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Case No. 12080-CB

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE APPRAISAL OF SOLERA HOLDINGS, INC.	))))	Consolidated C.A. No. 12080-CB PUBLIC VERSION Filed: June 23, 2017

<u>PETITIONERS' PRE-TRIAL BRIEF</u>

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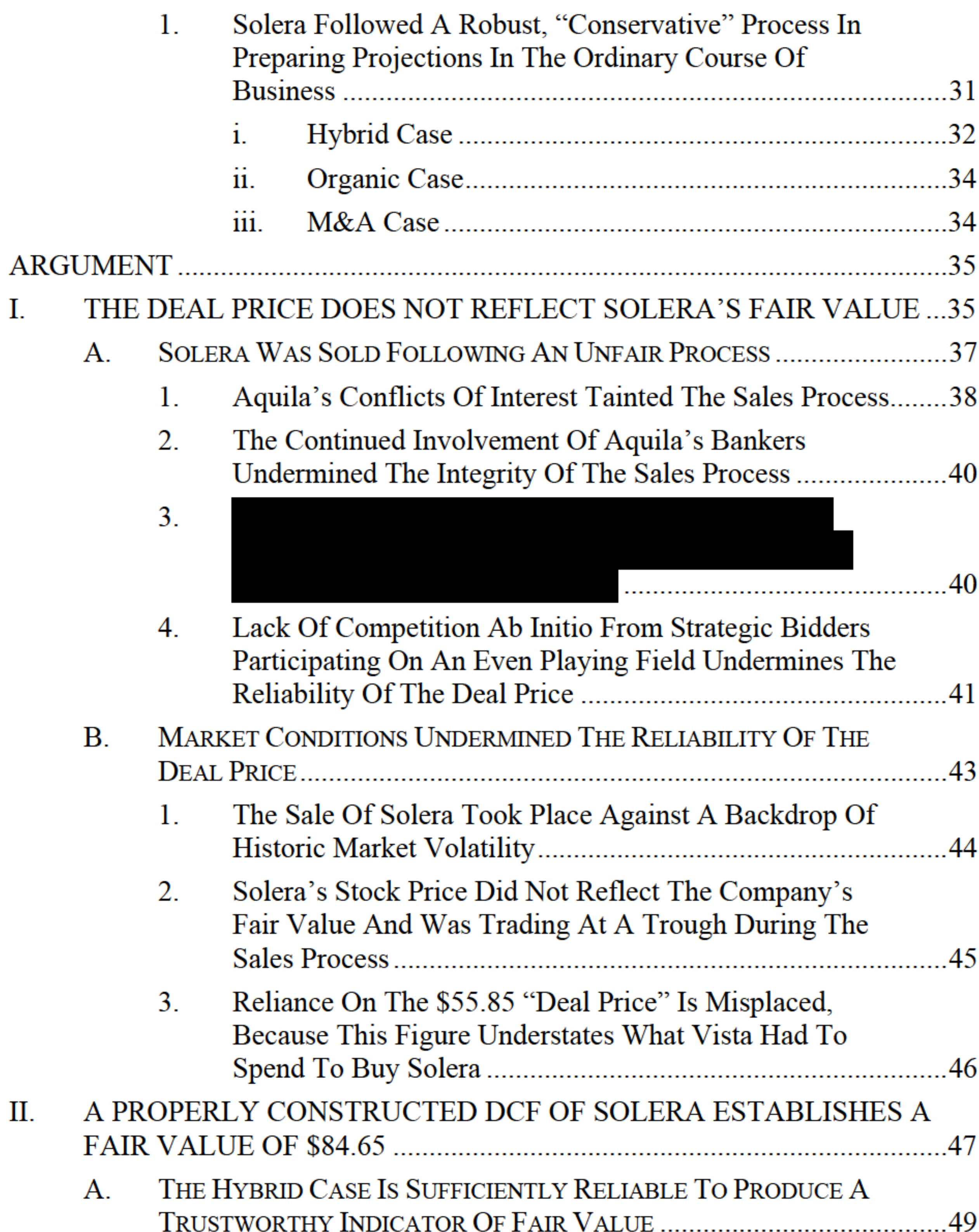

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GLOSSARY

Apax	Private equity firm Apax Partners LP
Blackstone	Private equity firm Blackstone Group L.P.
Board	Board of Directors of Solera
CAGR	Compound annual growth rate
CAPM	Capital assets pricing model
Centerview	Centerview Partners LLC, financial advisor to the Special Committee
Company	Solera Holdings, Inc.
Cox	Cox Automotive, Inc.
CVC	Private equity firm CVC Capital Partners
DCF	Discounted cash flow
Effective Date	March 3, 2016
Google	Google Inc.
GTCR LLC	Private equity firm GTCR
Hellman	Private equity firm Hellman & Friedman LLC
Hybrid Case	The baseline plan setting forth Solera's projected financial performance in fiscal years 2016-2020, approved by the Board and published in the Proxy for the Take Private
IHS	IHS Inc.

Insight	Private equity firm Insight Venture Partners
Koch	Koch Industries
KKR	Private equity firm Kohlberg Kravis Roberts & Co. L.P.
LBO	Leveraged buyout
M&A	Mergers and acquisitions
M&A Case	An upside alternative to the Hybrid Case that contemplated a higher level of M&A investment
Magna	Magna International, Inc.
McKinsey	McKinsey & Co.
Oracle	Oracle Corporation
Organic Case	A downside alternative to the Hybrid Case that contemplated a lower level of M&A investment
Pamplona	Private equity firm Pamplona Capital Management
Permira	Private equity firm Permira Advisers LLP
PGR	Perpetuity growth rate
Proxy	Solera Holdings, Inc. DEFM14A filed with the SEC on October 30, 2015
PTO	Stipulated [Proposed] Joint Pre-Trial Order (Transaction ID #60727235)

RELX	RELX Group
ROIC	Return on invested capital
Rothschild	Rothschild, Inc., financial advisor to Aquila and Solera
Silver Lake	Private equity firm Silver Lake Partners
Special Committee	Special Committee of Solera's Board of Directors, comprised of Board members Stuart J. Yarbrough, Patrick D. Campbell, and Thomas Dattilo
SBC	Stock-based compensation
TAM	Total addressable market
Take Private	Transaction pursuant to which Solera was taken private in an LBO by Vista
Thoma Bravo	Private equity firm Thoma Bravo LLC
Vista	Private equity firm Vista Equity Partners LLC
WACC	Weighted average cost of capital
Warburg	Private equity firm Warburg Pincus LLC
Yahoo	Yahoo Inc.

KEY PLAYERS

Tony Aquila	Founder, CEO, President and Chairman of Solera
David Baron	Rothschild banker who assisted Aquila in a search for a private equity partner
Orlando Bravo	Founder of private equity firm Thoma Bravo
Elaine Buckberg	Petitioners' expert on market conditions surrounding the sale of Solera and the impact these conditions had on the bids for Solera
Thomas Dattilo	Head of Compensation Committee of Solera's Board
Bradford Cornell	Petitioners' valuation expert
Renato Giger	Solera's CFO
Glenn Hubbard	Respondent's valuation expert
Steve Ritchie	Kirkland & Ellis lawyer who negotiated Aquila's employment agreement with Vista
Robert Smith	Founder of private equity firm Vista
Christian Sowul	Vista Principal
Stuart Yarbrough	Head of the Special Committee of Solera's Board

CITATION CONVENTIONS

Deposition of Tony Aquila (JX887)	"Aquila:__"
Deposition of David Baron (JX881)	"Baron:__"
Deposition of Elaine Buckberg (JX895)	"Buckberg:__"
Deposition of Bradford Cornell (JX902 & JX904)	"Cornell:__"
Deposition of Renato Giger (JX888)	"Giger:__"
Deposition of David Hess (JX893)	"Hess:__"
Deposition of Glenn Hubbard (JX907)	"Hubbard:__"
Deposition of Christian Sowul (JX885)	"Sowul:__"
Deposition of Kurt Tenenbaum (JX889)	"Tenenbaum:__"
Expert Report of Elaine Buckberg, Ph.D. (JX895)	"BOR¶__"
Expert Report of Bradford Cornell (JX898)	"COR¶ __"
Expert Report of Glenn Hubbard (JX894)	"HOR¶__"
Joint Exhibit	"JX__"
Pre-trial Order	"PTO¶__"
Rebuttal Expert Report of Bradford Cornell (JX900)	"CRR¶__"
Rebuttal Expert Report of Glenn Hubbard (JX899)	"HRR¶__"

INTRODUCTION

This is an appraisal action stemming from a March 3, 2016 transaction in which Solera was taken private in an LBO backed by Vista. Petitioners' expert, Professor Cornell, has opined that Solera's fair value as of the Effective Date was $84.65; Respondent's expert, Professor Hubbard, has opined that Solera's fair value as of the Effective Date was $53.95.

Although the gulf between the experts' fair value conclusions is wide, the issues driving this gulf are few. Resolution of two issues – each of which calls for the Court to make a binary decision – bridges most of the gap between the experts' fair value conclusions.

Binary Decision One: Is The Deal Price A Reliable Indicator Of Fair Value?

The experts disagree over whether the deal price ($55.85) is a reliable indicator of fair value. Professor Cornell found that it was not and thus weighted 100% to his DCF in valuing Solera. Professor Hubbard found that it was and thus weighted 100% to the $55.85 deal price, less $1.90 in alleged synergies that he claims were paid to Solera's stockholders in the LBO. Thus, the Court must decide whether the deal price is a reliable indicator of fair value. The evidence will establish that it is not, for at least three reasons.

First, the evidence will establish that conflicts of interest tainted the sales process. Tony Aquila – Solera's founder, Chairman, CEO, and President –

"architect[ed]"[1] a process to take Solera private following a dispute with the Special Committee about his compensation. In the spring of 2015, Aquila (aided by Rothschild banker David Baron) resolved to take the Company private and began to aggressively look for a financial sponsor to partner with him. Despite the clear conflicts posed by Aquila's efforts to take his Company private, and long before a Special Committee was formed, Aquila (either directly or through Rothschild): (1) had conversations about a potential take private with ***eight*** private equity firms (including Vista, his eventual sponsor)[2] over a three month period;[3] (2) dispatched his bankers at Goldman Sachs to conduct LBO analyses;[4] and (3) reached out to Koch about equity financing for an LBO.[5] Aquila worked to get the private equity firms excited about the prospect of partnering ***with him***[6] and started to put the financing together.[7] In early May, Aquila told Vista that "now is

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[1] PTO¶349; JX0670.0002.

[2] JX00251.0001.

[3] PTO¶253-261, 264-266, 268, 278, 284; JX0670.0002; JX0251.0001; JX0261.0001; JX0273.0003; JX0316.0001.

[4] PTO¶269-270; JX0248.0004.

[5] PTO¶262; JX0208.0001.

[6] *See, e.g.*, JX0315.0001 ("From orlando[Bravo]: 'Unreal meeting. I love Tony man. We want to do this deal. Can I call you when land? He is the most inspiring and down to earth ceo I've met.'").

[7] As discussed below, the financing sources Aquila worked with during the spring – Goldman Sachs on debt and Koch on equity – were the ones who ended up financing the Take Private.

the time – next 4-6 weeks"[8] to get a deal done. Only after Aquila had put the Take Private in motion and spoken with multiple private equity firms who could sponsor the deal and to bankers who could finance it did Solera form a Special Committee to try to "duplicat[e]" the "arms-length process"[9] that should have been run from the outset. Because the conflicted Aquila and his Rothschild banker were the true "architects" "from [the] beginning as to how to engineer the process from start to finish,"[10] the Committee's efforts – however well-intentioned – amounted to nothing but window dressing.

Second, the evidence will establish that the Take Private was negotiated off a stock price that did not reflect Solera's fair value. Due to competitive concerns, Solera management had intentionally withheld information from the market that analysts needed to properly value the Company, which caused Solera stock to trade at a steep discount to its fair value. This disconnect was compounded by the fact that Solera had made a number of long-term investments in the years preceding the Take Private that had depressed the Company's earnings per share. The market's failure to credit the Company's transformation from a pure claims processing business to a diversified risk and asset management business, coupled with an

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[8] JX0234.0001.

[9] JX0380.0004.

[10] PTO¶349; JX0670.0002.

overhang from long-term investments that was depressing the Company's stock price, set the stage for an opportunistically timed deal negotiated off a trough price.

Third, the evidence will establish that the sale of Solera took place during a time of extraordinary market dislocation and historically high market volatility.[11] While these short-term market conditions did not impact Solera's intrinsic value, they had a direct impact on the reliability of the sales process to indicate fair value. Each of the three potential buyers who made offers for Solera was forced to lower its initial offer to accommodate adverse changes in the terms of available financing and the evaporation of their co-investor base.[12]

Binary Decision Two: Does Solera Need To Reinvest Cash In Excess Of Depreciation To Grow At The Rate Of Inflation?

Cornell weights his DCF 100% in valuing Solera; Hubbard claims that his DCF supports his "deal price less synergies" fair value conclusion. Cornell's DCF value is $84.65; Hubbard's is $53.15.[13] Much of the difference between the experts' DCF valuations can be bridged by deciding a single question: Does a

[11] *See generally* BOR.

[12] *See infra* at 25-27.

[13] During his deposition, Professor Hubbard admitted that he had made an error in deducting 55 cents from Solera's equity value for an early redemption fee on some of its debt. Hubbard 5:9-6:17. Because this fee would not have been incurred absent the Take Private, Professor Hubbard admitted that this 55 cent per share deduction was inappropriate. *Id.* Correcting the admitted error raises Professor Hubbard's DCF value to $53.70.

company need to reinvest new cash in excess of depreciation to grow at the rate of inflation in the terminal period?

Under Professor Cornell's model, in the terminal period Solera needs to invest capital in excess of depreciation only to fuel ***real growth***, i.e., Solera does not have to invest new cash in excess of depreciation to experience inflationary growth, because such "growth" occurs automatically. Professor Cornell has calculated that in the terminal period Solera will need to reinvest – or "plow back" – 11.1% of every dollar earned to fuel 1.25% real growth (i.e., his 3.25% PGR less 2% inflation).

Under Professor Hubbard's model, in the terminal period Solera would need to expend capital in excess of depreciation to fuel ***all growth***, i.e., Solera has to reinvest new cash to experience both real and inflationary growth. Professor Hubbard calculates that in the terminal period Solera will need to plow back 37.1% of every dollar that it earns to fuel 1% real growth (i.e., his 3% PGR less 2% inflation).

Deciding whether Solera needs to plow back cash in excess of depreciation to grow at the rate of inflation bridges most of the gap between the experts' DCF

models. Using Professor Cornell's plowback ratio in Professor Hubbard's model with no other changes raises Professor Hubbard's DCF value to $77.05.[14]

The evidence will demonstrate that Professor Cornell's approach to calculating plowback is correct, while Professor Hubbard's approach is wrong and results in scenarios that are economically unsupportable.

* * *

While the trial likely will focus on the two binary decisions laid out above, the Court will be called upon to resolve several other issues relating to the DCF models, including (1) extent to which Solera can be expected to earn an ROIC in excess of its WACC in the terminal period; (2) whether to deduct for speculative tax liabilities relating to Solera's offshore earnings in converting enterprise value to equity value; and (3) whether to add back all of Solera's balance sheet cash in converting enterprise value to equity value. Petitioners also provide a brief discussion of these issues below.

BACKGROUND OF THE TAKE PRIVATE

A. OVERVIEW OF SOLERA

Tony Aquila founded Solera in March 2005. At that time, Solera was an insurance claims processing business. Aquila took the Company public in May

[14] Factoring in the 55 cent increase from correcting the early redemption fee mistake, Professor Hubbard's DCF would rise to $77.60 if he used Professor Cornell's plowback ratio.

2007 and has served as Chairman of the Board, President, and CEO since that time. Aquila exercised tight control over Solera, imprinting the Company with a "pervasive founders' culture."[15] Aquila was so critical to the Company's success that the Board's Compensation Committee was told that "Solera possibly couldn't exist without Tony."[16] Solera, simply, was "Tony's company."

In 2012, Solera implemented "Mission 2020." Under Mission 2020, Solera set a goal of reaching $2 billion in revenue and $800 of EBITDA by its 2020 fiscal year.[17] In furtherance of Mission 2020, in 2013 Solera implemented its "Leverage. Diversify. Disrupt."[18] ("LDD") strategy. Pursuant to LDD, Solera "leveraged" its foothold in the claims processing business to allow the Company to "diversify" into adjacent offerings, including vehicle validation, valuation and salvage; violation monitoring;[19] maintenance and repair estimation;[20] and repair facility marketing.[21] Long-term, Solera sought to "disrupt" the market by connecting its platforms, transforming the car into another smart appliance within the home with

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[15] JX0174.0002.

[16] *Id.*

[17] Solera operated on a June 30 fiscal year. Fiscal year 2020, accordingly, ends on June 30, 2020.

[18] PTO¶132; JX0424.0004.

[19] JX0599.0015.

[20] JX0936.0001.

[21] JX0950.0001.

owners looking to use digital tools to manage their auto and home ownership experiences, including purchase, maintenance, and accident repair.[22] Through LDD, Solera was able to diversify its revenue mix to insulate itself from anticipated slowed growth in its claims segment due to developing collision avoidance technology.[23]

LDD was a huge success. In 2007, 94% of Solera's revenue came from claims; by 2015, Solera had expanded its TAM sixfold, to $29 billion, with claims comprising only 57.7% of the Company's revenue.[24]

In addition to the adjacent products Solera had rolled out in the years preceding the Take Private, by 2015 Solera had begun to develop a smartphone application called the "Digital Garage." Digital Garage was designed to provide vehicle owners with a one-stop-shop for historical vehicle and parts information; a direct line for roadside assistance and service repairs; alerts for upcoming service repairs and other vehicle-related issues; and information about insurance policy rates. Solera hired McKinsey to perform a study to assess the size of the Digital Garage opportunity. McKinsey found that Digital Garage could generate revenues

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[22] JX0599.0009.

[23] PTO¶134-137; JX0334.0025; JX1102.0002 ("SLH, about 5-6 years ago, identified this eventual impact [of collision avoidance technology] to claims and embarked on its LDD diversification strategy.").

[24] PTO¶135-137; JX0363.0025; JX0424.0005.

of $28 million - $56 million per year under a "highly conservative" scenario and up to $164 million - $445 million per year under an "aggressive" scenario.[25] As of August 2015, Solera estimated that Digital Garage would increase its TAM by $1.5 billion.[26]

Between its adoption in 2012 and the Take Private, Solera had consistently met its interim Mission 2020 targets for revenue and EBITDA. Solera was doing so well, in fact, that at the end of its 2014 fiscal year it raised its Mission 2020 EBITDA target to $840 million. In a July 20, 2015 presentation, Solera management told the Board that the Company remained "on track to Mission 2020."[27]

In the decade preceding the Take Private, Solera delivered strong financial performance, consistently outperforming[28] and posting double-digit revenue CAGRs ranging from a "low" of 28.9% in FY06 to as high as 45.2% in FY12:[29]

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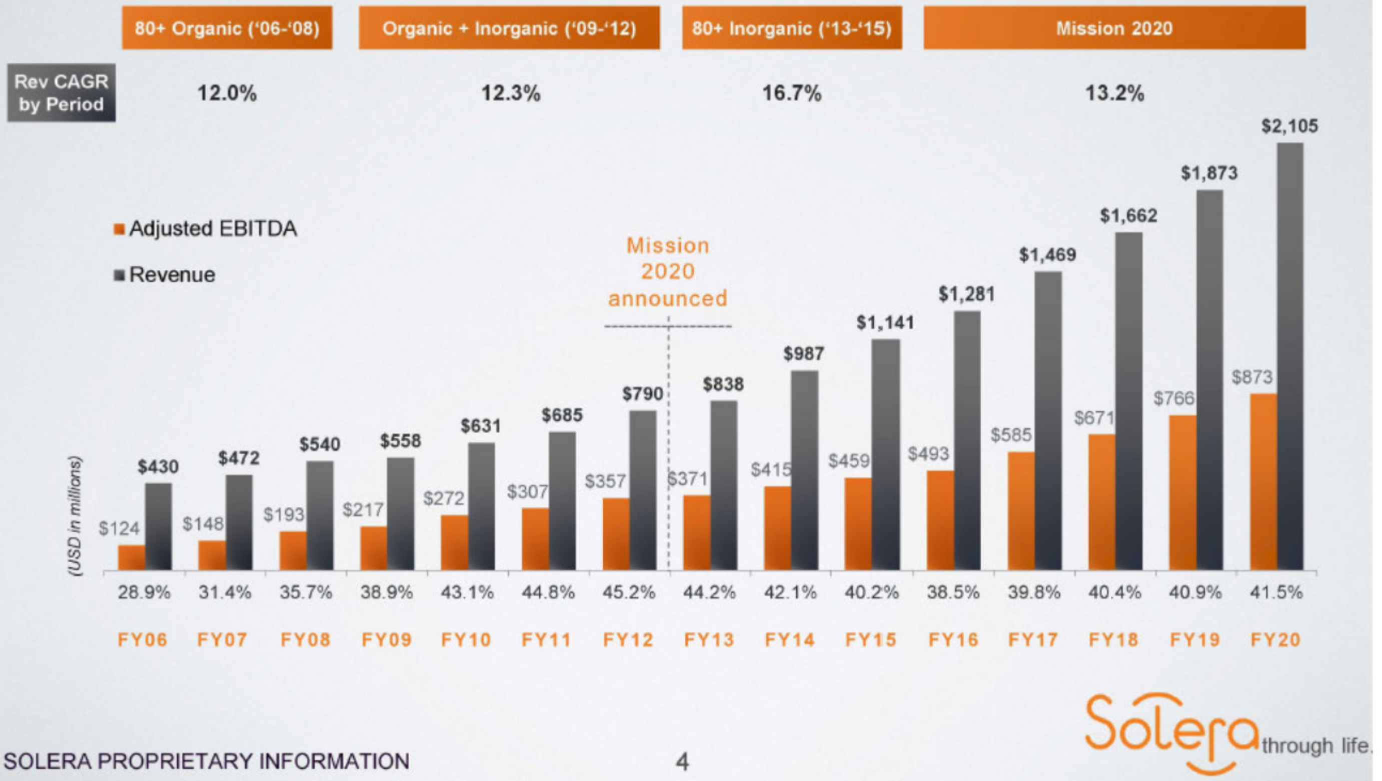
[25] PTO¶142; JX1103.0001.

[26] PTO¶143; JX0435.0020.

[27] JX0334.0025.

[28] JX0424.0004.

[29] JX0424.0005.



This strong performance continued in Solera's 2016 fiscal year. In the first quarter of 2016 (ended September 30, 2015), Solera beat its plan for both revenue and EBITDA.[30] In the second quarter of 2016 (ended December 30, 2015 – the last quarter completed before the closing of the Take Private), Solera again beat its plan for both revenue and EBITDA.[31]

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[30] PTO¶194-196; JX0755.0005.

[31] PTO¶198-200; JX0807.0004.

In short, at the time of the Take Private, Solera was a highly-valuable asset[32] that was poised to realize the benefits of the long-term investments it had made in prior years.[33]

B. CITING COMPETITIVE CONCERNS, SOLERA MANAGEMENT WITHHOLDS INFORMATION NEEDED TO PROPERLY VALUE THE COMPANY, CAUSING SOLERA'S STOCK PRICE TO TRADE AT A SHARP DISCOUNT TO THE COMPANY'S FAIR VALUE

Despite its strong performance, Solera's stock traded at a sharp discount to its fair value – a fact widely noted by Solera management;[34] the Board;[35] the Company's bankers;[36] the Special Committee's financial advisor, Centerview;[37] Solera investors;[38] and securities analysts.[39] Aquila himself had contributed to this

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[32] JX0363.0025.

[33] JX0818.0009.

[34] PTO¶238 (Aquila: "I don't really focus on short-term stock price too often, although I do feel it's quite dislocated from fair value today.").

[35] Yarbrough 87:11-14.

[36] JX0133.0004 (Goldman Sachs recommends stock buybacks to "capture recent stock price dislocation"); JX0154.0020 (Goldman Sachs: "Given current dislocated share price, SLH may wish to buy back a meaningful amount of stock now rather than waiting until further clarity emerges on acquisitions."); JX0301.0001 (Goldman Sachs: "We see SLH trading 1x to 1.5x too cheap vs. our coverage on NTN EV/EBITDA given in-line organic revenue growth."); JX0148.0007 (JPMorgan: "SLH is trading at an opportunistic valuation with the lowest valuation in its peer group").

[37] .

[38] JX0302.0007 ("We think that Solera stock is nearly 50% undervalued.").

disconnect. Fearing that disclosing too much information would harm the Company's competitive position, Aquila chose to withhold information about the Company from the public markets.[40] This decision, in turn, prevented analysts from fairly valuing Solera[41] as they failed to understand the Company's transformation from a pure claims processing business to a diversified risk and asset management business.[42]

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[39] JX0175.0107 (Solera is "undervalued"); JX0325.0001 ("In our view, SLH is a multiple reversion towards the mean story in 'show me' mode, trading too cheap vs. coverage give in-line 8% 3-year organic revenue CAGR and above peer 39%-40% EBITDA margins.").

[40] PTO¶243 ("What annoys me is the fact that we're not getting credit for who we are and that – now, long-term I believe that'll fix itself – but, look, as part of all this and listening to everybody I've agreed to give you more and more visibility so you can really see because I want no reason why we are not viewed as a risk and asset management company…We're going to continue to give you guys more visibility. We just have to do it in a way where it doesn't like give our competitors too much knowledge."); JX0377.0050 ("Management takes combative approach to investor communications.").

[41] PTO¶244 (Barclays analyst: "Competition prevents SLH from disclosing much – which in turn impedes us from understanding and modeling the business appropriately.").

[42] Aquila 49:9-50:16; JX0238.0030 ("The Company continues to be seen as a claims processing/software company instead of a risk and asset management company."); JX0377.0052 ("CFO expressed a view that sellside models are generally inconsistent with management's view as analysts do not yet fully understand the Company's ongoing evolution.").

The failure to understand Solera's business was compounded by analysts' taking a "show me"[43] attitude towards Solera's long-term investments. In the years preceding the Take Private, Solera had made a number of long-term investments that had depressed EPS in the 2013 to 2015 fiscal years. Solera management told the Board that the Company was poised to "harvest returns" from these investments beginning in its 2016 fiscal year.[44]

C. FRUSTRATED WITH HIS COMPENSATION, AQUILA "ARCHITECTS" A GOING PRIVATE TRANSACTION TO "TAKE BACK CONTROL" OF HIS COMPANY

As Solera's stock price lagged, so, too, did Aquila's personal compensation. Because Aquila's compensation was tied to "total shareholder return" ("TSR"),[45] the majority of his options were underwater and Aquila had received no bonuses in

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[43] JX01101.0013 ("We believe that SLH's fundamental outlook remains very favorable, yet the stock is in a 'show me' phase after three consecutive fiscal years of flat adjusted EPS growth mainly related to increased borrowings and interest expense for acquisition activities."); JX0301.0001 ("We believe SLH is currently a 'show me' story, with many investors indicating they would like to see a bridge between mid -single digit organic growth plus many small deals today to $2bn in revenue by 2020.").

[44] JX0334.0025 ("Investments and leverage lowered cash EPS growth between fiscal year 13 through 15, positioned to harvest returns in fiscal year 16 through 19 from prior investments for accelerated cash EPS growth."); JX0818.0009 ("We're now entering Solera 3.0, and you'll be seeing us proliferate platforms, in effect realizing many of the strategic investments we have been making over the past few years."); JX0367.0011 (margins had declined due to the $5 billion Solera had spent on acquisitions over the prior 5 years; margin expected to trough in first half of FY16).

[45] JX0088.0002.

2011, 2012 and 2013[46] even though he had guided the Company to stellar financial performance.[47] Frustrated, in February 2015, Aquila demanded that the Compensation Committee rectify the situation;[48] if they did not, Aquila threatened that he would leave.[49]

Shortly thereafter, Aquila began to take meetings with private equity firms about potential take-private transactions. Aquila's bankers – David Baron of Rothschild,[50] Eric Menell of JPMorgan,[51] and Christina Minnis[52] and Greg Lemkau of Goldman Sachs[53] – reached out to their private equity contacts to drum up a sponsor. Outreach to PE firms on Aquila's behalf began in March 2015 (right after Aquila threatened to quit) and continued through the spring. In May and June 2015, Rothschild took meetings on Aquila's behalf with ***seven*** private equity

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[46] JX0402.0004 (Aquila held 1.3 million underwater options; no bonuses in FY2011, 2012, and 2013).

[47] JX0402.0003 ("Approximately $2 bn equity value creation since IPO and > $3.3 bn enterprise value creation since IPO";"Share price appreciation of 134% since IPO vs 40% increase in S&P 500;implied CAGR of ~ 11%";"Management successfully integrated > 25 acquisitions, adding ~ $800m in additional revenue").

[48] PTO¶222; JX0170.0001.

[49] PTO¶224; JX0174.0002.

[50] JX0670.0002.

[51] PTO¶253,257,260; JX0182.0001.

[52] PTO¶255-256; JX0183.0001.

[53] PTO¶258; JX0192.0001.

firms,[54] and in May, Aquila met in person with two: Silver Lake[55] and Vista,[56] which ultimately bought Solera in a deal in which Aquila invested $45 million and obtained a compensation and package potentially worth nearly $1 billion.[57] In June 2015, Aquila met with a third private equity firm, Blackstone,[58] and in July a fourth, Thoma Bravo.[59] For each of the meetings with the PE firms going back to April, Rothschild put together a slide deck presentation about Solera, which was vetted in advance with Aquila.

At the same time he was meeting with and speaking to private equity firms, Aquila dispatched his bankers to perform LBO analyses for Solera. In June 2015, Goldman Sachs put together a series of LBO analyses, code named "Project Silver," and circulated them to Aquila and Solera's CFO Renato Giger. Goldman Sachs would ultimately provide $245 million in preferred equity financing and more than $3.7 billion in debt financing for the Take Private.[60]

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[54] JX0670.0002.

[55] PTO¶274; JX0261.0001.

[56] PTO¶274; JX0251.0001.

[57] JX0762.0010.

[58] PTO¶277; JX0273.0003.

[59] PTO¶284; JX0315.0001.

[60] PTO¶115; JX0673.0003.

On a parallel track, because he knew that most PE firms would be unable to fund the entire equity portion of an LBO on their own,[61] beginning in late April 2015, Baron reached out to Koch about providing equity financing for the planned LBO.[62] Koch would ultimately provide nearly $113 million in common equity and nearly $614 million in preferred equity financing for the Take Private,[63] together with a $250 million equity bridge for which it earned a fee of more than $20 million.[64]

From the outset of the discussions with PE firms, it was clear that Aquila continuing as CEO in the private Solera was a necessary condition of any deal. Baron told Koch: "Ceo objective is to try to get control back."[65] A July 24, 2015 presentation by Pearl Meyer – compensation consultant to the Compensation

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[61] Baron 52:24-53:1 ("There's not a sponsor on the planet that's writing a check for $3 billion of equity without significant support from their LPs.").

[62] JX0208.0001.

[63] PTO¶115; JX0673.0003.

[64] JX0673.0005.

[65] JX0208.0002.

Committee[66] – stated: "***Without CEO, there is presumably no deal*** – it is clear P[rivate] E[quity] is interested in partnering with CEO, so CEO can command a higher-than-typical participation rate."[67] Having lined up a list of eager partners, Aquila was poised to "get control back."[68]

The efforts of Aquila and Baron culminated on July 19, 2015, when Thoma Bravo sent Aquila a "Letter of Intent" to acquire Solera. This was no surprise: Aquila had met with Thoma Bravo (and Orlando Bravo personally "two or three times")[69] before the Letter of Intent was sent to Aquila "Per your (Tony's) dialogue w/Orlando."[70] Further, Thoma Bravo made clear that it wanted Solera ***only if*** Aquila would be part of "private Solera."[71]

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[66] While Aquila was out shopping for a private equity sponsor, the Compensation Committee was working to address Aquila's complaints about his compensation. In a July 22, 2015 email to Pearl Meyer, Dattilo asked for information about "going private transactions **in which the CEO and team will continue to run the company**" because "[t]hat would be very relevant information in judging the #s we want to do." JX0351.0001. The reason this information would be "very relevant" is obvious: the Compensation Committee ***knew*** that Aquila would evaluate anything it was going to offer him against the alternative Aquila was pursuing: "***a going private transaction in which the CEO and team will continue to run the company***."

[67] JX0361.0008.

[68] JX0208.0002.

[69] Aquila 168:18-23.

[70] JX0340.0001.

[71] JX0340.0004 ("We are contemplating this deal solely in the context of being able to partner with Tony Aquila and his management team.").

D. THE BOARD FORMS A SPECIAL COMMITTEE TO WHITEWASH THE PROCESS

Solera's Board recognized that allowing Aquila to shop his Company would pose a clear "substantive conflict"[72] of interest because management is frequently invited to become an equity participant in an LBO.[73] To attempt to mitigate this conflict, the Board formed a Special Committee on July 20, 2015 in an effort to "duplicat[e] an 'arms-length' process."[74]

The Special Committee retained Centerview as its financial advisor. [REDACTED] [REDACTED].[75] [REDACTED] [REDACTED].[76]

Armed with advice on how to put on the appropriate show, the Special Committee set about checking the relevant boxes. But while the Special Committee went through the motions of running a process, its efforts could never change the unescapable fact that ***long before the Special Committee was even***

[72] Yarbrough 105:23-25.

[73] Yarbrough 34:6-12.

[74] JX0380.0004.

[75] [REDACTED]

[76] [REDACTED]

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formed Aquila (1) had resolved to take Solera private following a dispute about his compensation; (2) had his bankers at Goldman Sachs prepare LBO analyses for him; (3) had reached out to Koch about equity financing; and (4) had solicited a host of private equity firms to be his partner, including both his eventual sponsor (Vista) and his runner up (Thoma Bravo), while excluding strategics from this process.[77] The process, in short, was doomed before it even began to be nothing but window dressing.

E. THE SPECIAL COMMITTEE RUNS A PERFUNCTORY PROCESS AND PROCEEDS WITH A SALE OF SOLERA IN THE FACE OF HISTORIC VOLATILITY IN THE DEBT AND EQUITY MARKETS THAT HAMPERED WHAT BIDDERS COULD PAY

After the Special Committee was formed, it ran "a small process"[78] that lasted just six weeks. The Special Committee contacted eleven private equity firms. Aquila (either directly or through Rothschild) had previous contacts with nine of them ***before*** the Special Committee had been formed.[79] And the three that would ultimately submit offers – Vista, Thoma Bravo, and Pamplona – had all been contacted months before.[80] In fact, ***Aquila himself*** had had discussions or meetings with each of these three firms before the Special Committee was

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[77] JX0363.0027.

[78] JX0614.0004.

[79] *Compare* JX0429.0004 *with* [redacted] [redacted] and JX0372.0002; JX0670.0002.

[80] *See supra* n.57; PTO¶254,260,268.

formed.[81] After news of the sales process leaked on August 19, two additional private equity firms – Advent[82] and Providence Equity[83] – reached out to Centerview to express interest. Aquila's banker, Baron, told Centerview that "Tony [was] not a fan" of Providence Equity.[84] No one told the Special Committee about either of these potential bidders[85] and neither participated in the process.[86] The so-called "sales process" did nothing to attract "new" financial sponsors to Solera.

The process fared no better with respect to strategics. Aquila had no interest in and made no serious attempt to speak with a potential strategic bidder before the Special Committee was formed. [redacted]

[redacted].[87] These "contacts" consisted of perfunctory phone calls followed up with emails sending the deck that ***Rothschild*** had created for its discussions with private equity firms.[88] None were

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[81] *See supra* n.57, 59; Aquila 173:11-174:10.

[82] JX0497.0001.

[83] JX0556.0001.

[84] JX0556.

[85] Yarbrough 174:7-9,173:25-174:6.

[86] [redacted].

[87] JX1107.0001.

[88] JX0386.0002; JX0388.0002; JX0405.0002; JX01105.0002

interested.[89] The strategic identified as being the most likely to be interested in buying Solera – IHS – was not contacted. Aquila had said "no on IHS."[90]

F. The Special Committee Undermines The Integrity Of The Process By Allowing Baron To Play A Continuing Role In The Sale Of Solera And Tipping Bidders On The Expected Price Outcome

The integrity of the sales process was further undermined by the continued involvement of Aquila's banker, David Baron, in the sale of Solera. The testimony from the Special Committee and [redacted] is unequivocal that Baron was working for Aquila.[91] Given Aquila's obvious conflicts of interest, Baron was equally tainted. Despite this, Baron was intimately involved in the sale of Solera, in many instances acting alone (i.e., without Centerview) in having discussions

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[89] JX0756.0043; PTO¶298.

[90] JX0378.0001.

[91] While Rothschild signed an engagement letter in August to serve as ***Solera's*** financial advisor, the contemporaneous evidence makes clear that Baron was working for ***Aquila***. On July 29, 2015 – months after he started working with Aquila to find a private equity dance partner – Baron signed a non-disclosure agreement relating to Rothschild's "***representation of Tony Aquila, the Company's founder, Chairman, CEO and President, in connection with a possible change of control transaction***." JX0375.0002. Yarbrough considered Baron to be Aquila's advisor. Yarbrough 79:22-24. [redacted]). An amendment to Rothschild's engagement letter with Solera required Rothschild to give up $4 million of its transaction fee if ***Aquila*** asked it to. PTO¶91. Baron was "Tony's guy."

with the potential buyers[92] and financing sources.[93] Baron was able to influence who was invited into the sales process: Baron told Centerview that IHS was "no per Tony" – and IHS was excluded from the sales process.[94] Baron said that Aquila was "not a fan" of Providence Equity – and Providence Equity did not participate in the sales process. In addition, both Aquila and Baron had numerous meetings and discussions with Vista and Thoma Bravo during the heart of the sales process without the involvement of Centerview or the Special Committee. In short, Rothschild was "***the architect with the CEO from the beginning as to how to engineer the process from start to finish***."[95] Rothschild's ongoing involvement undermined what was already a perfunctory process conducted by the belatedly formed Special Committee.

In addition to allowing Rothschild to play a continued role in the sales process, the Special Committee undermined the sales process by tipping potential buyers off to the appropriate offer range. [redacted]

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[92] JX0467.0001 (Silver Lake told Baron, not Centerview, that it was not going to make an offer for Solera); JX0456.0001 (Baron email to Pamplona: "Tony remains v excited by potential partnership w you + Pamplona…Let me know if there's anything my team can do today/tmrw to advance your objectives in advance of Cmte"); JX0627.0001 (communications with Pamplona about its willingness to join with Thoma Bravo in making an offer for Solera).

[93] PTO¶262;JX0457.0001.

[94] JX0378.0001. As noted below, IHS subsequently forced its way into the sales process after news of the potential take private leaked.

[95] PTO¶349.

.[96] Giving Vista this information placed a cap on the price buyers expected to have to pay, further undermining the process.

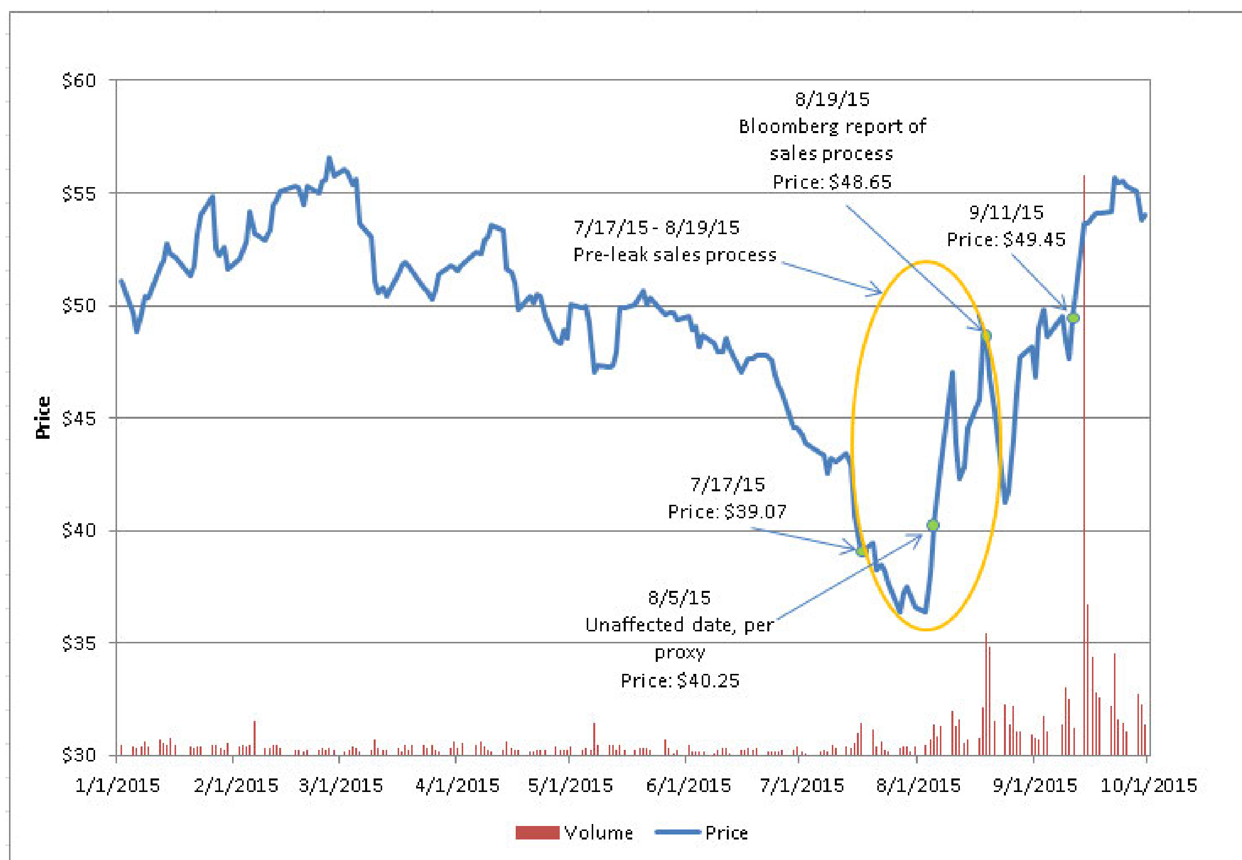
G. THE SPECIAL COMMITTEE PROCEEDS WITH THE SALE OF SOLERA IN THE FACE OF HISTORICALLY HIGH MARKET VOLATILITY AND ADVERSE FINANCING CONDITIONS THAT "WREAKED HAVOC" ON THE SALES PROCESS

In addition to the irremediable taint flowing from a sales process that was architected by the CEO and his banker which started months before the Special Committee was even formed, the sales process took place against the backdrop of a trough trading price and historic market volatility that wreaked havoc on the terms of available debt and equity financing.

Solera was trading at a trough during the sales process. Between July 13, 2015 and July 27, 2015, Solera's stock price fell 16.2%, dropping from $43.44 to $36.40 (its lowest level since August 2010) following the Company's announcement that it had acquired the remaining 50% of a company called

[96] Sowul 58:3-8; *see also* JX0544.0002 ("Our bidding strategy was based on a variety of inputs we received over the last few weeks about the process, other parties, and the company's expectations.").

Identifix.[97] The Company hit a trough in the middle of the Special Committee's sales process:



Solera's trough price set the stage for an opportunistically timed buyout.

In addition, this six week process occurred during an extraordinary surge in market volatility and uncertainty in global markets that started just as the process commenced and worsened right as the remaining buyers were attempting to line up

97 PTO¶250; JX0346.0001 ("[S]everal analysts reduced [EPS] estimates last week following announcement SLH agreed to acquire the remaining 50% of Identifix and announcement/execution of its related note offering; SLH shares meaningfully underperformed in conjunction, ahead of F'16 guidance release.").

financing for their offers.[98] Dr. Buckberg will testify concerning the impact such volatility has on investments in general and had on the sale of Solera in particular. On August 24, 2015, in the middle of discussions with the private equity firms who were considering sponsoring the Take Private, the VIX (the so-called "fear index") spiked, reaching its highest level since January 2009 and a level exceeded only six other times in the preceding twenty seven years.[99] In addition to the VIX spike, the equities markets dropped sharply. Between August 17, 2015 and August 25, 2015, the S&P 500 dropped 11.2%, the Dow Jones dropped 10.7%, and the NASDAQ Composite dropped 11.5%.[100]

This unusual and extreme volatility in the financial markets during the sale of Solera had a series of negative effects. First, it was highly unlikely that any of the PE firms considering a deal with Solera could have written the entire equity check necessary to buy Solera on its own;[101] but in the wake of the volatility, firms' limited partners evaporated[102] and they were forced to turn to an extremely expensive equity bridge from Koch to close the deal.[103] The evidence will show

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[98] BOR at 2.

[99] BOR¶¶40-41.

[100] BOR¶¶34-36.

[101] Baron 52:24-53:1 ("There's not a sponsor on the planet that's writing a check for $3 billion of equity without significant support from their LPs.").

[102] Baron 76:5-8.

[103] BOR¶¶80-88.

that the Special Committee was aware that, as its Chairman admitted, "market volatility was wreaking havoc on the sales process."[104]

Second, the volatility caused financing terms to worsen. This, in turn, forced the private equity firms to drop their offers as increased funding rates prevented the firms from being able to pay fair value for Solera while still hitting an acceptable IRR. Vista – the eventual sponsor of the Take Private – submitted its initial indication of interest on August 17, 2015 at $63; on September 4, 2015, Vista lowered its offer to $55. In explaining this drop to its Investment Committee, Vista attributed nearly 60% of the $8 drop to adverse changes in Vista's anticipated financing[105] – ***factors that have absolutely nothing to do with Solera's fair value.***

After the $63 to $55 drop, Vista lowered its offer a second time – to $53 – after one of its anticipated sources of equity financing dropped out.[106] [Vista subsequently secured additional financing and submitted its final offer at $55.85 on September 12, 2015.]

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[104] Yarbrough 192:8-11.

[105] Vista attributed $4.60 of the $8 reduction to financing-related expenses ($2.70 to Goldman Sachs debt, $0.50 to Series A preferred equity, and $1.40 to the Koch bridge). JX0620.0002.

[106] [redacted].

Thoma Bravo – the sole PE potential sponsor remaining after Pamplona dropped out on August 25, 2015[107] – also reduced its offer in response to adverse financing conditions. On August 17, 2015, Thoma Bravo submitted an offer at $60 per share. By August 24, 2015, Thoma Bravo had told Centerview that it was having a hard time getting enough equity financing to support that offer.[108] On September 4, 2015, Thoma Bravo submitted a lowered offer at $56, attributing the drop to "challenges in availability and terms of financing (both equity and debt)" in the wake of "turbulence in global financial markets."[109] On September 11, 2015, Thoma Bravo again lowered its offer to $54 because it was unable to get financing for the $56 offer.[110]

The evidence at trial will show that worsening financing conditions and the evaporation of potential equity co-investors in the face of historic volatility caused the private equity firms[111] who were interested in buying Solera to drop their offers

[107] JX0548.0001.

[108] PTO¶310; JX0756.0047.

[109] PTO¶322-323; JX0634.0033.

[110] [redacted].

[111] The lone strategic who expressed interest in Solera – IHS – had planned to finance its acquisition in large part with IHS stock. IHS dropped out on September 29, 2015, telling Centerview that it was "very concerned about the decline in IHS's stock price over the past several weeks in response to rumors that IHS was exploring a Transaction and that debt financing costs had increased, adversely changing the returns that IHS could realize in a potential Transaction." JX0728.

even though there had been ***no underlying change in Solera's business or expected future performance***.

It was, simply, the "wrong time" to sell Solera. The Special Committee admitted that there was no reason that Solera had to be sold in August 2015.[112] But Tony Aquila and Baron had put the train in motion months before and the Special Committee refused to stop it, or even consider pausing the process.

H. THE SPECIAL COMMITTEE ACCEPTS VISTA'S $55.85 OFFER; AQUILA INKS A DEAL WITH VISTA WITH A POTENTIAL PAYOUT OF NEARLY $1 BILLION

On September 12, 2015, the Special Committee accepted Vista's $55.85 offer. Glass Lewis recommended that Solera stockholders vote against the deal:

> Ultimately, we question the recommendation to accept Vista's current offer for the Company at this time. The proposed purchase price of $55.85 is 11.3% below Vista's initial indication of $63 per share and slightly below the $56 per share low end of the range first offered by another private-equity firm. Clearly, that's the opposite of what a board is aiming for when it initiates a sale or auction process following the receipt of interest from multiple parties. Notably, ***the successive lower bids seem to be the result of extenuating market conditions outside of the control of the board or management, and not the result of further diligence efforts by the prospective buyers, the emergence of potential industry or company-specific issues, or the business or financial performance of the Company***, each of which may have justified a lower valuation. ***Rather, the lower bids and final purchase price appear to be mostly the result of poor timing and temporary volatility in the broader financial markets***…

[112] Centerview and Rothschild also noted that adverse market conditions were undermining the sales process. [REDACTED]; Baron 149:13-21.

> ***We ultimately believe that primarily as a result of poor timing and extenuating market conditions – factors unrelated to the Company's standalone business performance and prospects – the board was unable to obtain a fair or attractive price and instead accepted an offer that appears to undervalue the Company and insufficiently compensates shareholders for both the past and reasonably-expected future financial performance of the Company***.[113]

While the $55.85 price did not provide fair value for Solera's stockholders, it positioned Aquila to become a billionaire. Once the Special Committee signed off on the $55.85 deal, Vista and Aquila worked out the financial terms of Aquila continuing as CEO in the post-closing private Solera. On October 15, 2015, Vista sent Aquila a proposed compensation package under which Aquila would have 6% of "private Solera's" fully diluted equity.[114] This generous offer would have placed Aquila well above the 75th percentile[115] of the equity stakes given to CEOs in LBOs between 2013 and March 2016.[116] Aquila immediately forwarded this

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[113] PTO¶357-359; JX0776.0010.

[114] JX0744.0003.

[115] An "opening offer" on such decidedly advantageous terms is strong circumstantial evidence that Vista knew what Aquila was expecting and was willing to accommodate him. It is difficult to imagine that Vista would a have opened with such an outsized offer if there truly had been no prior discussions of Aquila's continued role in "private Solera."

[116] JX0838.0004 (75th percentile for CEO percent of fully diluted shares at 4.4%).

offer to Baron,[117] commenting that the equity valuation at exit (calculated to be as high as $500 million) had to be higher.[118]

Vista swiftly agreed to Aquila's terms. On November 6, 2015, Smith sent Aquila a revised proposal under which Aquila would have 10% of the fully diluted equity, giving him $258 million of "equity at work."[119] Aquila would invest $15 million of his own money in the deal and Vista would lend him $30 million more to invest. Under this proposal, Aquila stood to earn up to ***$969.6 million*** over a seven year period.[120] On March 4, 2016, Aquila signed an employment agreement on the same economic terms as the November 6, 2015 proposal.[121] The Employment Agreement provides Aquila an enviable upside of nearly $1 billion in exchange for rolling over his stake in "public Solera" (worth $15 million) and investing an additional $30 million that he had borrowed from Vista.

I. SOLERA'S PROJECTIONS OF FUTURE GROWTH ARE RELIABLE

At the time of the Take Private, Solera had strong prospects for future growth.

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[117] Baron's involvement in negotiating Aquila's equity stake in "private Solera" removes any doubt as to who he was working for. "Public Solera" would have no interest whatsoever in what "private Solera" would pay Aquila. Baron's continued involvement in this issue makes clear that he was working for Aquila.

[118] JX0744.0001.

[119] JX0760.0004.

[120] JX0760.0010.

[121] JX0855.0001.

1. Solera Followed A Robust, "Conservative" Process In Preparing Projections In The Ordinary Course Of Business

Solera followed a robust process in creating financial projections. In the ordinary course of its business, Solera projected its future performance for the next four years using its "1+3" process. Solera's "1+3 Plans" were developed between February and June of each year and reviewed by Solera's Board for approval each July. The "1" portion of each "1+3 Plan" was an operational plan and budget for the coming year and the "+3" portion was a strategic plan for the three subsequent years. To prepare these plans, Solera's regional managing directors and/or regional CFOs met and presented their regional plans, which were a combination of top-down and bottom-up projections. Solera's top management then consolidated these regional projections and presented the consolidated "1+3 Plan" to the Board. In presenting the "1+3 Plan," management did its best to arrive at the most accurate projections to give the Board.[122] In its presentations to investors, Solera represented that nearly all of its revenue was predictable[123] and touted the Company's "uncommon accuracy" in preparing projections.[124] While Solera touted its accuracy most vociferously with respect to year "1" of its 1+3 Plans, the Company also told investors that it had strong visibility into its revenue in the out

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[122] Aquila 37:24-38:2.

[123] JX01106 (97% of revenue was recurring; annual customer retention rates over 97%).

[124] PTO¶398; JX0424.0018.

years of the 1+3 Plans, because "over 40% of [Solera's] revenues are subscription based with an average contract length of 3 years in the U.S."[125] Solera management told investors on the Road Show for the Take Private that the Company had "a conservative projection methodology that we have relied on for years."[126]

On July 20, 2015, Solera's Board held a regularly scheduled meeting to review the Company's annual fiscal results and the "1+3 Plan" for fiscal 2016 through 2019 (the "July 1+3 Plan"). Management had prepared the July 1+3 Plan in the ordinary course of business without taking into account any private company synergies or cost savings and using the process described above for preparing 1+3 Plans. The Board approved this Plan.

As part of the sales process, in August 2015, Solera's management updated the July 1+3 Plan. This process included creating a detailed model supporting three cases – Hybrid, Organic and M&A Cases.

i. Hybrid Case

The Hybrid Case was the baseline plan setting forth financial performance projections for FY2016 – FY2020.[127] The Hybrid Case was, in essence, the July

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[125] JX0238.0017.

[126] PTO¶399; JX0818.0024.

[127] PTO¶389; JX0414.0006.

1+3 Plan with the following differences: (1) the July 1+3 Plan used June 2014 spot foreign exchange ("FX") rates, whereas the Hybrid Case used July 2015 spot rates; (2) the Hybrid Case assumed some revenue from Digital Garage based on "conservative"[128] projections, whereas the July 1+3 Plan did not; (3) the Hybrid Case and the July 1+3 Plan had different assumptions regarding M&A activity and investment;[129] and (4) the Hybrid Case included an extrapolated fifth year. In preparing the Hybrid Case, Solera management applied the same rigor that it typically applied to only the first year of the "1+3" plans to each of the years covered (i.e., the Hybrid Case reflected an 80% probability long-range plan).[130] The Board reviewed the Hybrid Case[131] and approved it at a meeting of the Board on August 5, 2015.[132]

The parties to the sales process treated the Hybrid Case as the "right projections" to use in valuing Solera. First, the Special Committee viewed the Hybrid Case as "the most realistic set of projections" to use in valuing Solera.[133]

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[128] JX0416.0006. The Digital Garage projections were developed by Solera management based on McKinsey's work. Giger 238-239; JX0334.0034.

[129] JX0414.0007.

[130] Giger 234:21-235:25.

[131] The Hybrid Case as finally adopted had been "haircut." Baron 114:13-22.

[132] PTO¶388; JX0414.0001.

[133] PTO¶392; Yarbrough 135:13-16.

Second, Centerview (at the Special Committee's direction) used the Hybrid Case[134] in preparing its fairness opinion.[135] Third, the Hybrid Case was disseminated to potential buyers.[136] Finally, the Hybrid Case was published in the Proxy.[137] Given these indicia of reliability, Professors Cornell and Hubbard both use the Hybrid Case in their DCFs of Solera.

ii. Organic Case

Solera's management prepared the Organic Case as a downside alternative to the Hybrid Case that contemplated a lower level of M&A investment ($60 million per year between fiscal 2016 and fiscal 2020).[138]

iii. M&A Case

Solera's management prepared the M&A Case as an upside alternative to the Hybrid Case that contemplated a higher level of M&A investment ($185 million to $350 million per year between fiscal 2016 and fiscal 2020).[139]

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134 [redacted]

135 PTO¶394; Yarbrough 134:11-14.

136 PTO¶393; Giger 222:9-16.

137 PTO¶395; JX0756.0069.

138 JX0414.0011; JX0416.0010.

139 JX0414.0012; JX0416.0011.

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Applying conservative assumptions to the Hybrid Case that was considered the most realistic set of projections for Solera, a DCF demonstrates that Solera's fair value at the time of the Take Private was $84.65.

ARGUMENT

The evidence will establish that the deal price does not reflect Solera's fair value as a going concern as of the Effective Date of the Take Private and that the Company is most accurately valued based on a DCF using the Hybrid Case. Solera's fair value as of the Effective Date was $84.65.

I. THE DEAL PRICE DOES NOT REFLECT SOLERA'S FAIR VALUE

The Delaware Supreme Court has long held that the merger price is not presumed to be the same as "fair value," regardless of the process through which the target was sold. In *Golden Telecom, Inc.* v. *Global LP*, 11 A.3d 214, 217-18 (Del. 2010), the Supreme Court made clear that "[r]equiring the Court of Chancery to defer – conclusively or presumptively – to the merger price, even in the face of a pristine, unchallenged transactional process, would contravene the unambiguous language of the statute and the reasoned holdings of our precedent."[140] The reason for this is simple: "***The concept of fair value under Delaware law is not***

[140] *See also In re: Appraisal of Dell, Inc.*, 2016 WL 3186548, at *23 (Del. Ch. May 31, 2016) ("[T]he Delaware Supreme Court has eschewed market fundamentalism by making clear that market price data is neither conclusively determinative of nor presumptively equivalent to fair value.").

equivalent to the economic concept of fair market value."[141] "The focus of the fair value calculation is on 'the value of the company [to the stockholder] as a going concern, rather than its value to a third party as an acquisition.'"[142]

Because fair value within the meaning of the appraisal statute is fundamentally distinct from fair market value, this Court has found that the deal price is a reliable indicator of fair value only where the evidence reveals a market value "forged in the crucible of objective market reality,"[143] that is, a deal price that "was 'the product of not only a fair sales process, but also of a well-functioning market.'"[144] Accordingly, this Court has recognized that a transaction price is "reliable [as an indicator of fair value] only when the market conditions leading to the transaction are conducive to achieving a fair price."[145] "The trial

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[141] *Merion Capital L.P. v. Lender Processing*, 2016 WL 7324170, at *13 (Del. Ch. Dec. 16, 2016) (quoting *Finkelstein v. Liberty Dig., Inc.*, 2005 WL 1074364, at *12 (Del. Ch. Apr. 25, 2005)).

[142] *In re Appraisal of PetSmart Inc.*, 2017 WL 2303599, at *27 (Del. Ch. May 26, 2017) (quoting *M.P.M. Enters., Inc. v. Gilbert*, 731 A.2d 790, 795 (Del. 1999)). *See also Highfields Capital, Ltd. v. AXA Fin., Inc.*, 939 A.2d 34, 42 (Del. Ch. 2007) ("It is well established that 'fair value' for purposes of appraisal is equated with the corporation's stand-alone value, 'rather than its value to a third party as an acquisition.'"); *see also Dell*, 2016 WL 3186538, at *21 ("The concept of fair value under Delaware law is not equivalent to the economic concept of fair market value.").

[143] *In re Appraisal of DFC Global Corp.*, 2016 WL 3753123, at *21 (Del. Ch. July 8, 2016).

[144] *PetSmart*, 2017 WL 2303599, at *27 (quotations omitted).

[145] *DFC,* 2016 WL 3753123, at *1.

court 'need not accord any weight to [values derived from the market] when unsupported by evidence that they represent the going concern value of the company at the effective date of the merger.'"[146]

Because the sale of Solera was the result of neither a fair sales process nor a well-functioning market, this is not a "deal price" case. The evidence will establish that (1) the sales process was flawed; and (2) the market conditions undermined the reliability of the sales process as potential buyers were forced to lower their offers in response to macroeconomic developments that had nothing to do with what Solera was worth as going concern.

A. SOLERA WAS SOLD FOLLOWING AN UNFAIR PROCESS

The evidence will show that the Solera sales process was unfair, for several reasons, including: (1) the process was commenced and conducted by an interested party – Aquila – long before appointment of a Special Committee; (2) Aquila's conflicts of interest tainted the sales process; (3) the continued involvement of Aquila's banker undermined the integrity of the Special Committee's sales process; (4) potential buyers were tipped to the "band" of acceptable purchase prices, placing an artificial cap on the offers; and (5) there was not robust pre-signing competition among heterogeneous buyers.

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[146] *Lender Processing*, 2016 WL 7324170, at *14 (quoting *M.P.M.*, 731 A.2d at 796).

1. Aquila's Conflicts Of Interest Tainted The Sales Process

The evidence will establish that Aquila's conflicts of interest tainted the sales process. Following a dispute over his compensation, Aquila (aided by Baron) spent the spring of 2015 searching for a private equity sponsor for what effectively became a management-led buyout. For months, Aquila took unsupervised meetings about a potential take private during which there was nothing stopping him from discussing the sub-par compensation that led him to want to take Solera private and what he expected in such a transaction. After Aquila and Baron thoroughly canvassed the private equity market for a sponsor and reached out to some debt and equity financing sources to check the feasibility of a take private, a Special Committee was formed to whitewash the process.

From the outset, it was clear that Aquila was going to be a part of any buyout. Each of the three offers for Solera expressly referenced the PE firm's assumption that it would be partnering with Aquila.[147] Several weeks before the Special Committee accepted its offer, Vista told one of its prospective limited

[147] JX0340.0003 (Thoma Bravo: "We are contemplating this deal solely in the context of being able to partner with Tony Aquila and his management team."); JX0464.0008 (Pamplona: "Our team is ecstatic about the opportunity to partner with Tony and other members of senior management"); JX0464.0005 (Vista under "Terms of Proposal": 2. "**Management**. Vista seeks to invest in and partner with superior management teams, offering them strategic and financial support as appropriate.…We have been impressed by the high caliber of the management team we have met, and look forward to forming a successful and productive partnership with them and the other members of the Solera management team.").

partner investors that Aquila was going to be running "private Solera."[148] But to avoid the heightened scrutiny required from structuring this deal as a *de jure* MBO,[149] Aquila put off reaching a formal deal with Vista until ***after*** the Special Committee accepted its $55.85 offer. This tactic allowed the Special Committee to claim "plausible deniability" as to the true nature of the Take Private while enabling Aquila to ink a deal that gave him ***a nearly $1 billion upside*** free from the questions this would have posed had he been more transparent about the end game. Because the value of Aquila's post-signing equity stake rises along with Vista's exit multiple, Aquila had an incentive during the sales process to "keep juice in the [Solera] lemon that he could use to make a financial Collins for himself"[150] after the Take Private. The evidence will allow the Court to dismiss as completely implausible Aquila's after-the-fact claim that he put Solera up for sale without having any assurance that he would be part of its continued future.

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[148] JX0590 ("We will absolutely work with Tony to get as many execs in there as we can to get trained up under his leadership and help him manage an organization that will double in size over the next 5-7 years.").

[149] *Dell*, 2016 WL 3186538, at *28 ("[T]he weight of authority suggests that a claim that the bargained-for price in an MBO represents fair value should be evaluated with greater thoroughness and care than, at the other end of the spectrum, a transaction with a strategic buyer in which management will not be retained.").

[150] *In re El Paso Corp. S'holder Litig.*, 41 A.3d 432, 444 (2012).

2. The Continued Involvement Of Aquila's Bankers Undermined The Integrity Of The Sales Process

The evidence will also establish that Baron's continued involvement in the sale of Solera undermined the integrity of the Special Committee's process. The Special Committee was formed for the express purpose of attempting to duplicate an arms-length transaction. Despite the Committee's awareness of Aquila's obvious conflicts of interest in negotiating a take private transaction, the Committee allowed Aquila's banker, David Baron, to play a continuing role in the sale of Solera. The evidence will establish that Rothschild's ongoing role tainted the sales process, as discussed above.

3.

4. Lack Of Competition *Ab Initio* From Strategic Bidders Participating On An Even Playing Field Undermines The Reliability Of The Deal Price

This Court has recognized the importance of heterogeneous bidders during the pre-signing phase to finding that a sales process served as a reliable tool for price discovery.[151] When the initial offers for Solera came in on August 17, 2015, there were ***none*** from any strategic buyer. The absence of competition from strategic buyers *ab initio* hampered the effectiveness of the sales process as a tool for price discovery.[152] As the Court noted in *Lender Processing*, "[a]mong homogenous bidders, a sale process functions as a common-value auction,[153] but with heterogeneous bidders, the sales process functions as a private-value auction. The latter is better for the seller because in a private-value auction, 'honest reporting of values is a dominant strategy for bidders.'"[154] Because financial sponsors "predominantly use the same pricing models, the same inputs, and the

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[151] *See, e.g.*, *Lender Processing*, 2016 WL 7324170, at *17.

[152] *See also* Guhan Subramanian, *The Drivers of Market Efficiency in* Revlon *Transactions*, 28 J. CORP. L. 691, 713 (2003) ("[T]he most important driver of market efficiency for [change of control] transactions [is] heterogeneous buyers.").

[153] "A common value auction is one in which 'every bidder has the same value for the auctioned object." Peter Crampton & Alan Schwartz, *Using Auction Theory to Inform Takeover Regulation*, 75 L. Econ. & Org. 27, 28-29 (1991). A private value auction is one in which 'the value of the auctioned object differs across potential acquirers." *Id.*

[154] *Lender Processing*, 2016 WL 7324170, at *17 (quoting Jeremy Bulow & John Roberts, *The Simple Economics of Optimal Auctions*, 97 J. Pol. Econ. 1060, 1065 (1989)).

same value-creating techniques,"[155] a sales process in which the sole potential buyers are private equity firms is a more akin to a private value auction and is less reliable as a tool for price discovery.

In addition, the evidence will establish that strategic buyers were at a disadvantage vis-à-vis the financial buyers that were Aquila's favored suitors. Aquila excluded strategic buyers for ***months*** before the Special Committee was formed. The Special Committee's tepid outreach to a handful of strategic buyers at the outset of the "official" sales process was insufficient to level the playing field.

The playing field was even ***less*** level with respect to IHS, the only strategic buyer who ever made an offer for Solera. Although IHS was widely recognized from the outset as the most likely strategic buyer,[156] IHS was initially shut out of the process altogether after Baron told Centerview that IHS was "no per Tony." Rather than being included from the outset of the sales process (when it could have provided at least the specter of competition from a strategic), IHS was begrudgingly allowed in only ***after*** news of the potential sale leaked, which was ***after*** the first offers had been made. Thereafter, IHS was not given the same access to information as had been given to the PE firms. This belated entry and

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[155] *Lender Processing*, 2016 WL 7324170, at *17 n.14 (citing *Dell*, 2016 WL 3186538, at *30) ("[T]he outcome of competition between financial sponsors primarily depends on their relative willingness to sacrifice potential IRR[s].").

[156] [redacted]

unlevel playing field put IHS at a decided disadvantage vis-à-vis the private equity firms that had been exploring a purchase of Solera. By the time IHS was let in to the process, Vista had completed its diligence.[157] IHS was not given access to the full dataroom until ***after*** the deal was signed[158] and even then was not given access to all of the information that the private equity firms were given.[159] The absence of a pre-signing level playing field among private equity firms and strategic buyers further undermined the sales process.

B. MARKET CONDITIONS UNDERMINED THE RELIABILITY OF THE DEAL PRICE

In addition to following a flawed sales process, the sale of Solera was not the product of a well-functioning market. The evidence at trial will establish that (1) the sale of Solera took place against the backdrop of extraordinary market volatility that impacted what potential buyers were able to pay for Solera; (2) Solera's publicly traded price did not reflect the Company's fair value; and (3) reliance on the $55.85 "deal price" as a proxy for fair value would be inappropriate, because it ignores what ***Vista actually had to spend*** to buy Solera. To the extent the deal price is probative of fair value, it must be adjusted to reflect

[157] JX0544.0001.

[158] Baron 145:23-146:3 (IHS given access to data room, minus information about Digital Garage, on September 13, 2015); JX0733.0001 (IHS given "access to 'full' virtual data room" on September 13, 2015).

[159] PTO¶315-316, 318-319, 337, 351; [redacted]; JX0603.0001; [redacted]; JX01108.0001.

the substantial costs Vista incurred to do the deal; it is this "all in" number – not just the $55.85 that Solera's stockholders received – that reflects what Vista was willing to pay for Solera.

1. The Sale Of Solera Took Place Against A Backdrop Of Historic Market Volatility

The evidence will establish that the sale of Solera took place against the backdrop of historic volatility in the financial markets that impacted what potential buyers were able to pay for Solera and, indeed, whether they could raise the necessary financing at all. The process was conducted in a six-week window between July 30, 2015 and September 11, 2015,[160] an unusually truncated period.[161] At almost the exact same time, financial markets in the United States and abroad experienced unusual and extremely high volatility. Between the Special Committee's receipt of the first sales process offers for Solera (August 17, 2015) and August 25, 2015, the S&P 500 dropped 11.2%, the Dow Jones dropped 10.7%, and the NASDAQ Composite dropped 11.5%.[162] On August 24, 2015, the VIX (the accepted measure of US market volatility) spiked to its highest level in over 9 years, and the 7th highest level ever reached in over 27 years. This volatility affected the ability to undertake and finance going private transactions. As

[160] PTO¶293.

[161] *See, e.g.*, *DFC* (two-year sales process).

[162] BOR¶¶34-36.

discussed above, the firms considering buying Solera were forced to drop their offers to accommodate adverse changes in the financial markets. The fact that offers were lowered not in response to any "new information" about Solera but, rather, in response to "extenuating market conditions outside of the control of the board or management"[163] demonstrates that the sale of Solera was not the product of a well-functioning market.

2. Solera's Stock Price Did Not Reflect The Company's Fair Value And Was Trading At A Trough During The Sales Process

The evidence will establish that Solera's stock price did not reflect the Company's fair value and was trading at a trough during the sales process. Due to competitive concerns, Aquila withheld information from the market that analysts needed to properly value the Company. This caused Solera to trade at a sharp discount to its fair value – a fact that was recognized not only by Solera management but by the Board, the Company's bankers, the Special Committee's financial advisor, Solera investors, and securities analysts.

During the sales process, Solera's stock was trading at a trough as the market struggled to understand the Company's value and investors were taking a "wait and see" attitude towards the Company's long-term investments. While

[163] JX0776.0010.

Aquila had vowed in the quarters leading up to the Take Private to be more transparent with the market so that analysts could properly value the Company, he took the Company private before that strategy had a chance to work.[164] A deal price that was negotiated off of a dislocated trough stock price[165] does not reflect Solera's fair value as a going concern.[166]

3. Reliance On The $55.85 "Deal Price" Is Misplaced, Because This Figure Understates What Vista Had To Spend To Buy Solera

Even if the Court were inclined to ignore the substantial evidence demonstrating that market conditions undermined the sale of Solera, reliance on

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[164] *See, e.g.*, *Dell,* 2016 WL 3186538, at *32 ("[T]he optimal time to take a company private is after it has made significant long-term investments, but before those investments have started to pay off and market participants have begun to incorporate those benefits into the price of the Company's stock.").

[165] *See, e.g.*, *Dell*, 2016 WL 31865438, at *33 ("Proposing an MBO when the stock price is low has the further effect of using the depressed stock price to anchor price negotiations. Empirical evidence confirms the experiential insight that both targets and acquirers use the market price of the target's stock as a reference point in formulating a bid. When a company with a depressed market price starts a sale process, the anchoring effect makes the process intuitively more likely to generate an undervalued bid.").

[166] The fact that Solera's stock was trading in a dislocated fashion creates even more reason to doubt the reliability of a deal price negotiated in the thin and illiquid M&A market. *See Dell*, 2016 WL 3186538, at *24 ("[T]he M&A market for an entire company has different and less confidence-promoting attributes than the public trading markets" because, among other factors, "[t]he M&A market has fewer buyers and one seller, and the dissemination of critical, non-public diligence information is limited to participants who sign confidentiality agreements. ***It is therefore erroneous to 'conflate the stock market (which is generally highly efficient) with the deal market (which often not)***.") (quotations omitted) (emphasis added).

the $55.85 "deal price" as a proxy for fair value would be misplaced. Vista had to "pay" substantially more than the $55.85 per share that Solera's public stockholders received to buy the Company. Vista incurred $40,227,590 in "buyer fees and expenses," $102,204,148 in "seller fees," $268,327,434 in "debt fees," and a $154,943,650 "early participation premium" for retiring debt in connection with the deal – totaling $565,703,822 (equating to $6.51 per share) – ***on top of what was paid to cash out Solera's public stockholders*** to buy Solera.[167] The Take Private, therefore, made economic sense from Vista's perspective ***only if*** Vista believed that Solera was worth $62.36 per share. To the extent the Court takes the "deal price" into account in valuing Solera, the focus should be on what Vista was ***actually willing to spend*** to buy the Company, not the portion of this figure that ultimately made its way into the pockets of Solera stockholders.

II. A PROPERLY CONSTRUCTED DCF OF SOLERA ESTABLISHES A FAIR VALUE OF $84.65

Even if the Court were satisfied that the deal price was a reliable indicator of fair value (and the evidence at trial will establish that it is not), its inquiry would not end, because Section 262 mandates that the trial court consider "all relevant factors." The trial court must, therefore, "consider the reliability" of the experts'

[167] PTO¶373,375,377,379; JX0673.0024.

DCF values of Solera.[168] Professor Cornell has opined that Solera's fair value based on a DCF is $84.65 per share; Professor Hubbard has opined that Solera's value based on a DCF is $53.15 per share.[169]

Professors Cornell and Hubbard agree on the following: (1) the projections to use (i.e., the Hybrid Case); (2) use of the WACC as the discount rate, with the cost of equity based on the CAPM; (3) the need to use a transition period to allow Solera's operations to reach a steady state (i.e., a "three-stage" model); (4) the length of the transition period (i.e., five years); (5) the linear decrease of growth rates during the transition period; (6) use of a Gordon Growth model to calculate terminal value; and (7) use of a risk-free rate of 2.23%, based on the yield on the 20-year treasury, to calculate the cost of equity.[170]

Many of the inputs Professor Hubbard selects result in a ***higher*** DCF valuation than those selected by Professor Cornell. These include: (1) beta (Hubbard uses a cash adjusted re-levered beta of 1.01; Cornell uses a cash adjusted re-levered beta of 1.11); (2) cost of equity (Hubbard uses a range of 9.14% to

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[168] *PetSmart*, 2017 WL 2303599, at *31 ("My determination that the $83 per share Merger Price is a reliable indicator of fair value does not end the inquiry. To discharge my statutory obligation to consider 'all relevant factors,' it is necessary that I consider the reliability of the other valuations of PetSmart in the trial record.").

[169] As noted *supra* n.13, correcting Professor Hubbard's mistake with respect to the early redemption fee raises his DCF to $53.70.

[170] CRR¶8.

9.91%; Cornell uses a range of 8.92% to 9.92%); (3) WACC (Hubbard uses 8.09%; Cornell uses 8.75%); (4) spread between PGR and WACC (Hubbard's 3% PGR and 8.09% WACC results in a 5.09% spread to WACC; Cornell's 3.25% PGR and 8.75% WACC results in a 4.50% spread to WACC); (5) long-term tax rate (Hubbard uses 33.6%; Cornell uses 34%); and (6) Hubbard uses a fixed amount of shares outstanding, while Cornell's model determines the number of shares outstanding based on Solera's implied fair value and the exercise price of employee stock options.[171]

There are several inputs upon which Professors Cornell and Hubbard disagree that have a material impact of their DCF valuations.[172] An analysis of the underlying projections and an overview of the four issues that have the most significant impact on the DCF are discussed below.

A. THE HYBRID CASE IS SUFFICIENTLY RELIABLE TO PRODUCE A TRUSTWORTHY INDICATOR OF FAIR VALUE

Both Professors Cornell and Hubbard use the Hybrid Case in their DCFs of Solera. This reliance is well-placed, because the evidence will establish that the Hybrid Case is "sufficiently reliable to produce a trustworthy indicator of fair value."[173] The evidence will establish that the Hybrid Case was prepared by long-

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[171] CRR¶9.

[172] CRR¶13.

[173] *PetSmart*, 2017 WL 2303599, at *26.

standing management who had years of experience preparing multi-year projections for Solera, who had a strong track record of meeting their projections (going so far as to publicly tout their "uncommon accuracy"), and who followed what Solera described as "a conservative projection methodology that we have relied on for years" in preparing projections. Further, the Hybrid Case was based on the July 1+3 Plan that was prepared in the ordinary course of Solera's business and, in contrast to *PetSmart* (in which the Court found that management was instructed to be aggressive in preparing the projections used in the DCF), the Hybrid Case as approved by the Board had been "haircut."[174]

B. PROFESSOR CORNELL USES THE APPROPRIATE PLOWBACK FORMULA IN DETERMINING THE AMOUNT OF REINVESTMENT NECESSARY TO FUEL FUTURE GROWTH

Professors Cornell and Hubbard disagree on the amount of cash that Solera will need to reinvest each year to fuel growth at the rates assumed in their respective DCF models. The difference comes down to one question: Does Solera need to reinvest cash only to fuel real growth (i.e., growth in excess of inflation), or will Solera have to reinvest cash to fuel ***all*** growth (i.e., both real and inflationary growth)? Professor Cornell calculated the required amount of reinvestment to fuel real growth. Professor Hubbard ignores the effect of inflation on Solera's existing assets and assumes that the ***only way*** for Solera to grow is

[174] Baron 114:13-22.

through new capital expenditures funded by its cash flows. Professor Hubbard's erroneous assumption that Solera needs to reinvest cash to grow at the rate of inflation is contrary to the academic literature and Chancery precedent.

Professors Bradley and Jarrell analyzed the relationship between steady state growth in cash flows and inflation in two seminal articles published in the JOURNAL OF APPLIED CORPORATE FINANCE.[175] In these articles, Bradley and Jarrell demonstrate that the correct formula for determining plowback (the amount of reinvestment needed to generate growth in the terminal period) is k = g / roic, where k = the plowback ratio; g = real growth; and roic = the real return on invested capital (the "Bradley-Jarrell Plowback Formula"). Under the Bradley-Jarrell Plowback Formula, plowback of cash for capital expenditures in excess of projected depreciation is required only for ***real growth***. Because inflationary growth occurs automatically, the Bradley-Jarrell Plowback Formula reflects the common sense notion that a firm does not need to reinvest cash in excess of

[175] Michael Bradley & Gregg Jarrell, *Expected Inflation and the Constant-Growth Valuation Model*, JOURNAL OF APPLIED CORPORATE FINANCE 20 (2008); Michael Bradley & Gregg Jarrell, *Comment on 'Terminal Value, Accounting Numbers, and Inflation' by Gunther Friedl and Bernhard Schwetzler*, JOURNAL OF APPLIED CORPORATE FINANCE 23 (2011).

deprecation to fuel inflationary growth. Leading valuation textbooks have adopted the Bradley-Jarrell Plowback Formula.[176]

In addition, this Court has accepted the Bradley-Jarrell Plowback Formula. In *In re Appraisal of Ancestry.com, Inc.*, 2015 WL 399726 (Del. Ch. Jan. 30, 2015), both parties' valuation experts used the Bradley-Jarrell Plowback Formula in their DCFs.[177] And the Court adopted the premise underling the Bradley-Jarrell Plowback Formula – i.e., that a firm does not need to reinvest cash in excess of depreciation to grow at the rate of inflation – in *MacLane Gas Company Limited Partnership v. Enserch Corporation*, 1992 WL 368614, at *2 (Del. Ch. Dec. 11,

[176] *See*, *e.g.*, Robert Holthausen & Mark Zmijewski, CORPORATE VALUATION: THEORY, EVIDENCE & PRACTICE 235-36 (Cambridge Business Publishers, 2014).

[177] Professor Jarrell's 12 percent plowback ratio used a 4.5 percent nominal PGR, with 2 percent expected inflation, and an implied nominal ROIC of 22.8 percent. With 2 percent expected inflation, a 4.5 percent nominal growth rate equates to a 2.45 percent real growth rate [((1+0.045)/(1+.02))–1=0.0245] and a 22.8 percent nominal ROIC equates to a 20.39 percent real ROIC [((1+0.228)/(1+.02))–1=0.2039]. Therefore, Professor Jarrell's plowback ratio is calculated as 0.0245/0.2039 = 0.12. *See Ancestry*, 2015 WL 399726, at *12. Mr. Wisialowski's 4.8 percent plowback ratio used a 3 percent nominal PGR, with 2 percent expected inflation, and an implied nominal ROIC of 22.6 percent. With 2 percent expected inflation, a 3 percent nominal growth rate equates to a 0.98 percent real growth rate [((1+0.03)/(1+.02))–1=0.0098] and a 22.6 percent nominal ROIC equates to a 20.20 percent real ROIC [((1+0.226)/(1+.02))–1=0.2020]. Therefore, Mr. Wisialowski's plowback ratio using the correct formula is 0.0098/0.2020 = 0.0485. *See Ancestry*, 2015 WL 399726, at *12.

1992).[178] This Court's precedent supports the use of the Bradley-Jarrell Plowback Formula. Using the Bradley-Jarrell Formula, Professor Cornell calculates that Solera will need to reinvest 11.1% of every dollar it earns in the terminal period to experience 1.25% real growth.

Professor Hubbard does not use the Bradley-Jarrell Formula to calculate plowback. Instead, to calculate plowback, Professor Hubbard uses the equation G = k * ROIC, where G = nominal PGR in free cash flow, k = the plowback ratio, and ROIC = nominal return on invested capital (the "Hubbard Plowback Formula"). Under the Hubbard Plowback Formula, Professor Hubbard calculates that in the terminal period Solera will have to reinvest 37.09% of any dollar it earns to experience 1% real growth. To put this into context, Professor Hubbard's model assumes that in the terminal period Solera would need to invest $267.8 million to generate a real increase in after-tax operating profit of $6.89 million. Such an investment would translate into a 2.57% real return on Solera's investments – a rate of return ***less than half*** of Professor Hubbard's real WACC (i.e., 6.09%). Because an investment below a firm's WACC is a negative net present value investment and expected inflation is 2%, Professor Hubbard's DCF

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[178] *Id.* at 2 ("Contrary to defendants' repeated suggestion, the adjustment to the terminal year cashflow for inflation does not represent real growth that would require an allowance for additional capital reinvestment necessary to produce that growth.").

effectively assumes that Solera will make ***value-destroying investments*** into perpetuity. Such an assumption is not realistic.

Notably, Vista – who bought Solera – rejected Professor Hubbard's approach in valuing Solera. Vista projected that in fiscal year 2031 (the start of Vista's terminal period), Solera would need to invest $3.8 million to support 3.32% growth. Professor Hubbard, in contrast, projects that in fiscal 2026 (the start of his terminal period) Solera would need to invest $267.8 million to support 3% growth. In other words, ***Professor Hubbard assumes that Solera would need to invest in excess of 70 times more capital than Vista assumes to grow at a lower rate in the terminal period.*** The wild disconnect between (1) the assumptions made by a party that bought Solera in the "real world" and (2) the assumptions Professor Hubbard makes in performing his theoretical valuation of Solera belies the sheer absurdity of his plowback ratio.

The choice of plowback ratio drives a huge portion of the chasm between the experts' DCFs. Professor Hubbard's DCF value would increase to $77.05 if he used the Bradley-Jarrell Plowback Formula.[179]

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[179] Together with the correction of his admittedly improper deduction for the early redemption premium, Professor Hubbard's DCF would rise to $77.60 if he used the Bradley-Jarrell Plowback Formula.

C. PROFESSOR CORNELL APPROPRIATELY ASSUMES THAT SOLERA WILL CONTINUE TO EARN A RETURN IN EXCESS OF ITS WACC IN THE TERMINAL PERIOD

Professors Cornell and Hubbard disagree about the extent to which Solera can be expected to earn a return on invested capital in excess of its WACC in the terminal period. Professor Cornell assumes that in the terminal period any new investment Solera makes will earn 4.5% (i.e., that its ROIC will be 13.25%, compared its 8.75% WACC); Professor Hubbard assumes that Solera's WACC will equal its ROIC in the terminal period (i.e., Professor Hubbard assumes that any new investment Solera makes in the terminal period will create no value). Such an assumption is only reasonable in a ***perfectly competitive industry***. The evidence at trial will establish that Professor Hubbard's assumption of perfect competition is not reasonable for Solera.

First, Solera had significant competitive advantages and operated in an industry in which strong barriers to entry existed.[180]

Second, Solera historically earned rates of return well in excess of its WACC. Solera's ROIC on acquisitions four and five years following the acquisition date was 14.2% and 23.7%, respectively, well in excess of its

[180] PTO¶152,154-156; JX0291.0010-12 (Solera has "strong competitive position with significant barriers to entry," "deep moats around the business," and spends $115 million each year on its proprietary databases and related applications).

WACC.[181] Professor Cornell's chosen 13.25% terminal period ROIC represents a ***45% reduction*** in Solera's actual ROIC as of the Transaction Date on investments after five years. Given Solera's actual history, it is appropriate to assume, as Professor Cornell does, that Solera's ROIC will trend toward (but not converge with) its WACC in the terminal period.

Third, Professor Cornell's assumed steady state ROIC is consistent with return data for the industries in which Solera operates complied by McKinsey and Professor Damodaran. McKinsey has found that the median ROICs (excluding goodwill) for the software and IT services industries are approximately 100% and approximately 40%, respectively, for the period 1995 to 2013.[182] As reported by Professor Damodaran, the average of the current ROICs for the software and information services industries are 15.2% and 36.4%, respectively, for the twelve months ended September 30, 2016.[183]

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[181] JX0782.0002.

[182] Tim Koller, ET AL., VALUATION: MEASURING AND MANAGING THE VALUE OF COMPANIES 310 (John Wiley & Sons, 6th ed. 2015).

[183] *See* Aswath Damodaran, *After-tax operating income and Free Cash Flow to Firm*, (Mar. 23, 2017), http://www.stern.nyu.edu/~adamodar/pc/datasets/mgnroc.xls.

Fourth, Professor Damodaran has found that a spread of less than 4% to 5% between ROIC and WACC is appropriate in the steady state.[184] Given Solera's historical and projected ROICs, it is reasonable to assume that Solera will be at the high end of this range.

Professor Hubbard's DCF value would rise to $85.12 – ***a value higher than Professor Cornell's DCF*** – if his unreasonable assumption of perfect competition in the terminal period were corrected concurrently with his plowback error.[185]

D. PROFESSOR HUBBARD IMPROPERLY DEDUCTS SPECULATIVE TAX LIABILITIES

Professor Hubbard concocts two speculative tax liabilities relating to Solera's offshore earnings and uses these phantom liabilities to reduce Solera's value. First, Professor Hubbard creates a speculative $262.6 million tax liability for Solera's historical offshore earnings (the "Speculative Historical Offshore

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[184] *See* Aswath Damodaran, THE DARK SIDE OF VALUATION 286 (FT Press, 2d ed. 2010).

[185] Factoring in the correction of the improper deduction of the early redemption premium, Professor Hubbard's DCF increases to $85.67 if these two errors are corrected.

Earnings Tax Liability").[186] The Speculative Historical Offshore Earnings Tax Liability reduces Professor Hubbard's DCF value by $3.81. Second, Professor Hubbard assumes that Solera will repatriate all of its projected future overseas earnings for FY16 and FY25 precisely five years after they are earned and pay domestic taxes on those earnings (the "Speculative Projected Future Offshore Earnings Tax Liability") (together with the Speculative Historical Offshore Earnings Tax Liability, the "Speculative Offshore Earnings Tax Liabilities").[187] Professor Hubbard estimates a hypothetical tax liability in the amount of $46.7 million ($0.68 per share in his DCF model) for the Speculative Projected Future Earnings Tax Liability.[188] The deductions for the Speculative Offshore Earnings Tax Liabilities are improper and cause Professor Hubbard to undervalue Solera by $4.49 per share.

The evidence at trial will show that Solera had no actual business plans to repatriate any of its offshore earnings at the time of the Take Private, let alone to

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[186] The Speculative Historical Offshore Earnings Tax Liability consists of (1) $166 million relating to the present value of the hypothetical tax liability on $840.7 million of overseas earnings that Solera has designated as permanently reinvested; (2) $123.7 million relating to a hypothetical deferred tax liability on $350 million of overseas earnings that Solera had de-designated as permanently reinvested (but with respect to which it had no actual business plans to repatriation as of the closing of the Take Private); and (3) a $26.98 million offset relating to foreign tax credits.

[187] HOR¶¶218,224-225.

[188] HOR Exhibits 26-27.

do so at the times assumed by Professor Hubbard. Professor Hubbard's DCF model assumes the following with respect to the repatriation of Solera's offshore earnings:

- On March 3, 2016, Solera actually repatriated the $350 million of offshore earnings as to which the PRE designation had been revoked and paid $123.7 million in taxes on those earnings;
- At the end of fiscal 2020, Solera will repatriate the $840.7 million of offshore earnings which Solera designated as PRE and will pay $166 million in taxes in connection with this repatriation;
- Solera will necessarily repatriate all of its projected overseas earnings for fiscal years 2016 through 2025 exactly five years after they are earned and pay domestic taxes in the amount of $46.7 million on those earnings; and
- All of these repatriations will occur at the current federal marginal tax rate instead of during a tax holiday or under other circumstances that would allow Solera to pay a tax rate that is lower than the current federal margin rate.

These assumptions are baseless.

First, Professor Hubbard is simply wrong in valuing Solera as if it had actually repatriated the $350 million that had been de-designated as PRE on March 3, 2016 and paid $123.7 million in taxes on those earnings. Solera had not repatriated those earnings at the time of the closing and thus did not pay taxes on these earnings. In fact, at the time of the closing, Solera had no specific plans to actually repatriate this $350 million. The evidence at trial will establish that Professor Hubbard's deduction for $123.7 million for the taxes "paid" in

connection with this non-existent repatriation is counterfactual and must be rejected.

Second, Professor Hubbard's assumption that Solera will repatriate at the end of fiscal 2020 the $840.7 million that remained subject to a PRE election at the time of the closing is unsupported by the evidence. As of the closing of the Take Private, Solera had no plans to revoke the PRE designation and repatriate these earnings – let alone to do so in 2020.[189] The evidence at trial will establish that Professor Hubbard's $166 million deduction for taxes to be paid in connection with the $840.7 million in offshore earnings that was designated as PRE is improper.

Third, Professor Hubbard's assumption that Solera will repatriate all of the earnings it is projected to earn offshore between 2016 and 2025 precisely five years after it is earned is unsupported by the evidence. While Professor Hubbard deducts $46.7 million in taxes for Solera's projected earnings between 2016 and 2025, Solera will pay these hypothetical taxes if, ***but only if***, it (1) earns the precise amounts Professor Hubbard projects it will earn between 2016 and 2025; (2) repatriates ***all*** of these earning; (3) does so ***precisely*** five years after the money was earned; (4) does so under circumstances that would require it to pay taxes equal to the full current federal marginal tax rate; and (5) there is no change in the tax rates

[189] JX0782.0027

between now and the time these earnings are repatriated. Professor Hubbard admitted that he was not aware of any actual facts to suggest that Solera would repatriate these earnings five years after they were earned.[190] Nor is such an assumption reasonable in light of Solera's historical practices. Solera has only repatriated offshore earnings twice in its history: (1) Solera repatriated $24.5 million in 2010 to take advantage of expiring tax credits; and (2) Solera repatriated $107.6 million in 2011 – $99.1 million of which was treated as non-taxable return of basis – to fund an acquisition.[191] The evidence at trial will establish that this $46.7 million deduction is improper.

In addition to lacking evidentiary support, Professor Hubbard's deduction of the Speculative Offshore Earnings Tax Liabilities is contrary to Delaware law – a fact of which Professor Hubbard is undoubtedly well-aware, because this Court rejected an attempt by Professor Hubbard to gin up these exact types of speculative tax liabilities for offshore earnings in *Dell, supra*. Delaware precedent forecloses the deduction of the Speculative Offshore Earnings Tax Liabilities. *See also Ng. v. Heng Sang Realty Corp.*, 2004 WL 885590, *6 (Del. Ch. Apr. 22, 2004) ("In determining fair value, this court cannot consider speculative future tax liabilities.").

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[190] Hubbard 301:10-12.

[191] PTO¶412.

E. PROFESSOR CORNELL APPROPRIATELY ADDED ALL OF SOLERA'S CASH IN CONVERTING ENTERPRISE VALUE TO EQUITY VALUE

In converting enterprise value to equity value, Professor Cornell added back all of Solera's cash.[192] Professor Hubbard, in contrast, deducted $165 million from Solera's cash as "required cash."[193] This deduction is inappropriate and serves to undervalue Solera. Because modern companies typically invest cash needed for operations in near-cash investments that earn a fair but positive rate of return, there is no need to deduct "required cash" in valuing Solera.[194] The valuation literature supports the proposition that "even cash needed for operations can be invested in near cash investments such as treasury bills or commercial paper."[195] "Given the investment opportunities that firms (and individual investors) have today, it would require an incompetent corporate treasurer for a big chunk of the cash balance to be wasting cash."[196] Correcting this adjustment adds $2.39 per share to Professor Hubbard's DCF value.

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[192] COR¶148.

[193] HOR¶221.

[194] *See*, Aswath Damodaran, INVESTMENT VALUATION 424 (John Wiley & Sons, 3rd ed. 2012).

[195] *See* Aswath Damodaran, *Dealing With Cash, Cross Holdings and Other Non-Operating Assets: Approaches and Implications*, Sept. 30, 2005, at 13.

[196] *Id.*

CONCLUSION

Petitioners are entitled to the fair value of Solera as of the Effective Date, which is $84.65, plus interest at the statutory rate.

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Respectfully submitted,

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