

March 15, 2013

BY EMAIL and FIRST CLASS MAIL

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

Re: First Supplemental Demand for Records

Dear Mr. Lutin:

I write on behalf of Dell Inc. ("Dell" or the "Company") in reply to your recent correspondence, including the March 11, 2013 "First supplemental demand for records" (the "Supplemental Demand"), which seeks "all communications by the Company and its representatives with Icahn Enterprises, L.P., its affiliates and representatives ('Icahn') and "all information made available to Icahn." For reasons similar to those stated in the Company's letter to you dated March 12, 2013, by which the Company rejected your original "Demand for records" (the "Original Demand," and with the Supplemental Demand, the "Demands"), the Supplemental Demand fails to comply with 8 *Del. C.* § 220 ("Section 220").

First, although Section 220 permits stockholders to demand books and records through an "attorney or other agent," it makes clear that in such circumstances, the agent must act "*on behalf of the stockholder*" and likewise requires that the demand's stated purpose be reasonably *related to the stockholder's interest* as a stockholder. *See* 8 *Del. C.* § 220(b). It is obvious from the face of both Demands that neither was submitted "on behalf of" Cavan Partners, L.P. ("Cavan"), a purported Company stockholder, and that they were at most submitted with Cavan's authorization, 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 purpose related to "personal business," and was therefore not "'reasonably related' to the plaintiff's interest . . . as a stockholder.") (emphasis in original). In your original Demand, you in fact acknowledge that the "essential purpose of seeking the information is to make it publicly available for use" by "Forum participants." *See also* Letter to the Company dated March 13, 2013 (the "March 13 Letter") (stating that the "purpose of this process [i.e., the Demands] *is for the Forum* to report . . . non-confidential information for stockholder consideration") (emphasis added).

Second, the Supplemental Demand fails to state a proper purpose. The Shareholder Forum again seeks access to the Company's books and records for the improper purpose of disseminating confidential information received through the Demands to its members. *See, e.g., Pershing Square, L.P. v. Ceridian Corp.*, 923 A.2d 810, 819-20 (Del. Ch. 2007) (holding that demand for books and records failed to state a proper purpose where its "instrumental objective" was to "broadcast" the corporation's confidential information). Although your March 13 Letter states that the Shareholder

Forum intends “to report only non-confidential information,” this statement cannot be reconciled with the Supplemental Demand’s request for *all* information made available to Icahn and its stated purpose of providing “information access” to stockholders considering alternative transactions proposed by Icahn “*based on its access to confidential information.*” (emphasis added).

The Supplemental Demand also in effect seeks access to the boardroom in order to “determine the effectiveness of efforts by the board and its special committee” in exploring alternative transactions—also an improper purpose under Delaware law. *See Q Funding III, L.P. v. Cedar Fair Mgmt., Inc.*, C.A. No. 5551-VCS, at 12 (Del. Ch. July 19, 2010) (TRANSCRIPT) (suggesting that a stockholder lacked a proper purpose where it sought to “get engaged in the [transaction] process”). In the March 13 Letter you explain that the Demands are “simply for the same information that Dell provided for its own valuation experts, and those engaged by the special committee.” But the Shareholder Forum is not advising the Company or the Special Committee and thus has no basis for access to the same information provided to their experts. Even if the Shareholder Forum were a stockholder of Dell, which it does not claim to be, your Demands would be inappropriate because they conflate the role of directors, who manage the business and affairs of the corporation, with the role of stockholders. *See 8 Del. C. § 141.*

Third, like the Original Demand, the purposes set forth in the Supplemental Demand fail to justify the information sought. To be entitled to books and records under Section 220, a stockholder must “show that the specific books and records he seeks to inspect are ‘essential to [the] accomplishment of the stockholder’s articulated purpose for the inspection.’” *Espinoza v. Hewlett-Packard Co.*, 32 A.3d 365, 371 (Del. 2011). In *Polygon Global Opportunities Master Fund v. West Corporation*, the Delaware Court of Chancery denied a books and records demand brought, among other reasons, for the stated purpose of enabling the stockholder to evaluate the price offered in a going-private transaction. 2006 WL 2947486 (Del. Ch. Oct. 12, 2006). The Court noted that the Company would be required to make publicly available “comprehensive” information regarding the going-private transaction, and explained that “through its preliminary and final proxy materials, and its Schedule 13E-3, and amendments, [the company] would appear to have disclosed all material information necessary” for the stockholder to evaluate the transaction. *Id.* at *4. In that connection, the Court found that the stockholder failed to demonstrate that the information made publicly available in connection with the going-private transaction “omits information that is necessary, essential, and sufficient for its purpose.” *Id.*

The Supplemental Demand does not explain why the Company’s publicly-disclosed information will not sufficiently enable Dell’s stockholders to evaluate the board or special committee’s efforts to explore transaction alternatives, including Icahn’s participation in the process, to make an informed decision on any transaction presented to them and to determine whether to exercise any applicable appraisal rights. As the Company set forth in its response to the Original Demand, federal and state law requires that it file a proxy statement containing all information material to a stockholder’s decision as to how to vote on the proposed Merger and whether to exercise appraisal rights under Delaware law. *See Q Funding III*, C.A. No. 5551-VCS, at 12 (“[T]ypically everybody is informed at once in a public entity if the company decides to refinance, and then everybody learns at once.”). You still have made no showing that the information that will

be made available to the Company's shareholders through federal and state mandated disclosures will not be sufficient to satisfy the purposes set forth in the Demands.

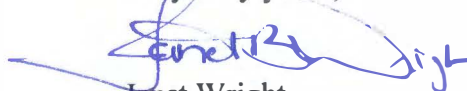
Fourth, the information sought in the Supplemental Demand is protected from disclosure by the business strategies privilege. Under Delaware law, "a company's negotiations and business plans" are protected from discovery in litigation "unless the party seeking discovery can show an overriding need for the information." *Corp. Prop. Assocs. 8, L.P. v. Amersig Graphics, Inc.*, 1995 WL 214359, at *2 (Del. Ch. Mar. 24, 1995). The Delaware Court of Chancery has applied the business strategies privilege to deny a Section 220 demand seeking "access to certain documents used or created by the Special Committee in its evaluation of a sale," where the materials contained "highly sensitive, non-public information concerning valuation and strategic alternatives, including potential strategic partners." *Dolphin Ltd. P'ship I, L.P. v. InfoUSA, Inc.*, 2006 WL 1071518, at *1 (Del. Ch. Apr. 11, 2006). As you acknowledge in your Supplemental Demand, the request for information provided to Icahn specifically relates to the Board and Special Committee's ongoing "explorations" of transaction alternatives and your proposed evaluation of the "effectiveness of [those] efforts." You have failed to demonstrate why the information sought is necessary and essential to your stated purposes, let alone an **overriding** need sufficient to overcome the business strategies privilege.

Finally, and as with your Original Demand, the broad scope of the documents requested far exceeds that permitted by the statute. Under Delaware law, a Section 220 Demand must "tailor its request for documents carefully so as only to seek documents proportionate to [the stockholder's] legitimate needs." *Fairthorne Maint. Corp. v. Ramunno*, 2007 WL 2214318, at *8 (Del. Ch. July 20, 2007). In the Supplemental Demand, you seek "**all** communications" between the Company and Icahn broadly related to his investment interest in the Company or in a possible transaction, as well as "**all** information made available to Icahn." (emphasis added). The Supplemental Demand fails to request documents with the precision required by Delaware law.

In these and other respects, as to which the Company expressly reserves all rights and objections, the Supplemental Demand fails to meet the requirements of 8 *Del. C.* § 220 and Delaware law.

With respect to your Original Demand, the March 13 Letter fails to remedy any of the defects identified in the Company's March 12 response. Among other things, your expressed understanding of Section 220 is inconsistent with Delaware case law applying Section 220, which is not intended to provide stockholders with unlimited access to all information considered by directors and their outside advisors. Delaware law provides that stockholders who are asked by directors to vote with respect to a proposal recommended by the directors are entitled to information that is material to the stockholders' voting decision. Dell will provide that information in its forthcoming proxy statement.

Very truly yours,



Janet Wright

Vice President - Corporate, Securities & Finance
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