

DELL INC
Form PRER14A
May 02, 2013
Table of Contents

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material under Rule 14a-12

Dell Inc.

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(Name of Registrant as Specified In Its Charter)

(Name(s) of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

Dell Inc. common stock, par value \$0.01 per share

(2) Aggregate number of securities to which transaction applies:

1,781,176,938 shares of common stock (including shares subject to restricted stock units and shares of restricted stock) and 25,482,624 shares of common stock underlying outstanding employee stock options with an exercise price of less than \$13.65 per share

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

In accordance with Exchange Act Rule 0-11(c), the filing fee of \$2,829,910.77 was determined by multiplying 0.0001364 by the aggregate merger consideration of \$20,747,146,376.79. The aggregate merger consideration was calculated as the sum of (i) the product of (a) 1,781,176,938 outstanding shares of common stock (including shares subject to restricted stock units and shares of restricted stock) as of March 25, 2013 to be acquired in the merger, multiplied by (b) the per share merger consideration of \$13.65, plus (ii) the product of (x) 25,482,624 shares of common stock underlying outstanding employee stock options with an exercise price of \$13.65 or less, multiplied by (y) \$6.46, representing the difference between the \$13.65 per share merger consideration and the \$7.19 weighted average exercise price of such options.

(4) Proposed maximum aggregate value of transaction:

\$20,747,146,376.79

(5) Total fee paid:

\$2,829,910.77

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x Fee paid previously with preliminary materials.

.. Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

Table of Contents

**PRELIMINARY COPY SUBJECT TO
COMPLETION**

NOTICE OF SPECIAL MEETING

OF

STOCKHOLDERS

One Dell Way

Round Rock, Texas 78682

Telephone: (512) 728-7800

[], 2013

To the Stockholders of Dell Inc.:

You are cordially invited to attend a special meeting of the stockholders of Dell Inc., a Delaware corporation ("Dell, the Company, we, our or us"), which we will hold at the Dell Round Rock Campus, 501 Dell Way, Round Rock, Texas 78682 on [], 2013, at [], Central Time.

At the special meeting, holders of our common stock, par value \$0.01 per share ("Common Stock"), will be asked to consider and vote on a proposal to adopt the Agreement and Plan of Merger, dated as of February 5, 2013 (as it may be amended from time to time, the "merger agreement"), by and among Denali Holding Inc., a Delaware corporation ("Parent"), Denali Intermediate Inc., a Delaware corporation and a wholly-owned subsidiary of Parent ("Intermediate"), Denali Acquiror Inc., a Delaware corporation and a wholly-owned subsidiary of Intermediate ("Merger Sub") and, taken together with Intermediate and Parent, the "Parent Parties"), and the Company. Pursuant to the merger agreement, Merger Sub will be merged with and into the Company (the "merger"), with the Company surviving the merger as a wholly-owned subsidiary of Intermediate and each share of Common Stock outstanding immediately prior to the effective time of the merger (other than certain excluded shares and dissenting shares) will be canceled and converted into the right to receive \$13.65 in cash, without interest (the "merger consideration"), less any applicable withholding taxes. The following shares of Common Stock will not be entitled to the merger consideration: (i) shares held by any of the Parent Parties (including the shares held by Michael S. Dell and certain of his related family trusts which shares will be contributed to Parent prior to the merger), (ii) shares held by the Company or any wholly-owned subsidiary of the Company and (iii) shares held by any of the Company's stockholders who are entitled to and properly exercise appraisal rights under Delaware law.

The board of directors of the Company (the "Board") formed a committee (the "Special Committee") consisting solely of four independent and disinterested directors of the Company to evaluate the merger and other alternatives available to the Company. The Special Committee unanimously determined that the transactions contemplated by the merger agreement, including the merger, are fair to, and in the best interests of, the Company's stockholders (other than Mr. Dell and certain of his related family trusts), and unanimously recommended that the Board approve and declare advisable the merger agreement, a copy of which is attached as Annex A to the accompanying proxy statement, and the transactions contemplated therein, including the merger, and that the Company's stockholders vote for the adoption of the merger agreement. Based in part on that recommendation, the Board unanimously (other than Mr. Dell, who did not participate due to his interest in the merger) (i) determined that the transactions contemplated by the merger agreement, including the merger, are fair to, and in the best interests of, the Company's stockholders (other than Mr. Dell and certain of his related family trusts), (ii) approved and declared advisable the execution, delivery and performance of the merger agreement and the consummation of the transactions contemplated therein, including the merger and (iii) resolved to recommend that the Company's stockholders vote for the adoption of the merger agreement. **Accordingly, the Board (without Mr. Dell's participation) unanimously recommends that the stockholders of the Company**

Table of Contents

vote FOR the proposal to adopt the merger agreement. The Board also unanimously (without Mr. Dell's participation) recommends that the stockholders of the Company vote **FOR** the proposal to approve, on an advisory (non-binding) basis, specified compensation that may become payable to the named executive officers of the Company in connection with the merger.

In considering the recommendation of the Board, you should be aware that some of the Company's directors and executive officers have interests in the merger that are different from, or in addition to, the interests of the stockholders generally. As of April 26, 2013, Mr. Dell and certain of his related family trusts beneficially owned, in the aggregate, 274,434,319 shares of Common Stock (including (i) 1,101,948 shares subject to Company stock options exercisable within 60 days and (ii) 33,186 shares held in Mr. Dell's 401(k) plan), or approximately 15.6% of the total number of outstanding shares of Common Stock, and have agreed with Parent to contribute to Parent, immediately prior to the consummation of the merger, 273,299,383 shares in exchange for common stock of Parent.

We urge you to, and you should, read the accompanying proxy statement in its entirety, including the appendices, because it describes the merger agreement, the merger and related agreements and provides specific information concerning the special meeting and other important information related to the merger. In addition, you may obtain information about us from documents filed with the Securities and Exchange Commission.

Regardless of the number of shares of Common Stock you own, your vote is very important. The merger cannot be completed unless the merger agreement is adopted by the affirmative vote of the holders of (i) at least a majority of the outstanding shares of Common Stock entitled to vote thereon and (ii) at least a majority of the outstanding shares of Common Stock entitled to vote thereon held by stockholders other than the Parent Parties, Mr. Dell and certain of his related family trusts, any other officers and directors of the Company or any other person having any equity interest in, or any right to acquire any equity interest in, Merger Sub or any person of which Merger Sub is a direct or indirect subsidiary. If you fail to vote or abstain from voting on the merger agreement, the effect will be the same as a vote against adoption of the merger agreement.

While stockholders may exercise their right to vote their shares in person, we recognize that many stockholders may not be able to, or do not desire to, attend the special meeting. Accordingly, we have enclosed a proxy that will enable your shares to be voted on the matters to be considered at the special meeting even if you are unable or do not desire to attend. If you desire your shares to be voted in accordance with the Board's recommendation, you need only sign, date and return the proxy in the enclosed postage-paid envelope. Otherwise, please mark the proxy to indicate your voting instructions; date and sign the proxy; and return it in the enclosed postage-paid envelope. You also may submit a proxy by using a toll-free telephone number or the Internet. We have provided instructions on the proxy card for using these convenient services.

Submitting a proxy will not prevent you from voting your shares in person if you subsequently choose to attend the special meeting. Even if you plan to attend the special meeting in person, we request that you complete, sign, date and return the enclosed proxy and thus ensure that your shares will be represented at the special meeting if you are unable to attend.

Sincerely,

Alex J. Mandl

Chairman of the Special Committee

Neither the Securities and Exchange Commission nor any state securities regulatory agency has approved or disapproved the merger, passed upon the merits or fairness of the merger or passed upon the adequacy or accuracy of the disclosure in this document. Any representation to the contrary is a criminal offense.

This proxy statement is dated [], 2013

and is first being mailed to stockholders on or about [], 2013.

Table of Contents

PRELIMINARY COPY SUBJECT TO COMPLETION

DELL INC.

One Dell Way

Round Rock, Texas 78682

Telephone: (512) 728-7800

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

To the Stockholders of Dell Inc.:

NOTICE IS HEREBY GIVEN that a special meeting of the stockholders of Dell Inc., a Delaware corporation (Dell, the Company, we, our or us), will be held at the Dell Round Rock Campus, 501 Dell Way, Round Rock, Texas 78682 on [], 2013, at [], Central Time, for the following purposes:

1. to consider and vote on a proposal to adopt the Agreement and Plan of Merger, dated as of February 5, 2013, as it may be amended from time to time, (the merger agreement), by and among Denali Holding Inc., a Delaware corporation (Parent), Denali Intermediate Inc., a Delaware corporation and a wholly-owned subsidiary of Parent (Intermediate), Denali Acquiror Inc., a Delaware corporation and a wholly-owned subsidiary of Intermediate (Merger Sub and, taken together with Intermediate and Parent, the Parent Parties), and the Company;
2. to approve, on an advisory (non-binding) basis, specified compensation that may become payable to the named executive officers of the Company in connection with the merger;
3. to approve the adjournment of the special meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the special meeting to approve the proposal to adopt the merger agreement; and
4. to act upon other business as may properly come before the special meeting or any adjournment or postponement thereof by or at the direction of the Board.

The holders of record of our common stock, par value \$0.01 per share (Common Stock), at the close of business on [], 2013, are entitled to notice of and to vote at the special meeting or at any adjournment or postponement thereof. All stockholders of record are cordially invited to attend the special meeting in person.

Your vote is important, regardless of the number of shares of Common Stock you own. The adoption of the merger agreement by the affirmative vote of the holders of (i) at least a majority of the outstanding shares of Common Stock entitled to vote thereon and (ii) at least a majority of the outstanding shares of Common Stock entitled to vote thereon held by stockholders other than the Parent Parties, Michael S. Dell and certain of his related family trusts, any other officers and directors of the Company and any other person having any equity interest in, or any right to acquire any equity interest in, Merger Sub or any person of which Merger Sub is a direct or indirect subsidiary are conditions to the consummation of the merger. The proposal to approve, on an advisory (non-binding) basis, specified compensation that may become payable to the named executive officers of the Company in connection with the merger, and the proposal to approve the adjournment of the special meeting to solicit additional proxies, if necessary or appropriate, each require the affirmative vote of holders of a majority of the voting power present and entitled to vote thereon. Even if you plan to attend the special meeting in person, we request that you complete, sign, date and return the enclosed proxy and thus ensure that your shares will be represented at the special meeting if you are unable to attend.

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You also may submit your proxy by using a toll-free telephone number or the Internet. We have provided instructions on the proxy card for using these convenient services.

If you sign, date and return your proxy card without indicating how you wish to vote, your proxy will be voted in favor of the proposal to adopt the merger agreement, the proposal to approve, on an advisory (non-binding) basis, specified compensation that may become payable to the named executive officers of the Company in connection with the merger, and the proposal to approve the adjournment of the special meeting to solicit additional proxies, if necessary or appropriate. If you fail to vote or submit your proxy, the effect will be that your shares will not be

Table of Contents

counted for purposes of determining whether a quorum is present at the special meeting and will have the same effect as a vote against the proposal to adopt the merger agreement. However, failure to vote or submit your proxy will not affect the vote regarding the proposal to approve, on an advisory (non-binding) basis, specified compensation that may become payable to the named executive officers of the Company in connection with the merger or the vote regarding the proposal to approve the adjournment of the special meeting to solicit additional proxies, if necessary or appropriate.

Your proxy may be revoked at any time before the vote at the special meeting by following the procedures outlined in the accompanying proxy statement. If you are a stockholder of record, attend the special meeting and wish to vote in person, you may revoke your proxy and vote in person.

BY ORDER OF THE BOARD OF DIRECTORS

Lawrence P. Tu

General Counsel and Secretary

Dated [], 2013

Round Rock, Texas

Table of Contents**TABLE OF CONTENTS**

	Page
<u>SUMMARY TERM SHEET</u>	1
<u>QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER</u>	14
<u>SPECIAL FACTORS</u>	20
<u>Background of the Merger</u>	20
<u>Reasons for the Merger; Recommendation of the Board of Directors; Fairness of the Merger</u>	50
<u>Opinion of J.P. Morgan Securities LLC</u>	61
<u>Opinion of Evercore Group L.L.C.</u>	69
<u>Position of the Parent Parties, the SLP Filing Persons and the MSDC Filing Persons as to Fairness of the Merger</u>	81
<u>Position of the MD Filing Persons as to Fairness of the Merger</u>	85
<u>Purposes and Reasons of the Company for the Merger</u>	87
<u>Purposes and Reasons of the Parent Parties, the SLP Filing Persons and the MSDC Filing Persons for the Merger</u>	87
<u>Purposes and Reasons of the MD Filing Persons for the Merger</u>	88
<u>Plans for the Company After the Merger</u>	89
<u>Certain Effects of the Merger</u>	91
<u>Projected Financial Information</u>	94
<u>Financing for the Merger</u>	102
<u>Limited Guarantees</u>	111
<u>Interests of the Company's Directors and Executive Officers in the Merger</u>	112
<u>Advisory Vote on Specified Compensation</u>	124
<u>Material U.S. Federal Income Tax Consequences of the Merger</u>	124
<u>Regulatory Approvals</u>	126
<u>Fees and Expenses</u>	127
<u>Anticipated Accounting Treatment of the Merger</u>	127
<u>Litigation</u>	128
<u>Effective Time of Merger</u>	128
<u>Payment of Merger Consideration and Surrender of Stock Certificates</u>	128
<u>CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING INFORMATION</u>	130
<u>THE PARTIES TO THE MERGER</u>	131
	Page
<u>Dell Inc.</u>	131
<u>The Parent Parties</u>	131
<u>THE SPECIAL MEETING</u>	132
<u>Date, Time and Place</u>	132
<u>Purpose of the Special Meeting</u>	132
<u>Recommendations of the Board and the Special Committee</u>	132
<u>Record Date and Quorum</u>	133
<u>Required Vote</u>	133
<u>Voting; Proxies; Revocation</u>	134
<u>Abstentions</u>	135
<u>Appraisal Rights</u>	136
<u>Adjournments and Postponements</u>	136
<u>Solicitation of Proxies</u>	136
<u>Additional Assistance</u>	137
<u>THE MERGER AGREEMENT</u>	138
<u>Explanatory Note Regarding the Merger Agreement</u>	138
<u>Structure of the Merger</u>	138
<u>When the Merger Becomes Effective</u>	139
<u>Effect of the Merger on the Common Stock</u>	140
<u>Treatment of Company Stock Options, Company RSU Awards and Company Restricted Shares</u>	140
<u>Payment for the Common Stock in the Merger</u>	141
<u>Representations and Warranties</u>	142
<u>Conduct of Business Pending the Merger</u>	145
<u>Other Covenants and Agreements</u>	146

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<u>Conditions to the Merger</u>	159
<u>Termination</u>	161
<u>Termination Fees: Reimbursement of Expenses</u>	162
<u>Expenses</u>	164
<u>Specific Performance</u>	164
<u>PROVISIONS FOR UNAFFILIATED STOCKHOLDERS</u>	164
<u>IMPORTANT INFORMATION REGARDING DELL</u>	165
<u>Company Background</u>	165
<u>Directors and Executive Officers</u>	165
<u>Selected Summary Historical Consolidated Financial Data</u>	171
<u>Ratio of Earnings to Fixed Charges</u>	172
<u>Book Value Per Share</u>	172
<u>Market Price of the Common Stock and Dividend Information</u>	172

Table of Contents

<u>Security Ownership of Certain Beneficial Owners and Management</u>	173
<u>Transactions in Common Stock</u>	175
<u>Transactions between the SLP Filing Persons and Executive Officer of the Company</u>	176
<u>The Company's Financial Advisor</u>	177
<u>RIGHTS OF APPRAISAL</u>	179
<u>Filing Written Demand</u>	179
<u>Notice by the Surviving Corporation</u>	181
<u>Filing a Petition for Appraisal</u>	181
<u>Determination of Fair Value</u>	182
<u>MULTIPLE STOCKHOLDERS SHARING ONE ADDRESS</u>	184
<u>SUBMISSION OF STOCKHOLDER PROPOSALS AND NOMINATIONS</u>	185
<u>IMPORTANT INFORMATION REGARDING THE PARENT PARTIES, THE SLP FILING PERSONS, THE MD FILING PERSONS AND THE MSDC FILING PERSONS</u>	186
<u>The Parent Parties</u>	186
<u>The SLP Filing Persons</u>	187
<u>The MD Filing Persons</u>	188
<u>The MSDC Filing Persons</u>	189
<u>WHERE YOU CAN FIND ADDITIONAL INFORMATION</u>	190
<u>ANNEX A AGREEMENT AND PLAN OF MERGER</u>	A-1
<u>ANNEX B OPINION OF J.P. MORGAN SECURITIES LLC</u>	B-1
<u>ANNEX C OPINION OF EVERCORE GROUP L.L.C.</u>	C-1
<u>ANNEX D SECTION 262 OF DELAWARE GENERAL CORPORATION LAW</u>	D-1

Table of Contents

SUMMARY TERM SHEET

This Summary Term Sheet discusses the material information contained in this proxy statement, including with respect to the merger agreement, as defined below, the merger and the other agreements entered into in connection with the merger. We encourage you to read carefully this entire proxy statement, including its annexes and the documents referred to or incorporated by reference in this proxy statement, as this Summary Term Sheet may not contain all of the information that may be important to you. The items in this Summary Term Sheet include page references directing you to a more complete description of that topic in this proxy statement.

The Parties to the Merger (page 131)

Dell Inc.

Dell Inc. (Dell, the Company, we, our or us) is a Delaware corporation. Founded by Michael S. Dell in 1984, the Company is a leading global integrated solutions provider in the IT industry. The Company is focused on providing complete technology solutions to our customers that are scalable, flexible and easy to use. Over time, the Company has added new distribution channels, such as retail, system integrators, value-added resellers and distributors, to expand its access to more end-users around the world. See *Important Information Regarding Dell Company Background* beginning on page 165. See also *The Parties to the Merger Dell Inc.* on page 131.

Additional information about Dell is contained in its public filings, which are incorporated by reference herein. See *Where You Can Find Additional Information* on page 190.

The Parent Parties

Denali Holding Inc. (Parent) is a newly formed Delaware corporation. Denali Intermediate Inc. (Intermediate) is a newly formed Delaware corporation and a wholly-owned subsidiary of Parent. Denali Acquiror Inc. (Merger Sub and, together with Intermediate and Parent, the Parent Parties) is a newly formed Delaware corporation and a wholly-owned subsidiary of Intermediate. Each of the Parent Parties is an affiliate of the entities referred to as the SLP Filing Persons (see *Important Information Regarding the Parent Parties, the SLP Filing Persons, the MD Filing Persons and the MSDC Filing Persons The SLP Filing Persons* beginning on page 187) and the persons and entities referred to as the MD Filing Persons (see *Important Information Regarding the Parent Parties, the SLP Filing Persons, the MD Filing Persons and the MSDC Filing Persons The MD Filing Persons* beginning on page 188) and was formed solely for the purpose of entering into the merger agreement and consummating the transactions contemplated by the merger agreement. None of the Parent Parties has engaged in any business except for activities incident to its formation and in connection with the transactions contemplated by the merger agreement. See *Important Information Regarding the Parent Parties, the SLP Filing Persons, the MD Filing Persons and the MSDC Filing Persons* beginning on page 186. See also *The Parties to the Merger The Parent Parties* on page 131.

The Purpose of the Special Meeting (page 132)

You will be asked to consider and vote upon the proposal to adopt the Agreement and Plan of Merger, dated as of February 5, 2013 (as it may be amended from time to time, the merger agreement), by and among Parent, Intermediate, Merger Sub and the Company. The merger agreement provides that at the effective time of the merger, Merger Sub will be merged with and into the Company (the merger), with the Company surviving the merger as a wholly-owned subsidiary of Intermediate. At the effective time of the merger, each share of common stock, par value \$0.01 per share, of the Company (the Common Stock) outstanding immediately prior to the effective time of the merger (other than certain excluded shares and shares held by any of the Company s stockholders who are entitled to and properly exercise appraisal rights under Delaware law (dissenting shares))

Table of Contents

will be converted into the right to receive \$13.65 in cash, without interest (the merger consideration), less any applicable withholding taxes, whereupon all such shares will be automatically canceled upon the conversion thereof and will cease to exist, and the holders of such shares will cease to have any rights with respect thereto other than the right to receive the merger consideration. Shares of Common Stock held by any of the Parent Parties (including the shares held by the MD Investors and the Gift Trusts (each as defined below), which shares will be contributed to Parent prior to the merger) and by the Company or any wholly-owned subsidiary of the Company will not be entitled to receive the merger consideration.

Following and as a result of the merger, the Company will become a privately held company, wholly-owned directly by Intermediate and indirectly by Parent, which in turn will be owned by the following entities and individuals:

Silver Lake Partners III, L.P., Silver Lake Partners IV, L.P. (together with Silver Lake Partners III, L.P., the SLP Investors) and their permitted assignees, if any, which have agreed, severally but not jointly, to provide an aggregate amount of up to \$1.4 billion in cash equity financing for the merger;

Michael S. Dell, Chairman and Chief Executive Officer of the Company, and The Susan Lieberman Dell Separate Property Trust (together with Mr. Dell, the MD Investors), who together have agreed, severally and not jointly, to transfer, contribute and deliver to Parent, immediately prior to the consummation of the merger, 273,299,383 shares of the Common Stock (including shares held by the Michael S. Dell 2009 Gift Trust and Susan L. Dell 2009 Gift Trust (together, the Gift Trusts), which shares will be acquired by Mr. Dell from the Gift Trusts prior to the consummation of the merger (conditional upon the occurrence of the closing of the merger)) in exchange for common stock of Parent, and, in the case of Mr. Dell, to provide up to an additional \$500 million in cash equity financing for the merger; and

MSDC Management, L.P. (the MSDC Investor) and its permitted assignees, if any, which have agreed to provide an aggregate amount of up to \$250 million in cash equity financing for the merger.

The Special Meeting (Page 132)

The special meeting will be held at the Dell Round Rock Campus, 501 Dell Way, Round Rock, Texas 78682 on [], 2013, at [], Central Time.

Record Date and Quorum (Page 133)

The holders of record of the Common Stock as of the close of business on [], 2013, the record date for determination of stockholders entitled to notice of and to vote at the special meeting, are entitled to receive notice of and to vote at the special meeting.

The presence at the special meeting, in person or by proxy, of the holders of a majority of the voting power of the shares of Common Stock outstanding and entitled to vote on the record date will constitute a quorum, permitting the Company to conduct its business at the special meeting.

Required Vote (Page 133)

For the Company to consummate the merger, under Delaware law and under the merger agreement, stockholders holding at least a majority of the shares of Common Stock outstanding and entitled to vote at the close of business on the record date must vote **FOR** the proposal to adopt the merger agreement. In addition, it is a condition to the consummation of the merger that stockholders holding at least a majority of the shares of Common Stock outstanding and entitled to vote at the close of business on the record date, other than the Parent Parties, the MD Investors, the Gift Trusts, any other officers and directors of the Company and any other person having any equity interest in, or any right to acquire any equity interest in, Merger Sub or any person of which Merger Sub is a direct or indirect subsidiary, vote **FOR** the proposal to adopt the merger agreement.

Table of Contents

Subject to certain conditions, the MD Investors and the Gift Trusts have agreed to vote, or cause to be voted, all of the outstanding shares of Common Stock they beneficially own in favor of the proposal to adopt the merger agreement pursuant to a voting and support agreement that they entered into with the Company on February 5, 2013 (the voting agreement). See *Special Factors Interests of the Company's Directors and Executive Officers in the Merger Voting Agreement* on page 123.

Conditions to the Merger (Page 159)

Each party's obligation to complete the merger is subject to the satisfaction of the following conditions:

the proposal to adopt the merger agreement has been approved by the affirmative vote of holders of at least a majority of the outstanding shares of the Common Stock entitled to vote thereon;

the proposal to adopt the merger agreement has been approved by the affirmative vote of holders of at least a majority of the outstanding shares of the Common Stock entitled to vote thereon, other than the Parent Parties, the MD Investors, the Gift Trusts and any other officers and directors of the Company and any other person having any equity interest in, or any right to acquire any equity interest in, Merger Sub or any person of which Merger Sub is a direct or indirect subsidiary;

there is no injunction or similar order prohibiting the consummation of the merger (i) by a governmental entity having jurisdiction over the business of the Company and its subsidiaries (other than a *de minimis* portion of such business) or (ii) that, if not abided by, would potentially result in criminal liability;

there is no law prohibiting or making illegal the merger (i) by any governmental entity in a jurisdiction in which the business of the Company and its subsidiaries is conducted (other than a *de minimis* portion of such business) or (ii) that, if not abided by, would potentially result in criminal liability; and

any applicable waiting period (and any extensions thereof) has expired or been terminated and any required approvals, consents or clearances have been obtained relating to the merger under (i) the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the HSR Act), (ii) if required or if jurisdiction is accepted, Council Regulation (EC) No 139/2004 of the European Union Merger Regulation, or, if not required or jurisdiction is not accepted, the antitrust and competition laws of the Member States of the European Union and European Economic Area in which a filing is required and (iii) the antitrust and competition laws of China and certain other jurisdictions.

The obligation of the Company to complete the merger is also subject to the satisfaction or waiver of the following additional conditions:

the representations and warranties of the Parent Parties in the merger agreement must be true and correct in all material respects both when made and as of the closing date of the merger (except with respect to certain representations and warranties made as of a specified date), except where the failure to be true and correct would not impair, prevent or delay in any material respect the ability of any of the Parent Parties to perform its obligations under the merger agreement;

the Parent Parties must have performed in all material respects all obligations that they are required to perform under the merger agreement prior to the closing; and

each of the Parent Parties must have delivered to the Company an officer's certificate stating that the conditions set forth above have been satisfied.

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The respective obligations of the Parent Parties to complete the merger are also subject to the satisfaction or waiver of the following additional conditions:

the representations and warranties of the Company in the merger agreement relating to (i) capitalization, (ii) dividends, (iii) the absence of any material adverse effect since November 2,

Table of Contents

2012, (iv) finder's and broker's fees and (v) takeover laws and rights agreements must be true and correct (except, subject to certain exceptions, for such inaccuracies as are *de minimis*) both when made and as of the closing date of the merger or, with respect to certain representations and warranties, as of a specified date;

the representations and warranties of the Company in the merger agreement relating to (i) the Company's subsidiaries, (ii) corporate authority and (iii) outstanding indebtedness must be true and correct in all material respects both when made and as of the closing date of the merger or, with respect to certain representations and warranties, as of a specified date;

the other representations and warranties of the Company in the merger agreement (except those listed in the above preceding bullet points) must be true and correct both when made and as of the closing date of the merger or, with respect to certain representations and warranties, as of a specified date, except where the failure to be true and correct would not result in a material adverse effect, as described under *The Merger Agreement - Conditions to the Merger* beginning on page 159;

the Company must have performed in all material respects all obligations that it is required to perform under the merger agreement prior to the closing date of the merger;

the Company must have delivered to Parent an officer's certificate stating that the conditions set forth above have been satisfied; and

Parent must not have the right to terminate the merger agreement as a result of the Company's cash on hand being less than \$7.4 billion as of the beginning of the day on which the closing of the merger would have been required to occur but for the failure of this condition.

When the Merger Becomes Effective (Page 139)

We currently anticipate holding our stockholders' meeting to vote on the merger agreement during the second quarter of our current fiscal year, which quarter will end on August 2, 2013, and completing the merger during the third quarter of our current fiscal year, which quarter will end on November 1, 2013, subject to approval of the proposal to adopt the merger agreement by the Company's stockholders as specified herein and the satisfaction of the other closing conditions.

Reasons for the Merger; Recommendation of the Board of Directors; Fairness of the Merger (Page 50)

The Board, acting upon the unanimous recommendation of a committee of the Board consisting solely of four independent and disinterested directors of the Company (the *Special Committee*), unanimously (without Mr. Dell's participation) has recommended that the stockholders of the Company vote **FOR** the proposal to adopt the merger agreement. For a description of the reasons considered by the Special Committee and the Board in deciding to recommend approval of the proposal to adopt the merger agreement, see *Special Factors - Reasons for the Merger; Recommendation of the Board of Directors; Fairness of the Merger* beginning on page 50.

Opinion of J.P. Morgan Securities LLC (Page 61 and Annex B)

The Special Committee retained J.P. Morgan Securities LLC (*J.P. Morgan*) to act as its financial advisor in connection with the proposed merger. At separate meetings of the Special Committee and the Board on February 4, 2013, J.P. Morgan rendered its oral opinion, subsequently confirmed in writing, that as of February 4, 2013, and based upon and subject to the factors and assumptions set forth therein, the consideration to be paid to the holders of the Common Stock (other than shares of Common Stock held in treasury or owned by Merger Sub and its subsidiaries, other excluded shares, Company restricted shares and dissenting shares) in the proposed merger was fair, from a financial point of view, to such holders.

Table of Contents

The full text of the written opinion of J.P. Morgan, dated February 4, 2013, is attached to this proxy statement as Annex B and is incorporated into this proxy statement by reference. The opinion sets forth the assumptions made, procedures followed, matters considered and limits on the review undertaken by J.P. Morgan in rendering its opinion. You are urged to read the opinion carefully in its entirety. J.P. Morgan's written opinion was provided to the Special Committee and the Board, is directed only to the fairness from a financial point of view of the merger consideration to be paid in the proposed merger and it does not constitute a recommendation to any stockholder of the Company as to how such stockholder should vote with respect to the merger or any other matter. For a further discussion of J.P. Morgan's opinion, see *Special Factors Opinion of J.P. Morgan Securities LLC* beginning on page 61 and Annex B to this proxy statement.

Opinion of Evercore Group L.L.C. (Page 69 and Annex C)

The Special Committee retained Evercore Group L.L.C. (Evercore) to act as our financial advisor in connection with the proposed merger. At separate meetings of the Special Committee and the Board on February 4, 2013, Evercore rendered its oral opinion, subsequently confirmed in writing, that as of February 4, 2013, and based upon, and subject to, the factors, procedures, assumptions, qualifications and limitations and other matters set forth therein, the \$13.65 per share merger consideration was fair, from a financial point of view, to the holders of shares of Common Stock entitled to receive such merger consideration.

The full text of the written opinion of Evercore, dated February 4, 2013, is attached to this proxy statement as Annex C and is incorporated into this proxy statement by reference. The opinion sets forth, among other things, the factors considered, procedures followed, assumptions made and qualifications and limitations on the scope of review undertaken by Evercore in rendering its opinion. You are urged to read the opinion carefully in its entirety. Evercore's opinion was addressed to, and was provided for the information and benefit of, the Special Committee and the Board (in their capacity as such) in connection with their evaluation of whether the merger consideration to be received by the holders of the shares of Common Stock was fair, from a financial point of view, to the holders of the shares of Common Stock entitled to receive such merger consideration. The opinion does not address any other aspect of the merger and does not constitute a recommendation to the Special Committee, the Board or to any other person in respect of the merger, including as to how any of our stockholders should act or vote with respect to the merger. Evercore's opinion did not address the relative merits of the merger as compared to other business or financial strategies that might be available to the Company, nor did it address the underlying business decision of the Company to engage in the merger. In arriving at its opinion, Evercore was not authorized to solicit, and did not solicit, interest from any third party with respect to the acquisition of any or all of the Common Stock or any business combination or other extraordinary transaction involving the Company. For a further discussion of Evercore's opinion, see *Special Factors Opinion of Evercore Group L.L.C.* beginning on page 69 and Annex C to this proxy statement.

Purposes and Reasons of the Company for the Merger (Page 87)

The Company's purpose for engaging in the merger is to enable its stockholders to receive \$13.65 per share in cash, without interest and less any applicable withholding taxes, which \$13.65 per share merger consideration represents a premium of approximately 25% above the closing price of the Common Stock on January 11, 2013, the last trading day before media reports of a possible going private transaction involving the Company were first published, a premium of approximately 35% over the Company's enterprise value as of January 11, 2013, and a premium of approximately 37% over the average closing price of the Common Stock during the 90 calendar days that ended on January 11, 2013.

Certain Effects of the Merger (Page 91)

If the conditions to the closing of the merger are either satisfied or, to the extent permitted, waived, Merger Sub will be merged with and into the Company with the Company surviving the merger as a wholly-owned subsidiary

Table of Contents