

Misleading Reports of Appraisal Rights Suitability for Funds

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The legal officer of a major fund manager told me this week that they had decided to abandon their plans to seek appraisal rights on a very significant holding of Dell stock because someone who seemed to be associated with the Dell Valuation Trust claimed that its securities lawyers had said the required liquidity could not be established. He was misinformed.

Similar confusion has been reported by other fund managers.

Easily confirmed viability

Liquidity can in fact be established, and any lawyer familiar with securities regulation should be able to assure you of this. The plan that has been developed for the Dell situation – with law firms respected for their expertise in the relevant aspects of both securities regulation and appraisal rights, it should be noted – simply follows the conventional model used for a wide range of publicly traded asset-backed investments:

- (a) The Dell Valuation Trust has been established as an independent entity to (i) manage the administration of appraisal rights for multiple participants and (ii) provide reliable reporting to decision-makers.¹ This is the same function that is provided by servicing agents for everything from mortgage funds to commodity pools. It is not novel, and adaptations to particular asset requirements are routine.
- (b) An unaffiliated fund is expected to offer all holders of Trust-managed appraisal rights the opportunity to sell or exchange their interests for the fund's properly registered public securities.² This, too, is a routine practice.

If you do not have immediate access to a securities lawyer to answer any questions you may have about this, I will be pleased to arrange a conference call with appropriate experts.

Timing expectations

A valid concern for fund managers who require liquidity or market pricing is the time that may be required to complete a registration process for public trading. This could take as much as four or even six months, possibly leaving two or three months after the “60 day option” period during which pricing would be defined only by private trading. But since the Trust's independent management of the appraisal rights should support a reasonably efficient private market, nobody so far has considered it worthwhile to initiate a registration process prior to the

¹ See the “[Refinements of investor support requirements](#)” section of the [August 23, 2013 Forum Report: Choosing Fair Value over Auction Price for Dell](#).

² The Trust will also support alternative forms of market-making offers that may be properly presented in accordance with securities laws to accommodate the interests of some or all holders of its managed appraisal rights. As indicated in the section of an earlier Forum report referenced in the previous footnote, each Trust participant will be able to make completely independent decisions about any offer, including offers to sell or settle.

proposed buyout's official approval at the special meeting, which is now scheduled to take place two weeks from now on September 12.

These are our assumptions for the current plan's liquidity phases:

	Duration	Pricing Reference
<u>Phase I</u> From vote until 60 days after the effective date of merger	Expectations of timing generally in 3 to 5 month range, but could be anything from 2 to 6 months; effective date of merger depends on regulatory approvals	If market trading does not provide satisfactory references, pricing can be based on the \$13.75 offer price that remains available until the end of the "60 day option" period ³
<u>Phase II</u> From the end of Phase I until the start of Phase III	Allow for 1 to 3 months between end of Phase I and completion of registration to start Phase III, but could be from 0 to 4 months	Some market pricing based on private trading, but no assurance of "Level 1" standards
<u>Phase III</u> Starting upon completion of registration and public trading	Allow 4 to 6 months from voting date for completion of registration process, though could be less	Public trading at "Level 1" standards

Questions about this, and especially about the "Phase II" period of reliance on private market trading, will be welcomed.

We also need to know as soon as possible about any other questions concerning our plans to support investor interests. The Forum has devoted considerable attention to understanding and accommodating a wide range of objectives for the practical use of appraisal rights since the need for liquidity was addressed in a 2005 program,⁴ but there will always be new questions and adaptation opportunities. You should assume, as I do, that any issue you raise will fall into one of two possible categories: understandings that need to be clarified or plans that need to be further refined. And for Dell investors, both need to be addressed now, before the September 12 vote.

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³ See the [August 23, 2013 Forum Report](#) section on "[Practical value realization and 'no brainer' options.](#)"

⁴ See the "[Marketability of investment interests](#)" section of the [June 14, 2013 Forum Report: Enabling Use of Appraisal Rights to Choose Dell's Long Term Value.](#)