

DELL COMPUTER CORP
Form S-8
October 04, 2002

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As filed with the Securities and Exchange Commission on October 4, 2002

Registration No. 333-_____

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

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

DELL COMPUTER CORPORATION

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

74-2487834

(I.R.S. Employer Identification No.)

One Dell Way, Round Rock, Texas
(Address of Principal Executive Offices)

78682
(Zip Code)

**DELL COMPUTER CORPORATION
2002 LONG-TERM INCENTIVE PLAN**
(Full title of the Plan)

Thomas B. Green
Senior Vice President, Law and Administration
Dell Computer Corporation
One Dell Way
Round Rock, Texas 78682
(Name and address of agent for service)

Copies to:
Thomas H. Welch, Jr.
Vice President Legal
Dell Computer Corporation
One Dell Way
Round Rock, Texas 78682

(512) 338-4400

(Telephone number, including area code, of agent for service)

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered	Proposed maximum offering price per share (1)	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock	383,584,780 shares (2)	\$ 23.61	\$9,056,436,665	\$833,192(3)

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- (1) Estimated solely for purposes of calculating the registration fee, in accordance with Rule 457(h), on the basis of the price of securities of the same class, as determined in accordance with Rule 457(c), using the average of the high and low prices for the Common Stock reported on the Nasdaq Stock Market on September 30, 2002.
 - (2) Pursuant to Rule 416, this Registration Statement shall be deemed to cover such additional shares of Common Stock as may become issuable pursuant to the antidilution provisions of the Dell Computer Corporation 2002 Long Term Incentive Plan (the Plan).
 - (3) The Registrant, Dell Computer Corporation, previously filed a Registration Statement on Form S-8 (File No. 33-49014; initial filing date, October 31, 2000) to register 100,000,000 shares of Common Stock issuable pursuant to awards under the Dell Computer Corporation Incentive Plan and paid a registration fee of \$699,600 in connection with such registration. The Registrant has filed a post-effective amendment to that registration statement to deregister 38,469,236 of those shares. Accordingly, pursuant to Rule 457(p), the portion of the registration fee associated with those deregistered shares (\$269,130) is hereby offset against the registration fee payable hereunder. The remainder of the registration fee payable hereunder (\$564,062) is paid in cash herewith.
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PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. *Incorporation of Documents by Reference.*

The following documents, which have been filed with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), by Dell Computer Corporation (Commission File No. 0-17017), a Delaware corporation (the "Company"), are incorporated herein by reference and made a part hereof:

- (a) The Company's Annual Report on Form 10-K for the fiscal year ended February 1, 2002;
- (b) The Company's Quarterly Report on Form 10-Q for the fiscal quarter ended May 3, 2002;
- (c) The Company's Quarterly Report on Form 10-Q for the fiscal quarter ended August 2, 2002; and
- (d) The description of the Common Stock contained in the Registration Statement on Form 8-A dated June 20, 1988, including any amendment or report filed to update such description.

All documents filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act subsequent to the effective date of this Registration Statement, prior to the filing of a post-effective amendment to this Registration Statement indicating that all securities offered hereby have been sold or deregistering all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents. Any statement contained herein or in any document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed to constitute a part of this Registration Statement, except as so modified or superseded.

ITEM 4. *Description of Securities.*

Not required.

ITEM 5. *Interests of Named Experts And Counsel.*

None.

ITEM 6. *Indemnification of Directors and Officers.*

Article Tenth of the Restated Certificate of Incorporation of the Company and Article VI, Section 1 of the Company's Restated Bylaws provide that the Company shall, to the fullest extent permitted by law, indemnify its officers and directors, and may, to the fullest extent permitted by law or to such lesser extent as is determined in the discretion of the Board of Directors, indemnify any and all other persons whom it shall have the power to

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indemnify, from and against all expenses, liabilities or other matters arising out of their status as such or their acts, omissions or services rendered in such capacities. Pursuant to Section 145 of the Delaware General Corporation Law (the "DGCL"), the Company generally has the power to indemnify its present and former directors and officers against expenses and liabilities reasonably incurred by them in connection with any action, suit or proceeding to which they are, or are threatened to be made, a party by reason of their serving in those positions so long as they acted in good faith and in a manner they reasonably believed to be in, or not opposed to, the best interests of the Company, and with respect to any criminal action, they had no reasonable cause to believe their conduct was unlawful. With respect to suits by or in the right of the Company, however, indemnification is generally limited to attorneys' fees and other expenses and is not available if the person is adjudged to be liable to the Company unless the court determines that indemnification is appropriate. The statute expressly provides that the indemnification authorized thereby is not exclusive of any rights granted under any by-law, agreement, vote of stockholders or disinterested directors, or otherwise. The Company also has the power to purchase and maintain insurance for its directors and officers.

The preceding discussion of the Company's Restated Certificate of Incorporation and Section 145 of the DGCL is not intended to be exhaustive and is qualified by the Restated Certificate of Incorporation and Section 145 of the DGCL.

ITEM 7. *Exemption From Registration Claimed.*

Not applicable.

ITEM 8. *Exhibits.*

The following exhibits are filed as a part of this Registration Statement.

Exhibit Number	Description
4.1	Restated Certificate of Incorporation, filed July 16, 2001 (incorporated by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended August 3, 2001, Commission File No. 0-17017)
4.2	Restated Bylaws, as adopted on November 29, 1995 (incorporated by reference to exhibit 3.3 to the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended October 29, 1995, Commission File No. 0-17017)
4.3	Right Agreement, dated as of November 29, 1995 (incorporated by reference to Exhibit 4 to the Company's Current Report on Form 8-K, dated November 29, 1995, and filed with the Securities and Exchange Commission on November 30, 1995, Commission File No. 0-17017)
5+	Opinion of Legal Counsel.
23.1+	Consent of Independent Accountants.
23.2+	Consent of Legal Counsel (included in Exhibit 5)
24+	Power of Attorney (set forth on signature page)
99.1	Dell Computer Corporation 2002 Long-Term Incentive Plan (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended August 2, 2002, Commission File No. 0-17017)

+ Filed herewith

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ITEM 9. Undertakings

The Company hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(a) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended (the "Securities Act");

(b) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement;

(c) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement.

Provided, however, that paragraphs (1)(a) and (1)(b) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Company or the Plan pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purposes of determining any liability under the Securities Act, each filing of the Company's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(5) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Company of expenses incurred or paid by a director, officer or controlling person of the Company in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Company will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Austin, Texas, on September 30, 2002.

DELL COMPUTER CORPORATION

By: /s/ MICHAEL S. DELL

Michael S. Dell,
*Chairman of the Board and
 Chief Executive Officer*

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated. Each person whose signature appears below hereby authorizes and appoints each of Michael S. Dell and Thomas B. Green as his or her attorney-in-fact to sign on his or her behalf individually and in the capacity stated below all amendments and post-effective amendments to this registration statement as that attorney-in-fact may deem necessary or appropriate.

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ MICHAEL S. DELL</u> Michael S. Dell	Chairman of the Board and Chief Executive Officer (principal executive officer)	September 30, 2002
<u>/s/ DONALD J. CARTY</u> Donald J. Carty	Director	September 30, 2002
<u>/s/ WILLIAM H. GRAY III</u> William H. Gray III	Director	September 30, 2002
<u>/s/ MICHAEL H. JORDAN</u> Michael H. Jordan	Director	September 30, 2002
<u>/s/ JUDY C. LEWENT</u> Judy C. Lewent	Director	September 30, 2002
<u>/s/ THOMAS W. LUCE III</u>	Director	September 30, 2002

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Thomas W. Luce III

/s/ KLAUS S. LUFT

Director

September 30, 2002

Klaus S. Luft

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<u>/s/ ALEX J. MANDL</u> Alex J. Mandl	Director	September 30, 2002
<u>/s/ MICHAEL A. MILES</u> Michael A. Miles	Director	September 30, 2002
<u>/s/ SAMUEL A. NUNN, JR.</u> Samuel A. Nunn, Jr.	Director	September 30, 2002
<u>/s/ MORTON L. TOPFER</u> Morton L. Topfer	Director	September 30, 2002
<u>/s/ JAMES M. SCHNEIDER</u> James M. Schneider	Senior Vice President and Chief Financial Officer (principal financial and accounting officer)	September 30, 2002

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