



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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**CITY OF WESTLAND POLICE &  
FIRE RETIREMENT SYSTEM,**

Plaintiff,

v.

**AXCELIS TECHNOLOGIES, INC.,**

Defendant.

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C. A. No. 4473-VCN

**ANSWER OF DEFENDANT AXCELIS TECHNOLOGIES, INC.  
TO COMPLAINT PURSUANT TO 8 DEL. C. § 220 TO  
COMPEL INSPECTION OF BOOKS AND RECORDS**

Defendant, Axcelis Technologies, Inc. (“Axcelis” or “Defendant”), by and through its undersigned counsel, hereby answers and otherwise responds to the complaint (“Complaint”) of City of Westland Police & Fire Retirement System (“Westland” or “Plaintiff”) as follows:

1. As stated, Axcelis denies the allegations contained in paragraph 1 of the Complaint. Axcelis admits only that it denied Westland’s December 9, 2008 request for inspection of books and records on the basis that Westland did not satisfy the demand standard set forth in Section 220 of the Delaware General Corporation Law and Delaware’s jurisprudence interpreting Section 220.

2. Axcelis lacks information or knowledge sufficient to admit or deny what Westland “believe[s].” Further, whether Westland has “reasonable grounds to believe that the Board may have breached its fiduciary duties” is a legal conclusion. To the extent a further response is required, Axcelis denies the allegations contained in paragraph 2 of the Complaint, except that it admits that Sumitomo Heavy Industries, Ltd. (“SHI”) made

unsolicited proposals to acquire Axcelis and also admits that Axcelis's board of directors (the "Board") declined to accept the resignations of three directors who received more "withheld" votes than "for" votes at Axcelis's 2008 annual meeting of stockholders.

3. Axcelis admits the allegations contained in the third paragraph of the Complaint.

4. Axcelis lacks information or knowledge sufficient to admit or deny what "compel[led]" Westland to commence this action, and therefore denies the allegations contained in paragraph 4 of the Complaint.

5. Axcelis denies the allegations contained in paragraph 5 of the Complaint. By way of further response, Axcelis states that Westland's Chairperson alleges in his affidavit in support of Plaintiff's Complaint that Westland was the beneficial owner of 9,400 shares of Axcelis as of November 20, 2008.

6. Axcelis admits the allegations contained in paragraph 6 of the Complaint.

7. Regarding the allegations contained in the first sentence of paragraph 7 of the Complaint, Axcelis admits that on February 4, 2008 SHI and TPG Capital LLC made an unsolicited proposal to acquire Axcelis for \$5.20 per share. Regarding the allegations contained in the second sentence, Axcelis lacks information or knowledge sufficient to admit or deny whether SHI was "attempting to engage in good-faith negotiations with Axcelis" and denies any characterizations regarding Axcelis's market share and financial performance. Accordingly, Axcelis denies the allegations contained in the second sentence. Regarding the allegations contained in the third sentence, Axcelis admits only that on February 8, 2008, the closing price of its stock was \$4.04 and that \$4.04 is approximately 22% less than \$5.20. By way of further response, on February 4 Axcelis's

stock closed at \$4.18 per share, and on February 8 its stock closed at \$4.04 per share, an approximate 3.3% difference.

8. Regarding the allegations contained in the first sentence of paragraph 8 of the Complaint, Axcelis lacks information or knowledge sufficient to admit or deny whether “SHI’s acquisition proposals were widely seen as an effort by SHI to put an end to a contentious relationship with Axcelis....” and therefore denies the allegations contained in the first sentence. Axcelis admits only that it and SHI operated a joint adventure in Japan known as SEN Corporation (“SEN”). Axcelis admits the allegations contained in the second sentence. As stated, Axcelis denies the allegations contained in the third sentence. Axcelis admits only that an acquisition of Axcelis by SHI would have put SHI in control of 100% of SEN.

9. Axcelis denies the allegations contained in the first sentence of paragraph 9 of the Complaint. With the exception of typographical errors reflected in the Complaint, Axcelis admits only that the language quoted in the second and third sentences appears in a letter from Sterling Capital Management LLC (“Sterling Capital”) to Axcelis’s Chairman and CEO, which letter was attached as Exhibit 99 to Sterling Capital’s Form SC 13D/A filed with the Securities and Exchange Commission (“SEC”) on February 11, 2008. By way of further response, Axcelis respectfully refers the Court to the referenced letter, which is incorporated by reference in the Complaint, for a complete and accurate description of its terms. Sterling Capital was in support of Axcelis negotiating a deal but believed SHI’s offer price was too low. Indeed, in a letter to Axcelis, attached as Exhibit 99 to Sterling Capital’s Form SC 13D/A filed with the SEC on February 29, 2008, incorporated herein by reference, Sterling Capital stated that SHI’s “initial bid of \$5.20 per

share for Axcelis is clearly too low. Even with strong industry headwinds and lack of traction to-date, it is appropriate to value Axcelis assuming some modest level of Optima success. Our analysis would indicate that a fair price for Axcelis under this scenario would approximate \$7.00 to \$7.50 per share.”

10. As stated, Axcelis denies the allegations contained in the first sentence of paragraph 10 of the Complaint. Axcelis admits only that the Board rejected SHI’s first acquisition proposal. Axcelis admits the allegations contained in the second sentence. Axcelis denies the allegations contained in the third sentence. By way of further response, Axcelis respectfully refers the Court to the referenced press release and Powerpoint, which were attached as Exhibits 99.3 and 99.1, respectively, to Axcelis’s Current Report filed on Form 8-K with the SEC on February 25, 2008, and which are incorporated by reference in the Complaint, for a complete and accurate description of their terms.

11. Axcelis admits the allegations contained in paragraph 11 of the Complaint.

12. Regarding the allegations contained in the first sentence of paragraph 12 of the Complaint, Axcelis admits only that the quoted language appears in a March 10, 2008 letter from SHI to the Board. By way of further response, Axcelis respectfully refers the Court to the referenced letter, which is incorporated by reference in the Complaint, for a complete and accurate description of its terms. Axcelis denies the allegations contained in the second sentence. Regarding the allegations contained in the third sentence, Axcelis admits only that the selectively quoted language appears in a February 25, 2008 Bloomberg.com news report, which reads in relevant part: “‘I think management was right in stating their belief that the bid was too low,’ Matt Petkun, an analyst at D.A. Davidson & Co. in Lake Oswego, Oregon, said in an interview today. ‘However, the best outcome

for Axcelis is some combination with Sumitomo Heavy.””

13. Axcelis admits only that the language quoted in paragraph 13 of the Complaint appears in a March 10, 2008 letter from SHI to the Board. By way of further response, Axcelis respectfully refers the Court to the referenced letter, which is incorporated by reference in the Complaint, for a complete and accurate description of its terms.

14. Regarding the allegations contained in the first sentence of paragraph 14 of the Complaint, Axcelis admits only that it did not negotiate with SHI regarding SHI’s revised proposal, that it rejected SHI’s revised proposal, and that the same was disclosed in a March 17, 2008 press release. Regarding the allegations contained in the second and third sentences, Axcelis admits only that the language selectively quoted therein appears in an Axcelis press release dated March 17, 2008. By way of further response, Axcelis respectfully refers the Court to the referenced press release, which is attached as Exhibit 99.2 to Axcelis’s Current Report filed on Form 8-K with the SEC on March 17, 2008, and which is incorporated by reference in the Complaint, for a complete and accurate description of its terms.

15. Axcelis denies the allegations contained in the first sentence of paragraph 15 of the Complaint. The allegations contained in the second sentence set forth a legal conclusion to which no response is required. To the extent a response is required, Axcelis denies the allegations contained in the second sentence.

16. Axcelis denies the characterizations in the first sentence of paragraph 16 of the Complaint, and therefore denies the allegations contained in that sentence. Regarding the allegations contained in the second sentence, Axcelis lacks information or knowledge

sufficient to admit or deny whether Sterling Capital was “worried.” By way of further response, Axcelis respectfully refers the Court to the referenced letter, which is attached as Exhibit 99 to Sterling Capital’s Form SC 13D/A filed with the SEC on March 28, 2008, and which is incorporated by reference in the Complaint, for a complete and accurate description of its terms. Regarding the allegations contained in the third sentence, Axcelis admits only that the quoted language was published by Glass Lewis and that Glass Lewis recommended to Axcelis stockholders that they withhold their votes for management’s slate of directors at Axcelis’s 2008 annual meeting of stockholders. By way of further response, Axcelis respectfully refers the Court to the referenced proxy paper by Glass Lewis, which is incorporated by reference in the Complaint, for a complete and accurate description of its terms.

17. Axcelis admits the allegations contained in the first sentence of paragraph 17 of the Complaint. Regarding the allegations contained in the second sentence, Axcelis admits only that the selectively quoted language appears in the referenced letter to stockholders, which is attached as Exhibit 99.2 to Axcelis’s Current Report filed on Form 8-K with the SEC on April 14, 2008. Axcelis denies the characterizations of that letter, and notes that the partially quoted sentence actually reads: “We have been aware, for many years, that a ‘one company’ approach combining Axcelis and SEN could yield significant operational and commercial synergies, and we have on several previous occasions sought unsuccessfully to engage in such discussions.” Axcelis denies the allegations contained in the third sentence. As stated, Axcelis denies the allegations contained in the fourth and fifth sentences. Axcelis admits only that it decided not to meet with representatives of SHI regarding SHI’s unsolicited acquisition proposals, and also

admits that the quoted language appears in the referenced letter. By way of further response, Axcelis respectfully refers the Court to the referenced letter, which is incorporated by reference in the Complaint, for a complete and accurate description of its terms.

18. Axcelis denies the allegations contained in paragraph 18 of the Complaint.

19. Axcelis admits the allegations contained in the first three sentences of paragraph 19 of the Complaint. The allegations contained in the fourth sentence are denied to the extent they set forth a legal conclusion. Axcelis admits only that the Board, in its discretion, was obligated either to accept or to reject the tendered resignations.

20. Axcelis denies the characterizations of its Corporate Governance Policies and any amendments thereto. Axcelis's Corporate Governance Policies speak for themselves. By way of further response, Axcelis respectfully refers the Court to the referenced Corporate Governance Policies, which are incorporated by reference in the Complaint, for a complete and accurate description of their terms.

21. Axcelis admits the allegations contained in paragraph 21 of the Complaint. By way of further response, Axcelis respectfully refers the Court to the referenced letter, which is incorporated by reference in the Complaint, for a complete and accurate description of its terms.

22. Regarding the allegations contained in the first sentence of paragraph 22 of the Complaint, Axcelis admits only that that it issued a May 23, 2008 press release that addressed the decision of the Board not to accept the resignations of certain directors following Axcelis's 2008 annual meeting of stockholders. Axcelis admits the allegations contained in the second sentence. Any other allegations, or characterizations of the press

release are denied. By way of further response, Axcelis respectfully refers the Court to the referenced press release, which is incorporated by reference in the Complaint, for a complete and accurate description of its terms.

23. Axcelis denies the allegations contained in paragraph 23 of the Complaint.

24. As stated, Axcelis denies the allegations contained in the first sentence of paragraph 24 of the Complaint. Axcelis admits only that it entered into a confidentiality agreement with SHI, on or about June 6, 2008, to facilitate discussions regarding SHI's acquisition proposals. Axcelis denies the allegations contained in the second sentence.

25. Regarding the allegations contained in the first sentence of paragraph 25 of the Complaint, Axcelis admits only that the selectively quoted language appears in a letter from Axcelis to SHI. Any other allegations or characterizations of the referenced letter are denied. By way of further response, Axcelis respectfully refers the Court to the referenced letter, which is attached as Exhibit 99.1 to Axcelis's Current Report filed on Form 8-K with the SEC on September 15, 2008, and which is incorporated by reference in the Complaint, for a complete and accurate description of its terms. Axcelis denies the allegations contained in the second sentence.

26. Axcelis admits the allegations contained in the first sentence of paragraph 26 of the Complaint. Axcelis denies the allegations contained in the second sentence.

27. Axcelis denies any characterizations of the referenced demand letter contained in the first sentence of paragraph 27 of the Complaint, and admits only that the referenced letter was received. By way of further response, Axcelis respectfully refers the Court to the referenced demand letter, which is attached to the Complaint as Exhibit "A," for a complete and accurate description of its terms. Axcelis admits the allegations



contained in the first clause of the second sentence. The allegations contained in the second clause of the second sentence set forth a legal conclusion to which no response is required. By way of further response, Axcelis notes that the affidavit of Westland's Chairperson, attached to the Complaint, attests to Westland's beneficial ownership of 9,400 Axcelis shares as of November 20, 2008, and another attached document purporting to be a screen shot of a Comercia Bank web page purports to show Westland as the beneficial owner of 9,400 Axcelis shares on December 4, 2008.

28. The allegations contained in the first sentence of paragraph 28 of the Complaint set forth legal conclusions to which no response is required. To the extent a response is required, Axcelis denies the allegations contained in the first sentence and otherwise respectfully refers the Court to Westland's demand letter for a complete and accurate description of its terms. Axcelis admits the allegations contained in the second sentence.

29. Axcelis admits the allegations contained in the first and second sentences of paragraph 29 of the Complaint. With the exception of the word "apparently," Axcelis admits the allegations contained in the third sentence. By way of further response, Axcelis respectfully refers the Court to the referenced letter, which is attached as Exhibit "B" to the Complaint, for a complete and accurate description of its terms. Axcelis admits the allegations contained in the fourth sentence.

30. The allegations contained in paragraph 30 of the Complaint set forth a legal conclusion to which no response is required. To the extent a response is required, Axcelis denies those allegations.

31. Axcelis admits the allegations contained in the first sentence of paragraph 31 of the Complaint. Axcelis denies the allegations contained in the second sentence.

32. Axcelis admits the allegations contained in paragraph 32 of the Complaint.

33. As stated, Axcelis denies the allegations contained in paragraph 33 of the Complaint. Axcelis admits only that it declined to sell itself to SHI at \$6 per share and that it did sell its 50% interest in SEN to SHI for \$13 billion yen.

34. Axcelis denies the allegations contained in paragraph 34 of the Complaint.

35. Axcelis denies the allegations contained in paragraph 35 of the Complaint. Westland's Prayer for Relief sets forth the legal remedies to which Plaintiff claims it is entitled, and no response thereto is required. To the extent a response is required, Axcelis denies that Westland is entitled to any relief whatsoever.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a cause of action upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

The Complaint contains allegations outside of the scope of Plaintiff's December 9, 2008 demand letter.

DATED: May 1, 2009

**EDWARDS ANGELL PALMER & DODGE LLP**

*/s/ John L. Reed*

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **ANSWER OF DEFENDANT AXCELIS TECHNOLOGIES, INC. TO COMPLAINT PURSUANT TO 8 DEL. C. § 220 TO COMPEL INSPECTION OF BOOKS AND RECORDS** was caused to be served on the 1<sup>st</sup> day of May, 2009 on the following parties in the manner indicated below:

**LEXIS NEXIS FILE AND SERVE**

Jay W. Eisenhofer, Esq.  
Michael J. Barry, Esq.  
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EDWARDS ANGELL PALMER & DODGE LLP

/s/ Paul D. Brown  
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Paul D. Brown (DE Bar No.3903)