

Ultimate Investor Interests in Rights to Long Term Value

Since most Forum participants are professionals responsible directly or indirectly for the investment interests of ultimate beneficiaries, I took advantage of the rare opportunity for us to get the views of a “real individual” participant by asking Darsh Khusial to elaborate on his statements about long term value objectives reported in this past Sunday’s *New York Times* column about the Dell appraisal case.¹

Mr. Khusial’s perspective can be considered typical of an individual making investments for his own future security. He is a relatively sophisticated and informed investor, though, being a careful practitioner of value investing principles with considerable industry expertise as a leading software architect currently on educational sabbatical from one of the major companies in Dell’s market. It should be noted that Mr. Khusial is not a petitioner, which is also typical of the majority of both individuals and fund managers who seek appraisal by relying upon on the investors who volunteer as representative petitioners to guide the court proceeding. This is how he views his right to appraisal of an important part of his savings:

As a value investor, I decided to become a shareholder when I observed Dell was selling far below its intrinsic value. The proliferation of tablets and smartphones fanned the sentiment that the PC was dead which resulted in the price of Dell shares being depressed. Like Mr. Dell, I didn't believe that the PC was dead and would be overrun by smartphones and tablets. For consuming content these other devices were more efficient. But, to produce, support and stream that content it is still more practical to use a PC or server. When clips are shown of the development shops from Silicon Valley companies you observe programmers using a laptop or desktop to code, not hammering out lines of code using their smart-phones.

Since the approval of the buyout, the PC industry cycle could be observed from the latest earning news from the largest players in the industry such as Intel and Microsoft. People inside the business as well as large company IT departments were aware of it before from the order planning and training for required upgrades that had to be initiated well in advance of the end of Windows XP support. The PC is not dead; its refresh cycle is just much longer than before. As a result the shares of Intel and Microsoft have appreciated considerably since the date of the Dell buyout approval. I suspect if the market had understood this cycle Dell stock would have been trading significantly above the buyout price.

When Mr. Dell and Silver Lake decided to take Dell private, I initially thought that as a minority shareholder I had no alternative but to accept the offering price proposed. Their price was far below what I thought it was worth and I was resigned to relinquishing my Dell shares at an unfair price. However, subsequently, I read the June 2013 New York Times column by Gretchen

¹ See [July 19, 2014 The New York Times | Fair Game: "Your Rights, Buried in Paperwork"](#).

Morgenson on demands for appraisal rights and was excited about that route. I subsequently contacted The Shareholder Forum, which was mentioned in the article, and after learning more about it decided that appraisal rights were a practical and fair way to realize the intrinsic value of my investment.

As part of the appraisal process, the recent demand by Dell for all the records of investors who have volunteered as “petitioners” seems inefficient and impractical. The records demanded include such items as handwritten notes and instant messages from January 1st, 2011 to May 10, 2014. This is unjust and unreasonable.

Even more concerning is the inefficiency with regard to the objective of determining a fair price. We have different views on the valuation of Dell. Determining the intrinsic value of a company is an art, not a science. Hence, we would expect different opinions. However, trying to resolve this situation by having “petitioners” produce all documents since the start of 2011 seems designed to make the appraisal process an impractical option. Why would a “petitioner” agree to the monetary and opportunity cost of such an action. It would seem irrational in a competitive marketplace to reveal their 'secret sauce' of how they approach the valuation of a company. As for Dell, receiving and processing these documents from petitioners is very inefficient. We are just interested in what is a fair price for the value of the shares not all the noise and chatter that occurred over the 3 plus years to come to a valuation conclusion. The Dell approach appears to be one where every petitioner’s communication is analyzed over the last 3 plus years to point out why their valuation is incorrect. The simpler solution would be for an expert to give an opinion on the valuation.²

If Dell is successful in demanding that “petitioners” produce all the documents they outlined, it would be a blow to all minority shareholders demanding appraisal rights. One of the few options minority investors have in a buyout would become inefficient and possibly too impractical to be rationally employed.

Thanking Mr. Khusial for so generously offering his views, I invite your responsive comments.

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² It should be noted that Mr. Khusial’s view of common sense is consistent with what lawyers report as the court practice of considering valuation views offered by independent experts. A petitioner’s views would therefore be relevant only if the petitioner intended to take the unusual step of offering itself as an expert witness.