

Enabling Use of Appraisal Rights to Choose Dell's Long Term Value

[Reservation of appraisal rights](#)

[Investor reporting](#)

[Marketability of investment interests](#)

The recently initiated project to address Dell shareholder interests in appraisal rights¹ has identified several requirements to make this theoretically sensible alternative a practical choice for investors. As summarized below, we are developing plans for processes that should allow any investor, including regulated funds concerned with “Level 1” qualification or index tracking, to efficiently acquire and administer shares of Dell's long term investment value.

Please offer your advice of any interests that should be considered to guide our refinement of details during the next week.

Reservation of appraisal rights

Requirement: Prior to the date of voting, a stockholder of record must present the company with a formal written demand for appraisal. For beneficial (“Street name”) shareholders, someone must instruct the holder's broker or custodian to arrange for the registered depository to present a legally compliant demand relating to the beneficial holder's shares.² This seemingly simple communication should be as easy as checking the boxes in proxy voting, but the infrequent need for appraisal demands has not stimulated anyone's development of standardized forms and processes. It therefore usually involves considerable time and effort to find out who needs to be authorized to write letters and coordinate custodial arrangements, and to be sure that they do it.

Solution: Working with Delaware counsel, we are developing processes and staffing to manage the delivery of the required demand for appraisal on behalf of any Dell shareholder, either beneficial or registered. All that will be required of the investor is filling out a few identification spaces in a simple authorization form. This support should be operational by the end of next week, in time to meet deadlines for the scheduled July 18 voting date.

Benefit: Any Dell shareholder with record-date voting rights will be able to conveniently reserve rights to appraisal, establishing what is essentially a 60-day post-closing option to choose between the appraisal rights or the offer's cash payment of \$13.65.³

¹ See [May 23, 2013 Forum Report: Analysis of “Appraisal Rights” in a Dell Buyout](#).

² For the relevant part of [Delaware General Corporation Law \(“DCGL”\) § 262. Appraisal Rights](#), see [§ 262\(d\)\(1\)](#).

³ The Delaware statute gives a stockholder the right to withdraw the appraisal demand to accept the originally offered payment at any time until 60 days after the effective date of the merger transaction; see [DGCL § 262\(e\)](#).

Investor reporting

Requirement: Since the provisions for appraisal rights were developed long before the existence of the SEC and modern expectations of reporting for “public” securities, and in a time when investors expected to wait only a few months for a court to decide the value, there is nothing in the law addressing the need for reporting to investors. Today, of course, responsible investment management requires not only informed decisions about the choice between appraisal rights and an offer price, but also continuing monitoring and evaluation of the investor’s interest in appraisal rights.

Solution: The Forum will be organizing a “Review Panel” of legal and valuation experts selected by appraisal right investors. Panel members will confer regularly with the attorneys responsible for the conduct of the appraisal proceeding, have access to confidential information, and be able to ask questions and request research. The Panel’s staff will publish reports quarterly and in relation to any major developments, and will include statements provided by any Panel members who wish to present comments or views.

Benefit: Investors in Dell appraisal rights will have very effective access to information on which decisions can be made, and will be able to delegate their own trusted experts to examine their interests.

Marketability of investment interests

Requirement: Just as there was no need to address investor reporting in the pre-SEC days when appraisal rights were defined, the law does not include any provisions addressing the marketability requirements of modern investors. This is especially important for today’s regulated fund managers, many of which lack authority to hold illiquid investments or need to satisfy standards for market valuation of assets even if they have no concern about liquidity.

Solution: We are currently exploring SEC registration of interests in the appraisal rights to allow their public trading. This obvious solution had been identified when Forum participants considered appraisal alternatives in the 2005 Providian transaction,⁴ but it was too late to plan the fairly complicated arrangements for that situation. For the Dell situation, the effort is clearly justified and we should be able to report procedural expectations by next week.

Benefit: Assuming a practical path to the benefits of SEC registration, all types of regulated and unregulated investors will be able to consider interests in appraisal rights based on their analysis of Dell’s long term value as a going concern, without the handicap of illiquidity.

⁴ See [August 25, 2005 Glass Lewis & Co. Proxy Talk \(transcript\): “Delaware Appraisal Rights in Advance of Providian’s Merger Vote.”](#)



More specific plans, including dates, will be reported by the end of next week.

Our objective is to support the interests of investors who want the same thing that Michael Dell and Silver Lake are seeking in their proposed acquisition: the long term value of the Dell enterprise, which everyone apparently agrees is greater than the price set by current market bids. Appraisal rights were designed for exactly this purpose, and we will welcome your advice of what is needed to make them work for you.

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