide their Fairness Opinions and any other services relating to the Company; and
- (6) reports or other information prepared by the Company or by any of its other advisors relating to the Fairness Opinions or their associated valuations.

Please let me know if you have questions about any of these specifications of records. All of them may be provided in electronic form, unless you believe I would benefit from seeing one or more of the records in paper form.

#### **Purposes of demand**

Addressing the broadly recognized distinction between the duties of a company's directors to determine the interests of the corporation and the need for each stockholder to determine its own investor interest, this demand is intended to provide an agent of Shareholder with the same information that was available to the agents of the Company's Board and its Special Committee for these similar but necessarily independent Shareholder purposes:

- (a) determine the value of the stock to Shareholder, based on its own view of the Company's long term prospects as a going concern as well as on current market trading prices or other alternatives;
- (b) enable informed consideration of the unusually wide range of value estimates offered by the Company and by respected investment professionals;
- (c) enable informed consideration of the Company's board determination of corporate interests in the context of Shareholder's own view of long term going concern value;
- (d) enable informed decisions about any price that is offered for Shareholder's stock, including current market trading prices above the Company's proposal price;
- (e) enable an informed decision about voting for a proposal recommended by directors who are responsible for determining the interests of the corporation rather than for determining the particular investor interests of each stockholder;

- (f) enable an informed decision about reserving dissenter rights based on independent valuations of the Company; and
- (g) determine whether additional records need to be obtained for the timely consideration of alternatives relating to a proposed transaction.

**Confidentiality requirements**

As indicated in the Original Demands, I will welcome your proposal of a conventional agreement that provides for my respecting the confidentiality of information you provide in response to my demands for records. The agreement should of course require its acceptance by any agents or advisors I appoint, and may also include provisions for the Company's review of reports I plan to provide for the Shareholder so that you can advise me of any information that should not be disclosed based on its confidentiality.

Your definition of what is confidential should of course be consistent with securities laws. Generally, anything the Company reports in SEC filings will be considered public, including information that had previously been considered confidential. It should be understood that I may rely upon the Company to promptly report in SEC filings any non-public information disclosed by Company representatives to the press, securities analysts, advisory services or other publishers, whether or not such disclosures were authorized.

Please let me know what arrangements you propose for producing the demanded records.

Sincerely yours,

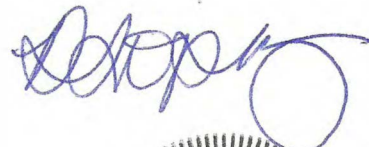


Gary Lutin,  
as Delegate

cc: Ms. Janet B. Wright

STATE OF NEW YORK  
COUNTY OF NEW YORK

Sworn to before me on this 21 day of March, 2013.



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