

Preliminary Plans for Panel Addressing Appraisal Rights Investments

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The recently reported Panel program supporting investor interests in appraisal rights¹ has developed preliminary plans for defining and presenting proposed policies and practices in a January open meeting.

The organizing members' initial understandings of investor interests and a schedule for addressing them are summarized below.

Need for marketable appraisal rights as a convenient investment alternative

Most investors understand that the price being offered in a typical management buyout must be less than what the insider buyers and their partnering professional investors think the company is worth. The Delaware court has consistently reached the same conclusion in its independent appraisals of a standalone company's long term intrinsic value.² Logically, then, many investors would prefer to get the higher intrinsic value.

The right to an alternative payment based on appraised intrinsic value is therefore a theoretically ideal solution. Unfortunately, this ideal right was designed in the 19th century with administrative rules that are not well suited to modern investing,³ involving inconvenient processes that require holding an unmarketable interest until it is either settled or decided by a court. The recent development of funds specializing in the management of appraisal rights as a niche asset class provides a significantly improved focus on investor interests, but does not address the needs of professional fund managers for direct control, independent reporting, and marketability of a right to the appraised value in a particular company.

The purpose of this program is to make these rights to appraised value a practical alternative for fund managers. The Dell project provided an opportunity to develop the required independent management support for a modern investor's essential administrative and regulatory requirements. Now that the support is available, we need to determine how marketplace leaders can most effectively use it. As one Forum participant observed, we need to do what was done by

¹ See the [October 14, 2013 Forum Report: Panel to Consider Appraisal Rights Policies for Long Term Investment](#).

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

³ According to the decision in *Chicago Corp. v. Munds*, 172 A. 452 (Del. Ch. 1934) that provided a foundation for appraisal based on intrinsic value rather than market pricing (notably in the same year that Graham and Dodd published their book, *Security Analysis*), appraisal rights were included in section 56 of the original General Corporation Law of Delaware that was enacted in 1899. [Lawrence A. Hamermesh](#), a professor at Widener Law and this Program's moderator, is thanked for this reference.

developing the sensible concept of contingent value rights into an equally sensible investment that won popular acceptance as a marketable “CVR.” What investors need, simply, is an appraised value right that can be called an “AVR.”

Program schedule

The following steps have been established for program participants to define the issues to be considered, and to develop their individual policies and practices:

- Co-chairs of Panel committees formed for each key decision-making constituency – preliminarily defined as value investors, pension and indexed investors, and policy makers⁴ – should be selected during the next two weeks.
- An initial Panel report of issues to be considered should be distributed to all participants by December 2, inviting comment.
- The Panel will present a report of proposals of policies and practices to be considered in early January, at least one week prior to the open meeting’s scheduled date.
- The program’s open meeting will be conducted in New York, with optional online participation, at a date to be scheduled in mid-January.
- The Panel will report consensus and alternative views established at the open meeting and in subsequent communications, appending any comments offered by individual Panel members.

Your suggestions of issues to be considered, as well as possible Panel members, will be appreciated.

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⁴ See the previously referenced [October 14, 2013 Forum Report](#).