

Supporting Practical Choices for Dell, and for Shareholders

[Safe appraisal rights without risking deal defeat](#)
[Choosing between auction value and fair market value](#)
[Defining support to optimize value of appraisal rights](#)

Last week Dell was offered an alternative that it can implement if needed to win support of its proposed buyout, and that allows shareholders to safely choose appraised fair value over the auction-based bid price. The related investor decisions for this week are addressed below.

Safe appraisal rights without risking deal defeat

Responding to investor concerns that negative votes required to secure appraisal rights might contribute to a defeat of the proposed transaction and result in a value-destroying control contest, I have offered Dell or any of the buyout affiliates support of what was termed a “yes-voting” appraisal rights option. This is essentially a more practical alternative to increasing the bid price, that the buyer can present if it decides something is needed to win more support for the transaction. In simplified form, the buyer would give shareholders a choice between the fixed bid price and a right to receive the same “fair value” payment (or an allocated portion) that a court establishes for dissident investors, but make it available to investors who vote in favor of the proposed buyout. Shareholders would therefore be able to secure the appraised fair value alternative without having to vote against the transaction.

The “yes-voting” appraisal rights option is summarized, with explanations of its use to accommodate different levels of investor participation and an analysis of costs compared with bid increases, in this letter to Mr. Dell with an attached copy of the earlier letter to the company’s special committee:

- [May 5, 2013 letter to Michael S. Dell with attached May 3, 2013 letter to Alex J. Mandl of the Special Committee of Dell Inc.](#) (4 pages, 176 KB, in [PDF](#) format)

With this option available to the buyout’s proponents, a shareholder can safely assume that its demand for appraisal rights will not actually threaten the transaction. Dell will know the exact number of shares that are subject to written demands they’ve received for appraisal rights. If the numbers they are counting justify the increased cost, they will be able to initiate the “yes-voting” appraisal rights alternative – or a traditional bid price increase – either before the scheduled meeting or for an adjourned or postponed date.

Choosing between auction value and fair market value

While media attention has been focused on debates about the effectiveness of the bidding contest and speculation about whether the bidders might offer a higher price, investors need to focus on the decision that is theirs: the choice between whatever bid the auction produces and an independent court appraisal of Dell’s fair value.

What is familiar to most people as the distinction between an “auction” or “liquidation” value and a “fair market value” for equipment or real estate is similarly recognized in the Delaware provisions for appraisal rights relating to companies. The court is required to make an appraisal of “fair value” based on a long-term investor interest in the business enterprise as a “going concern,” independently of current auction market bidding.* And Delaware law allows a company’s investors to choose between the bid price and the long-term fair value.

Now that appraisal rights are a practical alternative, the real money for investors is in an analysis of the difference between auction and fair market values.

Defining support to optimize value of appraisal rights

During the next few days we will be seeking the views of investors who are reserving appraisal rights, as well as those of you who have expressed interest in acquiring or trading the rights, to develop final definitions of the support arrangements to be provided by the Dell Valuation Trust. Forum participants who can justify the attention will be welcomed to review a confidential draft of the Trust’s organization plan and offer suggestions for its refinement. Any brief suggestions or observations will also be appreciated, of course, to help us understand how your interests can be most effectively supported.

We expect to have the Trust’s plan in final form by the end of this week, so that it can start offering whatever support services you need to realize the full value of eligible appraisal rights.

GL – July 8, 2013

Gary Lutin
Chairman, The Shareholder Forum
575 Madison Avenue, New York, New York 10022
Tel: 212-605-0335
Email: gl@shareholderforum.com

* See [Golden Telecom, Inc. v. Global GT LP and Global GT LTD, 11 A.3d 214 \(Delaware Supreme Court, December 29, 2010\)](#); for additional references to appraisal rights analysis, see [May 23, 2013 Forum Report: Analysis of “Appraisal Rights” in a Dell Buyout](#).

THE SHAREHOLDER FORUM, INC.

WWW.SHAREHOLDERFORUM.COM
575 MADISON AVENUE – 10TH FLOOR, NEW YORK, NEW YORK 10022
TELEPHONE: (212) 605-0335

July 5, 2013

By email

Mr. Michael S. Dell
Dell Inc.
One Dell Way
Round Rock, Texas 78682

Dear Mr. Dell:

Attached is a letter sent on Wednesday to the chairman of Dell's special committee suggesting an accommodation that could be implemented by a proponent of the merger to win the voting support of a key segment of Dell shareholders.

Simply summarized, the suggested "yes-voting" appraisal rights would allow Dell shareholders to choose between the currently proposed \$13.65 payment and the alternative of an amount to be determined by a court appraisal of fair value, essentially as Delaware law currently provides* but without requiring a vote against the merger. This would have significant advantages to both sides:

- ▶ The option would be considered fair by shareholders who genuinely believe the value of Dell as a going concern is greater than \$13.65, and are not simply negotiating for a higher bid price. This important shareholder constituency would thus be able to get what they want without having to vote against the transaction and contribute to the risk of a value-destroying proxy contest.
- ▶ Allowing shareholders to choose between the fixed price and appraised value alternatives should be a cost-efficient way for the buyer to respect investors with genuine valuation views, since there would be no need to raise the fixed price that is likely to be accepted by the "negotiating" segment of shareholders.

You will note that one of the elements of this alternative suggested in the attached letter is a specified limit on the number of shares to which the court's appraised valuation would be applied, providing for a proportional allocation of that amount and the fixed bid price to all the shares choosing the "yes-voting" appraisal if the total exceeds the specified limit. This is intended to strike a reasonable balance between investor interests and a buyer's need to define limits for practical capital planning.

* See the "Rights of Appraisal" section beginning on page 180 of the company's Proxy Statement and the [May 23, 2013 Forum Report: Analysis of "Appraisal Rights" in a Dell Buyout](#).

The following analysis uses round numbers to illustrate the general principles of this alternative.

Assumptions:

Shares outstanding on record date		1,000		
Offer and valuation amounts	<u>Case A</u>	<u>Case B</u>	<u>Case C</u>	
Offered price of transaction, per share	\$10.00	\$10.00	\$10.50	
Assumption of appraisal value	\$11.00	\$11.00	\$11.00	
Shareholders electing "yes-voting" appraisal rights				
Specified limit of shares for application of value	100	0	0	
Total shares electing "yes-voting" appraisal rights	150	0	0	
Shareholders electing conventional dissenters' appraisal rights				
Number of shares demanding dissenter appraisal rights	50	150	50	

Resulting payments and costs:

Payment to all "yes-voting" appraisal right holders	\$10.67	NA	NA
<i>Percentage allocation of court appraisal value</i>	66.7%	NA	NA
Payment to holders of dissenter appraisal rights	\$11.00	\$11.00	\$11.00
Costs to purchaser			
Total payments	\$10,150	\$10,150	\$10,525
Average payment per share	\$10.15	\$10.15	\$10.53

I will welcome discussions with your advisers or others to refine the appraisal alternative, assuming a common objective of respecting the interests of shareholders who share your own belief in the value of Dell.

Sincerely yours,

Gary Lutin

Enclosure

cc: Mr. Alex J. Mandl

THE SHAREHOLDER FORUM, INC.

WWW.SHAREHOLDERFORUM.COM
575 MADISON AVENUE – 10TH FLOOR, NEW YORK, NEW YORK 10022
TELEPHONE: (212) 605-0335

July 3, 2013

By email

Mr. Alex J. Mandl
Presiding Director and Chairman of the Special Committee, Board of Directors
Dell Inc.
One Dell Way
Round Rock, Texas 78682

Dear Mr. Mandl:

As you must know, many Dell shareholders who feel compelled to demand appraisal rights are concerned that voting against your proposed buyout – as required to secure the right to an appraised fair value – could contribute to a defeat of the proposal and result in a value-destroying proxy fight.

Discussions of this concern have led to the development of a very simple proposal that would benefit everyone who wants to realize the long term value of an undisrupted Dell enterprise:

1. ***The company would agree to allow a specified number of shares, say 10% or 20% of outstanding, to qualify for appraisal rights even though their owners vote in support of the proposed transaction rather than against it.*** Anyone who supports the general principle of the proposed transaction would therefore be able to vote in favor of it, without having to sacrifice investor rights to an independent court appraisal of fair value.
2. ***To the extent that holders of more than the allowed number of shares choose the “yes-voting appraisal” alternative, all participating investors would receive a proportional allocation of (a) the court’s appraisal amount for the specified number of shares that had been established as the limit and (b) the offered transaction price (\$13.65) for the additional above-limit shares.*** This would provide an equal opportunity to all shareholders who believe the long term value of Dell’s business exceeds the offer price, even if the number of shares exceeds the established limit, and at the same time provide a reasonable capital planning foundation for the new Dell.

It might be possible to implement these provisions with court support of another “quasi appraisal” variation of its standard proceeding, or simply with a Company commitment to pay the yes-voting appraisal shares the same amount that the court determines to be fair value for payment to conventionally qualified dissenters. You would of course be able to count on support of the recently organized Dell Valuation Trust for the proposal’s administration.

I will welcome informal discussion of your thoughts on how this proposal or a variation of it might be specifically defined, and will be in my office on Friday if you wish to reach me then.

Sincerely yours,

Gary Lutin

cc: William D. Regner, Esquire