

## Relying Upon Fiduciary Duties of Dell Directors to Respect Investor Rights

As indicated in a note the morning after receiving Dell's June 4<sup>th</sup> letter, the company's management has switched back from its recognition of investor information requirements<sup>1</sup> to its earlier use of legal arguments to obstruct stockholder demands for records. My response, the text of which is copied [below](#), leaves it up the company's board to perform its fiduciary duties concerning management compliance with laws and respect of investor rights.

For those of you who did not review the company's latest legal arguments when the link was provided earlier, this is the Dell legal officer's letter:

- [June 4, 2013 letter from Janet B. Wright, Vice President – Corporate, Securities & Finance Counsel of Dell Inc. to Gary Lutin](#) (3 pages, 219 KB, in [PDF](#) format)

The decision to rely upon the company's board members to perform their fiduciary duties was based partly on the practical consideration that it is now too late to seek court enforcement of the demands, since the company issued its official proxy statement a week ago with a July 18 date for the special meeting. It is unlikely that a court order could be obtained quickly enough to produce any information in time for making decisions about voting or appraisal rights. Under the circumstances, it is more important for Forum participants, including me, to focus our attention on making effective use of the information that is available to evaluate alternatives, and also on developing support for the election of appraisal rights to make that theoretically ideal alternative more conveniently accessible.<sup>2</sup>

Your questions and comments will be welcomed.

*GL – June 7, 2013*

Gary Lutin  
Chairman, The Shareholder Forum  
575 Madison Avenue, New York, New York 10022  
Tel: 212-605-0335  
Email: [gl@shareholderforum.com](mailto:gl@shareholderforum.com)

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<sup>1</sup> See [May 28, 2013 Forum Report: Dell Now Responding to Investor Information Requirements](#).

<sup>2</sup> See [May 23, 2013 Forum Report: Analysis of "Appraisal Rights" in a Dell Buyout](#) and [May 27, 2013 Financial Times Lex: "Appraisal rights: the oracle speaks | Having judges opine on value is perilous, but might be satisfying and entertaining in the case of Dell."](#)

For a printable version of this letter, with its referenced copy of a June 4, 2013 letter, click [here](#).

*[Shareholder Forum letterhead]*

June 7, 2013

Mr. Alex J. Mandl  
Presiding Director and Chairman of the Special Committee, Board of Directors  
Dell Inc.  
One Dell Way  
Round Rock, Texas 78682

Dear Mr. Mandl:

As you will see in the accompanying copy of a June 4 letter, Dell's management has reverted to disputing its obligation to provide information needed by the company's investors.

I do not wish to engage in frivolous squabbling. This requires your attention, not mine, to decide how the board should satisfy its fiduciary duties concerning these responsibilities:

1. **Company compliance with laws** – It is assumed you will seek your own legal advice about the company's position that someone who is authorized to make a statement on behalf of a stockholder cannot present the statement on his firm's letterhead. I look forward to learning whether your committee will condone or correct this.
2. **Respect of stockholder rights to ask questions** – Observing your committee's exceptional efforts to present investors with information supporting your recommendation, and your stated plans to conduct private meetings to win investor support, it is evident that you understand the need to satisfy investor information requirements beyond what the SEC specifies for standardized disclosure reports. I will welcome your development of company practices to fairly provide all investors with the information they request, just as effectively as you provide the information you want them to have.

Please understand that I initiated my communications with you in February believing that your committee and the company's management would welcome collaborative support of a shared interest in investor access to decision-making information. Be assured that I remain available to discuss this constructive purpose.

Sincerely yours,

/S/

Gary Lutin,  
as Delegate

cc: William D. Regner, Esquire  
Ms. Janet B. Wright

# THE SHAREHOLDER FORUM, INC.

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575 MADISON AVENUE – 10<sup>TH</sup> FLOOR, NEW YORK, NEW YORK 10022  
TELEPHONE: (212) 605-0335

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Ms. Janet B. Wright



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June 4, 2013

**BY EMAIL and FIRST CLASS MAIL**

Mr. Gary Lutin  
The Shareholder Forum, Inc.  
575 Madison Avenue 10<sup>th</sup> Floor  
New York, NY 10022

**Re: Demand for Records**

Dear Mr. Lutin:

I write on behalf of Dell Inc. ("Dell" or the "Company") in reply to your most recent correspondence, dated May 28, 2013 (the "May 28 Demand"), in which you again demand the production of certain records related to a proposed going private transaction between the Company and a group including Michael Dell (the "Proposed Merger"). Specifically, you demand information, including any transcripts, presentation materials or notes, related to a publicly-reported speech or presentation by John A. Swainson and other Dell representatives during an event in San Francisco, California held on or about April 24, 2013, and unredacted versions of fifteen exhibits, filed in redacted form with the Securities and Exchange Commission ("SEC") on Schedule 13E-3, on behalf of the stockholder whom you purport to represent—Cavan Partners, L.P. ("Cavan"). The May 28 Demand states that it is Cavan's purpose to obtain the information so that it can consider the Company's valuation, whether to vote for the Proposed Merger and whether to assert appraisal rights.

The May 28 Demand, like your demands dated March 5, 11, and 21, 2013, and May 17, 2013, does not comply with the requirements of 8 *Del. C.* § 220 ("Section 220"). We note that Cavan, which purports to be a stockholder, has made *no* statement of its purpose in seeking an inspection of the Company's records; the only statement of purpose is made on the letterhead of The Shareholder Forum, Inc. Moreover, although you also seek confidential information of Dell, the May 28 Demand expressly refers to your "preparing reports that will not be considered private" and seeks a mechanism to "assure that confidential information will not be

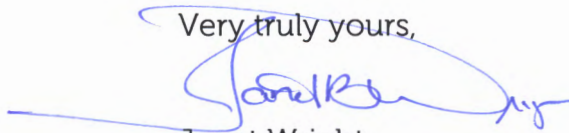
inadvertently disclosed to [Cavan,]" presumably because the durable power of attorney expressly withholds any authority to impose upon Cavan any confidentiality obligations that would limit its ability to trade in the Company's shares. In short, you purport to seek redacted, confidential information on behalf of a stockholder who does not want access to the information. It is therefore obvious from the face of the May 28 Demand that it is made not for Cavan's purposes, but for purposes related to the business interests of the Shareholder Forum. *See Badger v. Tandy Corp.*, 1983 WL 404449, at \*2 (Del. Ch. Mar. 24, 1983) (denying stocklist demand where the purpose related to "personal business" and was therefore not "reasonably related" to the plaintiff's interest . . . *as a stockholder.*")(emphasis in original); *Pershing Square, L.P. v. Ceridian Corp.*, 923 A.2d 810, 817 (Del. Ch. May 11, 2007) (explaining that the "mere statement of a proper purpose" will not "automatically satisfy [Section 220]" and that a corporation "may resist demand where it shows that the stockholder's stated proper purpose is not the actual purpose for the demand").

None of the stated purposes, moreover, is sufficient to justify inspection of the requested materials under Section 220. Although valuing shares can be a proper purpose under Section 220, the May 28 Demand does not demonstrate why the publicly available information about the Company will be insufficient to value publicly-traded shares or to accomplish any of the other stated purposes concerning the Proposed Merger. The law does not require disclosure of information that is not material to a decision upon which stockholders are requested to act. *Skeen v. Jo-Ann Stores, Inc.*, 750 A.2d 1170, 1174 (Del. 2000). You have not made, or even attempted to make, any showing that the "significant amounts of information" made available to the Company's stockholders through federal and state mandated disclosures is insufficient for the stated purposes. *See Polygon Global Opportunities Master Fund v. West Corp.*, 2006 WL 2947486, at \*1, 4 (Del. Ch. Oct. 12, 2006 ) (denying Section 220 inspection because the stockholder failed to show "that the information made publicly available in connection with the proposed ... transaction omits information that is necessary, essential and sufficient for its purpose").

In addition, although the May 28 Demand states that "it is assumed that both the Company's board members and advisers" had considered unredacted versions of the materials filed in redacted form with the SEC, Delaware law vests in Dell's directors -- not its stockholders -- the authority to manage the Company's business and affairs, and Section 220 does not provide stockholders an avenue to participate in the directors' decisions, negotiations or disclosure practices. *See Q Funding III, L.P. v. Cedar Fair Management, Inc.*, C.A. No. 5551-VCS, at \*12 (Del. Ch. July 19, 2010) (TRANSCRIPT) ("I think we've seen this before--about whether it is a proper purpose for someone to essentially ... get engaged in the process. Well, that's what fiduciaries are for.").

In these and other respects, as to which the Company expressly reserves all rights and objections, the May 28 Demand fails to meet the requirements of § *Del. C.* § 220 and Delaware law.

Very truly yours,



Janet Wright  
Vice President - Corporate, Securities &  
Finance Counsel and Assistant Secretary

cc: William D. Regner, Esq.  
Debevoise & Plimpton LLP

S. Mark Hurd, Esq.  
Morris, Nichols, Arsht & Tunnell LLP

Gregory P. Williams, Esq.  
Richards, Layton & Finger, P.A.