

Panel to Consider Appraisal Rights Policies for Long Term Investment

The Forum's attention to appraisal rights, initially in 2005¹ and especially in its current program for investor realization of fair value in the Dell buyout (and now also in the proposed [Dole buyout](#)), has been focused on providing the practical support required to make this alternative a marketable investment suitable for regulated fund managers. Having achieved this objective, we must also address very important policy issues that have been raised about how appraisal rights can be most effectively used to enhance long term investment interests.

The Review Panel being organized to guide the Forum's program for [Appraisal Rights Investments](#) will be defining the issues that need to be considered by various decision-makers, then conducting an open exchange of views on those issues to provide a report of both consensus points and ranges of opinion. Lawrence A. Hamermesh² has agreed to serve as the program's moderator, and Howard J. Bergman³ will be serving as the Panel's "reporter" responsible for meeting and reporting processes. Plans for the program, including a preliminary schedule and the initial Panel membership, will be reported in the next few weeks.

The issues are expected to be defined and considered as they apply specifically to three different types of decision-makers:

- **Value Investors** – What is needed to make appraisal rights an efficiently managed, practical investment alternative for realization of intrinsic value?
- **Pension funds and indexed investors** – What refinements of either appraisal rights processes or of portfolio administrative practices are needed to enable both enhanced index returns and support of commitments to long term investing?
- **Policy makers** – Are any changes needed in laws or regulations to assure effective support of the public interest in capital allocations based on long term economic growth?

¹ See [August 25, 2005 Glass Lewis & Co. Proxy Talk \(transcript\): "Delaware Appraisal Rights in Advance of Providian's Merger Vote"](#) from the Forum's program addressing the buyout of [Providian Financial Corporation](#).

² [Professor Hamermesh](#) teaches corporate law at Widener Law School and is Director of the Widener Institute of Delaware Corporate and Business Law, and served during a 2010-2011 leave as senior special counsel in the SEC's Office of Chief Counsel of the Division of Corporation Finance. He is considered a leading authority on appraisal rights, and his definitive papers on valuation standards have been cited in past Forum reports: [2009, Lawrence A. Hamermesh of Widener University and Michael Wachter of University of Pennsylvania: "Rationalizing Appraisal Standards in Compulsory Buyouts"](#); and [2005, Hamermesh and Wachter: "The Fair Value of Cornfields in Delaware Appraisal Laws"](#)

³ [Mr. Bergman](#) is a senior fellow with The Conference Board Governance Center, and has directed or counseled business-oriented programs at the University of Minnesota Law School's Corporate Institute, The Sedona Conference, and George Mason University since his 2011 retirement from the General Counsel's office of 3M.

Your suggestions of questions to be considered, and who should be considering them, will be welcomed.

GL – October 14, 2013

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