

Dell Decision Confirms Foundations of Forum Support for Appraisal Rights

Importance of difference between \$13.75 fair price and \$17.62 fair value
Resuming attention to “AVR” investments

Last week’s valuation decision in the Dell case was notable for both its resolution of a closely watched proceeding and for its careful explanations of the purposes of appraisal rights and of the “fair value” that the court must determine.¹ Thorough but easily understood, the opinion can be expected to eliminate much of the recent confusion about valuation criteria and guide the progress of future appraisal proceedings on which shareholders rely to realize the intrinsic value of their corporate investments.

- [May 31, 2016, In Re: Appraisal of Dell, Inc. \(Consol. C. A. No. 9322-VCL\): Post-Trial Memorandum Opinion Determining Fair Value](#) (115 pages, 667 KB, in [PDF](#) format)

This decision effectively confirms all of the legal principles of appraisal rights that had been presented to us, including particularly the distinction between fair pricing and intrinsic fair value that is familiar to all value investors.² Everyone who helped develop these foundations for Forum support of appraisal rights deserves our congratulations, as well as the gratitude of shareholders who perfected their rights to realize the 28% higher fair value of their Dell stock.³

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Importantly, the decision clarifies the rights of investors to realize the intrinsic value of a corporate stock investment, rather than be forced to accept opportunistic offers based on current market pricing, even when in cases such as Dell the offer was responsibly negotiated.

- *If you practice “value investing,”* the decision supports your ability to realize the difference between market-priced opportunities and intrinsic value.

¹ See these and other news reports listed chronologically in the “[Appraisal of Fair Value](#)” section of the Forum’s website for the Dell project:

- [May 31, 2016 Austin Business Journal: "Court: Dell shares were undervalued by 28% in 2013 buyout"](#)
- [May 31, 2016 Financial Times: "Delaware court finds Dell’s \\$24bn buyout underpaid investors"](#)
- [May 31, 2016 Law360: "Chancery's Dell Ruling Gives New Life To Appraisal Actions"](#)
- [June 1, 2016 Wall Street Journal: "Judge Finds Michael Dell, Silver Lake Underpaid for Dell in 2013"](#)
- [June 1, 2016 Reuters: "U.S. court rules \\$24.9 billion Dell buyout underpriced by 22 percent"](#)
- [June 1, 2016 Bloomberg View: "Michael Dell Bought His Company Too Cheaply"](#)
- [June 2, 2016 Fortune: "How Michael Dell Shortchanged Shareholders While Doing Nothing Wrong"](#)

² See for example, the [May 23, 2013 Forum Report: Analysis of “Appraisal Rights” in a Dell Buyout](#) and the [September 10, 2013 Forum Report: Court Rules for Appraisal: Fair Value = Intrinsic Value](#).

³ Special thanks are due especially to John Tully of Cavan Partners, LP, for volunteering to initiate the Dell appraisal proceeding as a representative of Forum participants, and for demonstrating the right way to manage a petition without [eligibility issues](#); see the [October 30, 2013 Forum Report: Initiation of Proceedings for Appraisal of Dell Intrinsic Value](#).

- *If you are concerned about the performance of an indexed portfolio (or about the broader economy),* the decision supports the public interest in long term corporate investments for the production of goods and services.
- *And if you want a practical way to follow the “smart money,”* the decision allows any informed investor to participate in some of the bargains that private equity professionals develop.⁴

It should be noted that the decision does not discourage the use of appraisal rights in trading applications such as the recently evolved practice of “appraisal arbitrage,” or in the old-fashioned negotiations demonstrated in the Dell buyout by Icahn’s dramatic campaign to win a ten-cent “bump” in the buyout price.⁵

Resuming attention to “AVR” investments

While we can of course expect to see continuing efforts on all sides to confuse the principles of appraisal rights,⁶ the Dell decision’s clear explanations of the law’s precedents and public purpose, as well as the marketplace logic, justify a renewal of Forum attention to the support that many of you have sought since 2005.⁷

Your suggestions to refine and apply our previously defined support of “Appraised Value Rights (AVR)” investments⁸ will be welcomed.

GL – June 6, 2016

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⁴ As quoted in 2013, ““Most investors look at this the same way Michael Dell does, and reach the same conclusion,” Mr. Lutin added. “They want the long term value of the company, not the short term value of the stock price.”” See [June 23, 2013 New York Times Fair Game: “For Dell Investors, a Safety Valve.”](#)

⁵ Carl Icahn initiated public solicitations of shareholder support for appraisal rights after his public bids for Dell failed, and ultimately withdrew the appraisal demands of his own accounts after getting a \$.10 per share increase in the buyout price; for reports of the negotiation, see [July 10, 2013 Wall Street Journal: “Icahn Calls on Dell Holders to Seek Appraisal of Shares”](#) and [September 10, 2013 New York Times DealBook: “Icahn’s Last Chance on Dell”](#), and for disclosure of the withdrawal, see [October 4, 2013 Bloomberg: “Carl Icahn Withdraws His Appraisal Request for Dell Stake.”](#)

⁶ For an early example, see [June 3, 2016, Martin Lipton and Theodore N. Mirvis of Wachtell Lipton Rosen & Katz posting in The Harvard Law School Forum on Corporate Governance and Financial Regulation: “Delaware Court of Chancery Appraises Fully-Shopped Company at Nearly 30% Over Merger Price.”](#)

⁷ See the [2005 Special Project: Providian Financial Corporation](#).

⁸ See [December 2013, Shareholder Forum: “Appraised Value Rights | A Summary for Investors”](#) (4 pages, 110 KB, in [PDF](#) format).