

## Provisions for Dell Valuation Trust Support of Marketable Appraisal Rights

### Extended period for definition of Trust-supported alternatives

#### Conditions for investor participation in Trust:

- ▶ *No need to file a petition, but free support to do so if investor wants identification*
- ▶ *No need to engage attorney, but optional provisions for representation*
- ▶ *Review Panel reporting, investor designation of members*
- ▶ *Payment for eligibility certification refunded upon proceeding*
- ▶ *Trust pays all costs of proceeding, no payments from investors*
- ▶ *Trust fees accrued and deducted from final distribution*

The early settlement of Icahn's appraisal rights, reported Friday,<sup>1</sup> will allow us to focus the Dell Valuation Trust's plans much more effectively on the interests of investors seeking fair value realization. With reduced risks of disruption and confusion, a sound foundation for both current pricing and long term investor interests can now be based on a more predictable process and a rational determination of value.<sup>2</sup>

Anticipating orderly progress, provisions for defining the alternatives to be supported and for investor participation in the Trust are summarized below.

### **Extended period for definition of Trust-supported alternatives**

To assure careful consideration of all investor interests that are now relevant, we are extending the period that was to have ended last week for participant advice to define the alternatives they want the Trust to make available for marketable investment structures.<sup>3</sup> Suggestions are encouraged now, until this Friday, October 11.

It should be understood that the settlement of Icahn's appraisal rights, while generally beneficial to other investors, reduces the efficiencies that might have been achieved with his 156 million shares. For example, a publicly registered, exchange-listed alternative will be worth developing only if it is to be used by Trust participants with sufficiently large holdings to support active trading – probably at least 20 million of the reported 68 million remaining shares demanding appraisal rights. Fortunately, though, most other forms of marketable investment structure, including the “basic form” as well as leveraged or preferential distribution alternatives, will be viable for much smaller amounts.

Preliminary definitions of alternative investment forms will be reported to Trust participants next week.

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<sup>1</sup> See [October 4, 2013 Bloomberg: "Carl Icahn Withdraws His Appraisal Request for Dell Stake"](#).

<sup>2</sup> See the [September 10, 2013 Forum Report: Court Rules for Appraisal: Fair Value = Intrinsic Value](#).

<sup>3</sup> See the [September 30, 2013 Forum Report: Defining Appraisal Rights Alternatives for Dell's 60-Day Option Period](#).

## Conditions for investor participation in Trust

The policies and processes for Dell Valuation Trust support of investor interests have been developed based on discussions with many actively interested investors who want to be able to treat an interest in appraisal rights as a practical investment. Investor priorities for independent management and reporting have been addressed in several previous Forum reports,<sup>4</sup> and we will of course continue to refine our objectives for support of participant interests.

For holders of Dell appraisal rights who have not been actively involved in the planning of the Trust's support services, some of the key conditions for participation are summarized below.

► ***No need to file a petition, but free support to do so if investor wants identification***

Investors that authorize Trust management of their appraisal rights investments will not have to file their own petitions or otherwise appear formally in the Delaware court. The Trust will be filing a single petition to establish its ability to represent the interests of all Trust participants, using one participant's Dell stock that had been registered as directly owned prior to the record date so that there could be no possible challenge to the petitioner's status.

Any investor that wants to file its own petition, however, whether for purposes of public identification in the court records or for any other reason, will be able to do so with Trust support. There will be no additional costs for this accommodation.

► ***No need to engage attorney, but optional provisions for representation***

Trust management of an investor's appraisal rights will include the legal services of Fish & Richardson to represent their interests in the Delaware court appraisal proceedings, and for all related requirements such as the engagement of experts. Since there will be no need for Trust participants to file their own separate petitions, there will be no need for them to engage separate legal representation to appear for them in court.

Though not necessary, the Trust welcomes investors to designate legal representatives who can guide them as well as the Trust in the progress of the appraisal proceeding. Qualified attorneys designated by participating investors may serve as either (a) co-counsel in the court proceedings or (b) members of the Review Panel committee described in the next section.<sup>5</sup>

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<sup>4</sup> See, for example, the [July 12, 2013 Forum Report: Plan for Support of Dell Appraisal Rights](#) and the [September 6, 2013 Forum Report: Reserving Value Realization Alternatives Before the Dell Vote](#).

<sup>5</sup> See the section "[Encouraging investor designation of trusted legal advisor – now, not later](#)" in the [September 20, 2013 Forum Report: Participation in Planning for Dell Appraisal Rights](#).

► ***Review Panel reporting, investor designation of members***

Investor participants will be encouraged to propose members of a “Review Panel” committee to confer confidentially with counsel for the appraisal rights proceeding and provide public reports to Trust investors on developments and progress.

► ***Payment for eligibility certification refunded upon proceeding***

To allow investors the flexibility of assuring access to Trust support of their appraisal rights before making final decisions about proceeding with the rights or withdrawing, the Trust requires a refundable cash payment for its review of the status of the rights and certification of eligibility for Trust management.

The base payment for an eligibility certification was established at one cent per share, subject to minimum amounts. This amount will remain effective until the end of this week, October 11. After that date, a supplemental charge of one-tenth of a cent (\$0.001) per share will be added each calendar day, and an additional half cent per share will be added on the effective date of the merger.

The base penny-per-share payment will be fully refunded to the investor in cash 90 days after the investor makes the Trust responsible for managing the rights. The supplemental charges will not be refundable.

► ***Trust pays all costs of proceeding, no payments from investors***

Investors will not be required to make any payments other than the refundable charge for eligibility certification. All costs of the appraisal proceeding, including the conventionally non-contingent costs of experts and court fees, will be paid by the Trust as part of its management responsibilities.

The only expense born by investors in Trust-managed appraisal rights will be accruals of the Trust management fees that are to be deducted from the proceeds when they are ultimately distributed, as described in the next section.

► ***Trust fees accrued and deducted from final distribution***

The contractual Trust management fees to be deducted from final distributions of appraisal rights consist of a base charge of one cent per month per share (an annual rate of 0.87% based on the \$13.75 per share offer price) starting on the effective date and a performance fee equal to 20% of the amount by which the total payment for appraisal rights exceeds the offer price plus the accrued base costs.

For simplified analysis, investors in Trust-managed appraisal rights will have no payment requirements and be entitled to a net distribution equal to

- (a) 100% of the amount up to the original offer price with an effective net interest accrual equal to 4.13% (the statutory 5% less the 0.87% management fee accrual) over the Fed discount rate, and
- (b) 80% of the “fair value” in excess of the offer price with interest at 5% (no adjustment for management fees) over the Fed discount rate.



Your questions and comments will be welcomed.

*GL – October 8, 2013*

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