



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

CITY OF WESTLAND POLICE & FIRE	)	
RETIREMENT SYSTEM,	)	
	)	
Plaintiff,	)	Civil Action No. 4473-VCN
	)	
v.	)	
	)	
AXCELIS TECHNOLOGIES, INC.,	)	
	)	
Defendant.	)	

**JOINT PRETRIAL ORDER**

**I. NATURE OF THE ACTION**

**A. Plaintiff’s Statement**

In this action, Plaintiff Westland Police & Fire Retirement System (“Westland P&F” or “Plaintiff”) seeks to enforce his right to inspect certain corporate books and records of Defendant Axcelis Technologies, Inc. (“Axcelis” or “Defendant”), a Delaware corporation, under Section 220 of the Delaware General Corporation Law (“Section 220”). Plaintiff seeks to inspect these records for the purpose of investigating whether Defendant’s directors breached their fiduciary duties in connection with: (1) the Board’s management of Sumitomo Heavy Industries, Inc.’s (“SHI”) acquisition proposals; and (2) the Board’s refusal to accept the resignations of Directors Stephen R. Hardis, R. John Fletcher, and H. Brian Thompson.

**B. Defendant’s Statement**

In this Section 220 action Plaintiff has not met its burden of bringing forth credible evidence of probable corporate wrongdoing in order to demonstrate entitlement to the books and records it seeks. Plaintiff’s arguments are speculative and lack substance. The Plaintiff’s complaint merely registers disagreement with business decisions of the board of directors (the

“Board”) of defendant Axcelis Technologies, Inc. (“Axcelis” or the “Company”); Among these decisions are: (i) a decision not to immediately engage in negotiations to sell the Company in response to two unsolicited conditional acquisition proposals from Sumitomo Heavy Industries, Ltd. (“SHI”); (ii) a decision not to accept the resignations of three directors under a “Pfizer-style” governance policy who received less than majority shareholder support at the Company’s 2008 annual meeting; and (iii) a decision to sell Axcelis’ 50% stake in an Axcelis/SHI joint venture called SEN Corporation (“SEN”). These decisions would be protected by the business judgment rule if this were an action for breach of fiduciary duty. Because the allegations of the complaint, which for the most part tracks Plaintiff’s demand letter (the “Demand”), could not rebut the presumption of business judgment, it follows *a fortiori* that they do not present any credible evidence of probable wrongdoing.

Plaintiff can point to nothing that is indicative of wrongdoing with regard to the Board’s decision to reject two unsolicited and conditional acquisition proposals from SHI. Instead, Plaintiff relies heavily on the fact that the purchase prices recited in SHI’s conditional proposals represented modest premiums to the then-current trading prices of the Company’s common stock and that the Company’s stock price has since declined.

Similarly, Plaintiff provides no evidence of wrongdoing with regard to both the rejections of SHI’s proposals and the refusal to accept certain director resignations. Plaintiff, instead, relies on conclusory references to disclosure shortcomings and entrenchment motives, which are entirely speculative and contradicted by many of the very documents and sources that Plaintiff itself relies on, as well as by SEC filings and other public documents.

Plaintiff’s argument that it is entitled to books and records to investigate mismanagement with respect to the post-Demand sale of Axcelis’ 50% stake in SEN lacks merit. The transaction arose after the date of the Demand. For that reason alone, it should not be considered as evidence

of Plaintiff's purported entitlement to the books and records it seeks. Regardless, Plaintiff again relies upon conclusory statements and speculation for its position. What the record shows, and what will be demonstrated at trial, is that the SEN sale was accomplished primarily to raise funds to satisfy an overdue debt obligation and to obtain dismissal of a lawsuit against the Company. This decision was a valid exercise of the Board's business judgment and nothing Plaintiff raises suggests the contrary.

Finally, Plaintiff's attempts to demonstrate the alleged conduct as "defensive" transactions that implicate *Unocal* or as disenfranchising conduct that implicates *Blasius* are completely unavailing. First, there was no takeover attempt or tender offer to defend against. Second, there was a lawful stockholder vote at which Axcelis' stockholders exercised their franchise. Plaintiff merely is unhappy with the way the Board exercised its fiduciary duties in applying the Company's corporate governance policies to those election results.

## **II. STATEMENT OF UNCONTESTED FACTS**

1. Axcelis is a Delaware corporation, originally incorporated as Eaton Semiconductor Equipment Inc., a subsidiary of Eaton Corporation.

2. Axcelis makes ion implantation and other equipment used to manufacture semiconductor chips.

3. Sumitomo Heavy Industries, Ltd. ("SHI") is a Japanese company that manufactures and sells various products that range from general industrial machinery to cutting-edge precision control machinery and components.

4. In 1983, SHI and Eaton Corporation established a 50-50 joint venture called Sumitomo Eaton Nova Corporation, currently known as SEN Corporation ("SEN").

5. SEN is a Japanese company that develops, manufactures, and sells semiconductor equipment.

6. In June 2000, Eaton Corporation transferred its ownership in SEN to Axcelis, which replaced Eaton Corporation as a 50% stakeholder in SEN.
7. From June 2000 until March 30, 2009, Axcelis and SHI each owned 50% of SEN.
8. On March 31, 2008 Axcelis filed with the SEC its Annual Report for 2007.
9. On February 4, 2008, SHI, along with TPG Capital LLP (“TPG”), made an unsolicited bid to acquire Axcelis for \$5.20 per share.
10. On February 4, 2008, Axcelis closed at a price of \$4.18 per share.
11. On February 7, 2008, Axcelis responded to SHI’s February 4, 2008 acquisition proposal by informing SHI that the Axcelis Board (“Board”) would discuss SHI’s acquisition proposal with its advisors and respond once those discussions were complete.
12. On February 11, 2008, SHI sent a letter to Axcelis regarding Axcelis’s response to SHI’s acquisition proposal.
13. In a February 25, 2008 press release, the Board announced its rejection of SHI’s proposal. The Board summarized its reasons for rejecting SHI’s proposal in that press release and in a PowerPoint presentation of the same date.
14. On March 10, 2008, SHI sent a letter to Axcelis’s Board regarding SHI’s communications with Axcelis shareholders.
15. On March 10, 2008, SHI proposed to acquire Axcelis for \$6 per share.
16. On March 10, 2008, Axcelis closed at a price of \$5.45 per share.
17. On March 17, 2008 the Board rejected SHI’s second acquisition proposal.
18. On April 14, 2008, the Board sent shareholders a letter discussing, among other things, its rejection of SHI’s proposals.

19. On April 16, 2008, SHI issued a statement discussing its efforts to acquire Axcelis.

20. Axcelis's governance policy requires directors who fail to receive a majority of the stockholder vote to submit their resignations to the Nominating and Corporate Governance Committee.

21. Axcelis's governance policy requires the Nominating and Corporate Governance Committee to consider any resignations submitted by directors under the governance policy.

22. Axcelis's governance policy requires the Nominating and Corporate Governance Committee to recommend to the Board whether to accept or reject any resignations it receives.

23. Axcelis's governance policy requires the Board to accept or reject any resignations submitted by its directors under the policy.

24. At the 2008 Annual Meeting, held on May 1, 2008, directors Stephen R. Hardis, R. John Fletcher, and H. Brian Thompson were up for reelection to the Board. Axcelis follows the plurality voting provisions of Delaware corporate law, so that in an uncontested election, a nominee may be re-elected without receiving a majority of the votes cast in favor of the nominee's re-election.

25. On May 1, 2008, at the 2008 Annual Meeting, director Stephen R. Hardis received less than a majority of the stockholder vote in support of his reelection bid.

26. On May 1, 2008, at the 2008 Annual Meeting, director R. John Fletcher received less than a majority of the votes cast in support of his reelection bid.

27. On May 1, 2008, at the 2008 Annual Meeting, director H. Brian Thompson received less than a majority of the votes cast in support of his reelection bid.

28. Following the May 1, 2008 vote, director Stephen R. Hardis submitted his resignation to the Nominating and Corporate Governance Committee.

29. Following the May 1, 2008 vote, director R. John Fletcher submitted his resignation to the Nominating and Corporate Governance Committee.

30. Following the May 1, 2008 vote, director H. Brian Thompson submitted his resignation to the Nominating and Corporate Governance Committee.

31. In a May 23, 2008 press release, the Board announced its decision not to accept the resignations of Messrs. Thompson, Hardis and Fletcher.

32. On June 6, 2008, Axcelis, SHI, and TPG entered into a confidentiality agreement to facilitate discussions among the parties.

33. In June 2008, after entering into the above-referenced confidentiality agreement, representatives of Axcelis management provided data in response to SHI's due diligence requests and met several times in June and July with representatives from SHI to discuss SHI's due diligence requests.

34. After the above-referenced June and July 2008 meetings between representatives from Axcelis and SHI, SHI requested additional information from Axcelis in order to perform due diligence in formulating an acquisition proposal.

35. Axcelis agreed to provide additional information to SHI, and agreed to further meetings with SHI, in exchange for SHI agreeing to commit to a specific written schedule for submitting a revised acquisition proposal, which proposal was to include an indication of value and a draft acquisition agreement.

36. SHI agreed to submit a revised acquisition proposal to Axcelis by August 1, 2008.

37. Thereafter, SHI requested from Axcelis an extension of the August 1, 2008 deadline. Specifically, SHI requested an additional seven weeks to perform due diligence before

deciding whether to submit a revised acquisition proposal and thereafter, a five week period of confirmatory due diligence.

38. Based on a determination by the Board, Axcelis informed SHI that it could not agree to the extended deadline.

39. Instead, Axcelis granted SHI until the end of August 2008 to submit a revised acquisition proposal. Axcelis also made an alternative proposal to SHI that SEN and Axcelis could become one company by SHI exchanging its SEN shares for Axcelis shares.

40. SHI decided not to submit a revised acquisition proposal to Axcelis.

41. In a September 15, 2008 8-K, Axcelis announced that on September 4, 2008, SHI informed Axcelis that it was placing discussions regarding the acquisition of Axcelis on “hold.”

42. On September 15, 2008, Axcelis’ stock closed at \$1.43 per share.

43. On December 9, 2008, Westland P&F sent to Axcelis a demand letter via Federal Express requesting for inspection, books and records related to Axcelis’s rejection of SHI’s acquisition proposals and the Board’s decision not to accept the resignations submitted by Directors Stephen R. Hardis, R. John Fletcher, and H. Brian Thompson.

44. The letter included a power of attorney form authorizing Westland P&F’s counsel to make demand, and it contained proof of Westland P&F’s beneficial ownership of Axcelis shares as of December 4, 2008.

45. Westland P&F has produced a brokerage account statement indicating that on December 4, 2008, Westland P&F owned 9,400 shares of Axcelis stock.

46. Westland P&F has produced a brokerage account statement indicating that on June 4, 2009 Westland P&F owned 100 shares of Axcelis stock.

47. In its December 9, 2008 letter, Westland P&F stated that its request was for the purpose of investigating whether the Board breached its fiduciary duties to the Company and its

shareholders in connection with SHI's acquisition proposals, and by refusing to accept the resignations of the Directors who received less than a majority of the stockholder vote.

48. By letter dated December 12, 2008, counsel for Axcelis advised counsel for Westland P&F that Axcelis had determined that the demand letter did not satisfy Section 220 of the DGCL or Delaware's jurisprudence interpreting Section 220, and, therefore, Axcelis was declining the demand.

49. On January 15, 2009 Axcelis announced it failed to make a required payment under an indenture agreement with U.S. Bank National Association.

50. On February 26, 2009, the Board agreed to sell Axcelis's 50% stake in SEN to SHI for 13 million yen (approximately \$132.6 million).

51. SHI's acquisition of Axcelis's 50% interest in SEN was completed on March 30, 2009.

52. Axcelis received net proceeds from the sale of SEN to SHI of approximately \$122.3 million after fees and expenses.

53. On March 30, 2009, Axcelis closed at a price of \$0.41 per share.

54. On April 2, 2009, Westland P&F filed its Complaint Pursuant to 8 *Del. C.* § 220 to Compel Inspection of Books and Records.

55. On May 1, 2009, Axcelis filed its Answer to the Complaint.

56. On June 5, 2009, Axcelis stock closed at \$0.58 per share.

57. On June 5, 2009, the NASDAQ index closed at 1849.42.

58. Live testimony is not necessary to establish proof of Westland P&F's ownership of Axcelis stock or to establish Westland P&F's claimed purpose as set forth in its December 9, 2008 demand letter because both Westland P&F's account statements and its December 8, 2008 demand letter are exhibits to this stipulation.



### **III. STATEMENT OF FACTS TO BE LITIGATED**

#### **A. Facts Averred by Plaintiff**

1. Plaintiff is the record owner of not less than 100 shares of Axcelis common stock.

2. Axcelis and SHI had a troubled relationship over SEN as indicated by their disputes over ownership of and royalties and dividends from SEN. These disputes are documented in Axcelis's SEC filings and other publicly available information. For instance, Axcelis's September 15, 2008 8-K, which is attached as Exhibit S to the Joint Stipulation of Uncontested Facts, describes Axcelis and SHI's contrasting positions on ownership of and dividends from SEN. Additionally, the April 16, 2008 Forbes.com article "Axcelis Bites Back," which is attached as Exhibit A to the Declaration Of Christian J. Keeney In Support Of Plaintiff's Pretrial Brief, describes the "troubled relationship" between Axcelis and SHI over SEN.

3. Shareholders, such as Sterling Capital Management ("Sterling Capital") and D.A. Davidson, supported a merger between Axcelis and SHI. For instance, on February 11, 2008, Sterling Capital sent Axcelis a letter, a copy of which is attached as Exhibit B to the Declaration Of Christian J. Keeney In Support Of Plaintiff's Pretrial Brief, that "strongly encourage[d]" Axcelis to consider a merger with SHI. On March 28, 2008, Sterling Capital sent a letter, a copy of which is attached as Exhibit C to the Declaration Of Christian J. Keeney In Support Of Plaintiff's Pretrial Brief, that described SHI as "the most logical acquirer" of Axcelis and encouraged Axcelis to "full[y] engage" with SHI. On May 2, 2008, Sterling Capital sent a letter, a copy of which is attached as Exhibit D to the Declaration Of Christian J. Keeney In Support Of Plaintiff's Pretrial Brief, that asked the Board to "embrace the steps necessary to drive shareholder value via a transaction with SHI." And on February 11, 2008, in *Semiconductor*

*International* article attached as Exhibit P-8 to this Order, D.A. Davidson analyst Matt Petkun described SHI as “the clearest and best buyer for Axcelis.”

4. Shareholders were widely dissatisfied with Axcelis’s responses to SHI’s acquisition proposals as evidenced by the public statements from major shareholders, recommendations of multiple proxy advisory services, and the results of director elections at the 2008 Annual Meeting. For instance, proxy advisory service Glass Lewis, in an April 18, 2008 Reuters article, a copy of which is attached as Exhibit P-5, recommended that shareholders withhold their votes for the Axcelis directors up for reelection at the 2008 Annual Meeting. And in Sterling Capital’s May 2, 2008 letter to Axcelis, it stated:

Although multiple proxy services recommended withholding votes for the nominated directors, the failure of those directors to receive a majority of the shareholder vote in support of their re-election represents a clear message from shareholders of their discontent with the failure of the Board to fully engage SHI in negotiations that could ultimately lead to a transaction that fairly values [Axcelis].

5. Besides Axcelis, only one other company – Pulte Homes – has used a Pfizer-style majority voting policy to reject the results of a shareholder vote for director elections. Pulte Homes’s June 2, 2009 8-K is attached as Exhibit C to the Declaration Of Christian J. Keeney In Support Of Plaintiff’s Reply Brief.

**B. Facts Averred by Defendant**

Facts, other than those set forth in the parties’ Joint Stipulation of Uncontested Facts, that are relevant to Defendant’s theory of the case are set forth in its Opening and Answering Pretrial Briefs. What Plaintiff contends to be factual disputes are merely its conclusions to be drawn from undisputed facts.

**IV. ISSUES OF LAW TO BE RESOLVED**

1. Whether Plaintiff has offered credible evidence of corporate wrongdoing sufficient to warrant its desire to inspect corporate books and records to investigate possible

breaches of fiduciary duty in connection with: (1) the management of certain acquisition proposals; and (2) the Board's refusal to accept the resignations of certain directors, elected by a plurality, after a majority of shareholders withheld support for those directors during director elections.

**A. Plaintiff's Position**

Plaintiff submits that a shareholder's efforts to investigate allegations of corporate mismanagement and breaches of fiduciary duties are proper purposes under Section 220. *See, e.g., Seinfeld v. Verizon Commc'ns, Inc.*, 909 A.2d 117, 121 (Del. 2006) ("It is well established that a stockholder's desire to investigate wrongdoing or mismanagement is a 'proper purpose.'"); *Sutherland v. Dardanelle Timber Co.*, 2006 WL 1451531, at \*8 (Del. Ch. May 16, 2006) ("The investigation of possible breaches of fiduciary duty is such a proper purpose."). Plaintiff's demand letter adequately set forth such a proper purpose. Therefore, Defendant wrongfully refused Plaintiff's request to inspect its books and records under Section 220.

**B. Defendant's Position**

Defendant does not dispute, as a general matter, that a stockholder's desire to investigate possible mismanagement and/or breaches of fiduciary duty is a "proper purpose" under Section 220. What Defendant does vigorously dispute is Plaintiff's unfounded contentions that it has offered credible evidence of probable corporate wrongdoing sufficient to justify its request for inspection of the Company's books and records. The grounds for this position are fully set forth in Defendant's Opening and Answering Pretrial Briefs.

**V. STATEMENT OF RELIEF REQUESTED**

**A. Plaintiff's Request for Relief**

Plaintiff respectfully requests that this Court enter judgment in its favor and Order Defendant to produce for inspection and copying all documents identified in Plaintiff's December 9, 2008 demand letter.

**B. Defendant's Request for Relief**

Defendant respectfully requests that the Court determine that Plaintiff has not offered credible evidence of probable corporate wrongdoing and, accordingly, enter an Order denying Plaintiff the inspection it seeks by way of the Demand.

**VI. REQUESTED AMENDMENTS TO PLEADINGS**

Neither party seeks to amend the pleadings.

**VII. LIST OF WITNESSES**

**A. Plaintiff's Witnesses**

None.

**B. Defendant's Witnesses**

None.

**VIII. EVIDENTIARY ISSUES**

**A. Joint Exhibits**

<b>Joint Ex. No.</b>	<b>Bates No.</b>	<b>Date</b>	<b>Description</b>
J-1		5/6/09	Axcelis's May 6, 2009 Amended and Restated Certificate of Incorporation
J-2		12/31/08	Axcelis's 10-K for the Year Ended December 31, 2008
J-3		2/26/09	SHI's February 26, 2009 Press Release Describing SEN's Formation
J-4		3/31/08	Axcelis's 2007 Annual Report
J-5		2/11/08	Axcelis's February 11, 2008 Press Release Confirming its Receipt of SHI's offer
J-6		2/4/08	Report Published by Yahoo Finance Showing Axcelis's Opening and Closing Share Prices on February 4, 2008

Joint Ex. No.	Bates No.	Date	Description
J-7		2/11/08	SHI's February 11, 2008 Letter to Axcelis, as Reprinted in a February 13, 2008 EETimes.com Article
J-8		2/25/08	Axcelis's February 25, 2008 8-K Discussing its Rejection of SHI's Unsolicited Proposal, and the Reasons Therefor
J-9		3/10/08	SHI's March 10, 2008 Letter to Axcelis's Board
J-10		3/10/08	Axcelis's March 10, 2008 Press Release Announcing the Receipt of SHI's Second Acquisition Proposal
J-11		3/10/08	Report Published by Yahoo Finance Showing Axcelis's Opening and Closing Share Prices on March 10, 2008
J-12		3/17/08	Axcelis's March 17, 2008 8-K Announcing the Board's Rejection of SHI's Second Acquisition Proposal
J-13		4/14/08	Axcelis' April 14, 2008 Letter to Shareholders Included in its April 14, 2008 8-K
J-14		4/16/08	SHI's April 16, 2008 Press Release Discussing its Efforts to Acquire Axcelis
J-15		5/1/08	Axcelis's May 1, 2008 8-K Explaining the Board's Conclusions as to Why the Three Directors Received Less than a Majority of the Stockholder Vote
J-16		10/16/07	Board's Governance Policies as Amended Through October 16, 2007
J-17		5/23/08	Axcelis's May 23, 2008 Press Release Announcing the Board's Decision Not to Accept the Resignations of the Directors Who Were Re-elected at the 2008 Annual Meeting
J-18		6/6/08	Axcelis's June 6, 2008 Press Release Announcing the Confidentiality Agreement
J-19		9/15/08	Axcelis's September 15, 2008 8-K Disclosing Axcelis Provided Data in Response to SHI's Due Diligence Requests and Several Meetings With SHI's Representatives to Discuss SHI's Due Diligence Requests
J-20		9/15/08	Report Published by Yahoo Finance Showing Axcelis's Opening and Closing Share Prices on September 15, 2008
J-21		12/9/08	Westland P&F's Demand Letter including their Brokerage Account Statement dated December 4, 2008
J-22		6/4/09	Westland P&F's Brokerage Account Statement dated June 4, 2009
J-23		12/12/08	Axcelis's Rejection to Westland P&F's Demand Letter
J-24		1/15/09	Axcelis's January 15, 2009 8-K Announcing that it Failed to Make a Required Payment Under an Indenture Agreement with U.S. Bank, N.A.
J-25		2/26/09	Axcelis's February 26, 2009 Press Release Announcing the Agreement to Sell Axcelis's 50% Stake in SEN to SHI
J-26		3/30/09	Axcelis's March 30, 2009 Press Release Announcing the Sale Was Complete
J-27		4/3/09	Axcelis's April 3, 2009 8-K Disclosing Details of the Sale
J-28		3/30/09	Report Published by Yahoo Finance Showing Axcelis's Opening and Closing Share Prices on March 30, 2009
J-29		4/2/09	Westland P&F's Complaint Pursuant to 8 Del. C. § 220 to Compel Inspection of Books and Records

<b>Joint Ex. No.</b>	<b>Bates No.</b>	<b>Date</b>	<b>Description</b>
J-30		5/1/09	Axcelis's Answer to the Complaint
J-31		6/5/09	Report Published by Yahoo Finance Showing Axcelis's Opening and Closing Share Prices from June 8, 2007 through June 5, 2009
J-32		6/5/09	Report Published by Yahoo Finance Showing the NASDAQ Index Closing Value from June 8, 2007 through June 5, 2009

**B. Plaintiff's Exhibits**

<b>Plaintiff's Ex. No.</b>	<b>Bates No.</b>	<b>Date</b>	<b>Description</b>
P-1		4/16/08	Forbes.com Article "Axcelis Bites Back"
P-2		2/11/08	Letter from Brian R. Walton, Managing Director, Sterling Capital Management to Mary Puma, Chairperson and CEO, Axcelis Technologies, Inc., dated February 11, 2008, as Reprinted in an EETimes.com article, dated February 11, 2008
P-3		3/28/08	Letter from Brian R. Walton, Managing Director, Sterling Capital Management to Mary Puma, Chairperson and CEO, Axcelis Technologies, Inc., dated March 28, 2008
P-4		5/2/08	Letter from Brian R. Walton, Managing Director, Sterling Capital Management to Mary Puma, Chairperson and CEO, Axcelis Technologies, Inc., dated May 2, 2008
P-5		4/18/08	Reuters Article Quoting Glass Lewis' Recommendations to Axcelis Shareholders, dated April 18, 2008
P-6		1/11/06	Axcelis's January 11, 2006 Press Release Announcing "Axcelis Secures Key Technology Win for New High Dose Optima Implanter; Latest Tool in Optima Family Recognized for Precision, Spot Beam Optics and Applications Coverage"
P-7		6/22/09	Report Published by Yahoo Finance Showing Axcelis's Stock Price History between June 21, 2004 through June 22, 2009
P-8		2/11/08	<i>Semiconductor International</i> Article "Sumitomo Makes Takeover Bid for Axcelis"
P-9		6/2/09	Pulte Homes' June 2, 2009 8-K Announcing the Rejection of the Resignation of Three Board Members

**C. Defendant's Exhibits**

<b>Defendant's Ex. No.</b>	<b>Bates No.</b>	<b>Date</b>	<b>Description</b>
D-1		4/2/09	Axcelis' Proxy Statement on Schedule 14A
D-2		5/2/07	Axcelis' Historical Stock Price Report from Axcelis' website
D-3		4/16/08	Axcelis' April 16, 2008 Press Release Responding to SHI Tactics
D-4		3/27/08	Axcelis' Proxy Statement on Schedule 14A
D-5		2/11/08	Letter to M. Puma from Sterling Capital Management, LLC, Exhibit 99 to Sterling Capital Management, LLC's Form SC 13 D/A
D-6		2/29/08	Letter to S. Hardis from Sterling Capital Management, LLC, Exhibit 99 to Sterling Capital Management, LLC's SC 13D/A
D-7		2/25/08	Bloomberg.com Report Discussing Axcelis' Rejection of SHI's \$544 Million Bid
D-8		10/8/07	By-Laws of Axcelis
D-9		2/28/08	Axcelis' Preliminary Proxy Statement on Schedule 14A
D-10		2/26/09	Axcelis' Historical Stock Price Report from Axcelis' website

**IX. ESTIMATED TRIAL LENGTH**

The parties estimate that the trial on this matter will last one day.

DATED: July 2, 2009

Respectfully submitted,

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