

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

Securities and Exchange Commission

v.

Dell Inc., et al

Case No. 10 CV 01245 (RJL)

**DISTRIBUTION PLAN NOTICE OF DELL SEC FAIR FUND TO DELL INVESTORS**

**TO: Persons who purchased or acquired Dell common stock from May 3, 2001 through September 8, 2006, inclusive (the "Recovery Period").**

If you submitted a Proof of Claim in connection with the settlement obtained in *In re Dell Inc., Securities Litigation*, Case No. A-06-CA-00726 (W.D. Tex.) (SS) (the "Dell Class Action") and your claim was approved, you do not need to submit a claim in order to be a potentially eligible claimant for your previously approved transactions during the period May 16, 2002 to September 8, 2006. However, as explained below, to be eligible to recover for transactions occurring from May 3, 2001 through May 15, 2002, you must submit a complete and valid Proof of Claim and supporting documentation.

Also, if you purchased Dell common stock during the Recovery Period and either (a) you submitted a Proof of Claim to participate in the Dell Class Action settlement but your claim was denied in whole or in part; or (b) you did not submit a Proof of Claim in the Dell Class Action, you must submit a completed Proof of Claim Form with the necessary documentation so that it is postmarked no later than May 25, 2013 (the "Claims Bar Date") to be eligible to participate in the Dell SEC Fair Fund.

**I. Purpose of this Notice**

The purpose of this Distribution Plan Notice is to inform you that you may be entitled to share in the proceeds of the Dell SEC Fair Fund described herein. Unless you fall within the exception described in Sections III and IV below, you must file a Proof of Claim form in accordance with the steps in this Distribution Plan Notice to be potentially eligible to share in the Dell SEC Fair Fund. Proof of Claim forms together with this Distribution Plan Notice are being mailed to all potentially eligible claimants who purchased Dell common stock during the Recovery Period (May 3, 2001 through September 8, 2006) and who can be identified by the Distribution Agent. If you submitted a proof of claim in connection with the Dell Class Action, a Proof of Claim Form should be enclosed with this Distribution Plan Notice. Copies of this Distribution Plan Notice and the Proof of Claim form are also available on the Dell SEC Fair Fund's website at [www.dellsecsettlement.com](http://www.dellsecsettlement.com) and through the website of the United States Securities and Exchange Commission (the "Commission") at [www.sec.gov](http://www.sec.gov). Moreover, as explained in greater detail below, if you submitted an eligible claim that was previously approved in the Dell Class Action, and you do not have any additional purchases of Dell common stock, you do not need to submit another Proof of Claim form to receive the share of the Dell SEC Fair Fund to which you may be entitled.

**Please Note:** Receipt of this Notice does not mean you have an eligible claim. The Distribution Agent does not have information regarding your potentially eligible transactions, unless you filed an eligible claim in the Dell Class Action settlement.

**NOTE TO INSTITUTIONAL FILERS.** Claims with 100 or more transactions or on behalf of 20 or more different accounts must be submitted electronically and in the required format. To obtain the mandatory electronic filing requirements and file layout, you may visit the Dell SEC Fair Fund's website at [www.dellsecsettlement.com](http://www.dellsecsettlement.com) or you may e-mail the Distribution Agent at [eClaim@gcginc.com](mailto:eClaim@gcginc.com). Any submission not in accordance with the required electronic filing format may be rejected. Proof of authority to submit a Proof of Claim form on behalf of any managed accounts must be submitted with any Proofs of Claim for such accounts. If you intend to file electronically, you can submit and track the history of your claims by using our secure website, GCG ICE™ ([www.gcgice.com](http://www.gcgice.com)), which is available 24/7. GCG ICE™ allows institutional investors to upload electronic claims and documents, track the history and status of submissions, view claim rejections and how to fix them, update contact information, and receive important status alerts via e-mail.

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. IF YOU SATISFY THE ELIGIBILITY CRITERIA DESCRIBED BELOW, YOU MAY BE ENTITLED TO A RECOVERY FROM THE DELL SEC FAIR FUND. THIS NOTICE CONTAINS IMPORTANT INFORMATION REGARDING YOUR ABILITY TO SHARE IN THE DELL SEC FAIR FUND.**

## II. Background

On July 22, 2010, the Commission filed its Complaint in this action and alleged that from 2001 through 2006 Dell Inc. ("Dell") and certain of its current and former senior executives, Michael S. Dell, Kevin B. Rollins, James M. Schneider, Leslie M. Jackson, and Nicholas A.R. Dunning, violated the federal securities laws by, among other things, failing to disclose material information (specifically, the receipt of large payments from Intel Corporation) to investors and using fraudulent accounting to make it falsely appear that Dell was consistently meeting Wall Street earning targets and reducing its operating expenses. Without admitting or denying the allegations in the Commission's Complaint, the Defendants consented to Final Judgments entered by the United States District Court for the District of Columbia (the "Court") on October 13, 2010 (the "Final Judgments"). As required by those Final Judgments, the Defendants together have paid or are scheduled to pay or disgorge funds to the Clerk of the Court in the aggregate amount of \$111,418,947.00, plus accrued interest. Pursuant to the Final Judgments, all funds received were deposited with the Court Registry Investment System ("CRIS") in an interest-bearing account identified by this case name and docket number ("Dell CRIS Account").

On August 27, 2010, the Commission filed related cases against two former Dell officers, Robert W. Davis and Randall D. Imhoff, alleging violations related to the accounting misconduct that was asserted in the Commission's action against Dell and certain other officers, described above. See *Dell SEC v. Robert W. Davis*, No. 1:10-cv-01464 (D.D.C.) and *Dell SEC v. Randal D. Imhoff*, No. 10-cv-01465 (D.D.C). Without admitting or denying the Commission's allegations, Messrs. Davis and Imhoff consented to Final Judgments entered by the Court. The final judgments ordered Mr. Davis and Mr. Imhoff to pay a penalty, disgorgement and prejudgment interest of \$203,158.00 and \$44,049.00, respectively, to the Clerk of the Court. The Court ordered that funds payable pursuant to the Final Judgments in these actions are to be transferred to the Dell CRIS Account. As of January 2, 2013, the Dell CRIS Account's balance was approximately \$110,962,734.24.

The final judgments entered in these matters provided that the Commission may propose a plan to distribute the funds in the Dell CRIS Account subject to the Court's approval, and that such plan may provide that the funds be distributed pursuant to the Dell SEC Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7246(a).

On October 21, 2011, the Commission submitted its Motion for Establishment of a Fair Fund and Appointment of Distribution Agent. On November 15, 2011, this Court granted the Commission's motion and entered an Order for Establishment of a Fair Fund and Appointment of Distribution Agent ("Order"). The Order also appointed The Garden City Group, Inc. ("GCG") to serve as the Distribution Agent to assist in developing a Distribution Plan of the Dell SEC Fair Fund pursuant to which monies in the Dell SEC Fair Fund will be distributed to investors harmed by the violations alleged in the Complaint. The Order also authorizes the Distribution Agent to oversee the administration of claims and the distribution of the Dell SEC Fair Fund pursuant to the terms of the Distribution Plan, subject to oversight by the Court.

The Distribution Agent, in consultation with the Commission staff, prepared the Distribution Plan, and the Commission submitted the Distribution Plan to this Court for its approval. The Court approved the Plan of Distribution on December 11, 2012.

## III. Previously Approved Claimants in Dell Class Action

The Dell SEC Fair Fund is separate and independent from the settlement fund previously established in the Dell Class Action, the securities class action involving Dell, which was brought in the United States District Court for the Western District of Texas. However, like the class action settlement, the Dell SEC Fair Fund relates to purchases of Dell common stock, and the Recovery Period for the Dell SEC Fair Fund (May 3, 2001 through September 8, 2006) overlaps with the class period in the Dell Class Action (May 16, 2002 to September 8, 2006). **Therefore, if you submitted a Proof of Claim form in connection with a claim that was approved by the Court in the Dell Class Action, you do not need to submit another Proof of Claim form for those same purchases. If you engaged in additional purchases of Dell common stock during the Recovery Period, including the period of May 3, 2001 through May 15, 2002, that were not approved by the Court in the Dell Class Action, you must submit a Proof of Claim form to be eligible to recover for those purchases.**

## IV. Eligibility Criteria and the Distribution Formula

To qualify for a recovery from the Dell SEC Fair Fund, you must satisfy certain eligibility criteria that are described in detail in the Distribution Plan and the Plan of Allocation, attached to the Distribution Plan as Exhibit A. These documents are available on the Dell SEC Fair Fund's website [www.dellsecsettlement.com](http://www.dellsecsettlement.com). Those criteria include the following:

1. You must have (i) purchased Dell common stock on dates between May 3, 2001 and September 8, 2006, inclusive, and (ii) retained such Dell common stock through the close of the markets in specific dates, depending on the date of purchase, as described in the Plan of Allocation.
2. **You are excluded from participation in the Dell SEC Fair Fund if you are:**
  - A director or officer, or former director or officer, of Dell or any of its past or present Affiliates (or any of his or her assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities) who served in such capacity during the Recovery Period;
  - An employee of Dell or any of its past or present Affiliates who has been terminated for cause in connection with the violations alleged in the Commission's Complaint in this action or any related Commission action, or who was otherwise terminated or has resigned in connection with the violations alleged in the Commission's Complaint in this action or any related Commission action (or any of such employee's assigns, heirs, immediate family members, or controlled entities);
  - Any defendant in action brought by the Commission or any class action lawsuit related to the conduct described in the Commission's Complaint in this action or any related Commission action (or any of such defendant's Affiliates, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities), unless and until such defendant is found not liable in all such civil suits prior to the Claims Bar Date, and proof of the finding(s) is included in such defendant's timely filed Proof of Claim Form;
  - A person who, as of the Claims Bar Date, has been the subject of criminal charges related to the violations alleged in the Commission's Complaint in this action, or any related Commission action (or any of his or her Affiliates, assigns, heirs, immediate family members, or controlled entities);
  - A person who assigned his or her right to obtain recovery in the Commission's lawsuit against Dell;
  - An assignee of another person's right to obtain a recovery in the Commission's lawsuit against Dell, provided, however, this provision shall not be construed to exclude those persons who obtained such a right by inheritance or devise; and
  - The Distribution Agent, its employees, and those persons assisting the Distribution Agent in its role as the Distribution Agent.

**The Eligible Loss Amount incurred by an Eligible Claimant shall be determined by reference to the Plan of Allocation attached to the Distribution Plan. Instructions for calculating your Eligible Loss Amount may be found in Exhibit A to the Distribution Plan which can be viewed at [www.dellsecsettlement.com](http://www.dellsecsettlement.com).**

If the monies available for distribution from the Dell SEC Fair Fund equal or exceed the aggregate Eligible Loss Amount for all approved claims, each claimant with an approved claim shall receive his or her Eligible Loss Amount. If the aggregate Eligible Loss Amount for all approved claims exceeds the monies available for distributions, payments shall be made to Eligible Claimants on a pro rata basis, determined by the ratio of each approved claim to the aggregate amount of all approved claims.

#### **V. Proof of Claim forms**

**PROOF OF CLAIM FORMS ARE BEING MAILED TOGETHER WITH THIS NOTICE TO ALL POTENTIALLY ELIGIBLE CLAIMANTS KNOWN TO THE DISTRIBUTION AGENT WHO, BASED ON THE DISTRIBUTION AGENT'S RECORDS, EITHER (A) DID NOT FILE A PROOF OF CLAIM IN THE DELL CLASS ACTION OR (B) DID FILE SUCH A PROOF OF CLAIM BUT THAT CLAIM WAS DENIED IN WHOLE OR IN PART. IF YOU DID NOT RECEIVE A FORM IN THE MAIL OR REQUIRE ADDITIONAL FORMS, SEE THE INSTRUCTIONS UNDER "ADDITIONAL INFORMATION," FOR OBTAINING CLAIM FORMS.**

**IF YOU SUBMITTED AN ELIGIBLE CLAIM THAT WAS PREVIOUSLY APPROVED BY THE COURT IN THE DELL CLASS ACTION, AND DO NOT HAVE ANY ADDITIONAL TRANSACTIONS IN DELL COMMON STOCK THAT WERE NOT PREVIOUSLY APPROVED IN THAT CLASS ACTION, YOU DO NOT NEED TO SUBMIT ANOTHER PROOF OF CLAIM FORM TO BE ELIGIBLE TO SHARE IN THE DELL SEC FAIR FUND.**

**IF YOUR CLAIM WAS APPROVED IN THE DELL CLASS ACTION, YOU MAY LOG INTO THE DELL SEC FAIR FUND'S WEBSITE – [WWW.DELLSECSETTLEMENT.COM](http://WWW.DELLSECSETTLEMENT.COM) – USING THE LOGIN INFORMATION PROVIDED TO VIEW YOUR APPROVED TRANSACTIONS OR ADD TRANSACTIONS TO YOUR CLAIM.**

**THE DEADLINE TO SUBMIT A PROOF OF CLAIM FORM AT THE ADDRESS BELOW IS MAY 25, 2013 (PLEASE NOTE: THIS IS A POSTMARK DEADLINE). IF YOU HAVE NOT ALREADY SUBMITTED A PROOF OF CLAIM FORM AND FAIL TO TIMELY SUBMIT A COMPLETED PROOF OF CLAIM FORM, YOU WILL BE BARRED FROM RECEIVING A PAYMENT FROM THE DELL SEC FAIR FUND. THE PROOF OF CLAIM FORM MUST BE ACCOMPANIED BY APPROPRIATE SUPPORTING DOCUMENTS FOR EACH TRANSACTION LISTED IN PART III OF THE PROOF OF CLAIM FORM.**

If you submit a Proof of Claim form that fails to provide all required information, or is otherwise deficient, you may receive a Claim Deficiency Notice advising you of the reason(s) why the claim is deficient and of the opportunity to cure such deficiencies.

**VI. Claims Determination**

The Distribution Agent shall mail a notice advising each claimant that submitted a new or amended Proof of Claim form of the determination concerning such claim. If a claim is denied in whole or in part, the Distribution Agent will state the reason for such denial.

All determinations of the Distribution Agent that are made in accordance with the Distribution Plan shall be final and not subject to appeal.

**VII. Instructions for Submitting a Proof of Claim form.**

**UNLESS YOU HAVE ALREADY SUBMITTED A PROOF OF CLAIM FORM (FOR A CLAIM WHICH WAS THEN APPROVED BY THE COURT IN THE DELL CLASS ACTION) LISTING ALL OF YOUR ELIGIBLE TRANSACTIONS, YOU MUST COMPLETE AND SIGN THE PROOF OF CLAIM FORM AND SUBMIT IT TO THE DISTRIBUTION AGENT SO THAT IT IS POSTMARKED NO LATER THAN MAY 25, 2013 AT THE ADDRESS LISTED BELOW, OR FILE YOUR CLAIM ON THE WEB AT WWW.DELLSECSETTLEMENT.COM IN ORDER TO BE ELIGIBLE TO RECOVER FROM THE DELL SEC FAIR FUND:**

Dell SEC Fair Fund  
c/o The Garden City Group, Inc.  
P.O. Box 9857  
Dublin, OH 43017-5757

**VIII. Other Claims**

Upon receipt and acceptance of a distribution from the Dell SEC Fair Fund, you shall be deemed to have released any claims you may have against the Distribution Agent and its agents. By participating in the distribution of the Dell SEC Fair Fund, you will not be releasing any rights or claims you may have against any other party, including, but not limited to, Dell and Dell's past and present directors, officers, advisors and agents.

**IX. Special Notice to Securities Brokers and Other Nominee Purchasers**

If you purchased Dell common stock during the Recovery Period as nominee for a beneficial owner and have additional names and addresses that were not previously submitted in the Dell Class Action due to the longer Recovery Period, then within ten (10) calendar days after you receive this Distribution Plan Notice, you must either: (a) send a copy of this Distribution Plan Notice and the accompanying Proof of Claim form by first-class mail to all such beneficial owners; or (b) provide a list of the names and addresses of such beneficial owners to the Distribution Agent at the address above.

**X. Additional Information**

Additional information regarding the Dell SEC Fair Fund may be found at [www.dellsecsettlement.com](http://www.dellsecsettlement.com). Additional Proof of Claim forms and Distribution Plan Notices may also be downloaded at the Dell SEC Fair Fund's website. You may obtain additional information or request copies of forms and notices by calling the Dell SEC Fair Fund's toll-free hotline at (888) 513-5033 in the United States, or by email at [Questions@dellsecsettlement.com](mailto:Questions@dellsecsettlement.com).

**PLEASE CHECK THE WEBSITE, WWW.DELLSECSETTLEMENT.COM, FREQUENTLY FOR UPDATES**