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Re: Gentile, et al. v. SinglePoint Financial, Inc.
C.A. No. 18677-NC
Date Submitted: September 12, 2002

Dear Counsel:

Petitioners, John A. Gentile ("Gentile"), Victoria S. Cashman ("Cashman") and Bradley T. Martin ("Martin"), Dyad Partners LLC ("Dyad Partners"), and John Knight ("Knight") (collectively, the "Petitioners"), bring this action pursuant to 8 Del. C. § 262 to assert their appraisal rights regarding their 98,750 shares. of common stock of Respondent SinglePoint Financial, Inc. ("SinglePoint" or the "Company"), a Delaware corporation.[1]

[1] Specifically, Gentile, a former SinglePoint director, was the record holder of 90,500 shares of SinglePoint common stock; Cashman and her husband, Martin, were the record holders of 2,500 shares of common stock; Dyad Partners was the record holder of 3,750 shares of common stock; and Knight was the record holder of 2,000 shares of common stock.

This action, filed on February 15, 2001, stems from an October 23, 2000, merger (the "Merger") in which SinglePoint became a wholly-owned subsidiary of Cofmiti, Inc. ("Cofiniti").[2] Although the Company initially defended this action, it abandoned that effort, and a default judgment was entered in favor of the Petitioners on May 13, 2002.

An evidentiary hearing to determine the fair value of the Petitioners' shares of common stock was held on July 9, 2002. The Petitioners ask the Court to determine SinglePoint's total enterprise value to have been $33.83 million as of the date of the Merger. In addition, because a re-capitalization of SinglePoint several months before the Merger resulted in the issuance of additional shares of common stock to another shareholder of the Company and the corresponding dilution of their interests in the Company, the Petitioners seek to challenge the appropriateness and efficacy of that act. If their proportionate holdings in SinglePoint are measured with the challenged shares deemed outstanding, they seek a per share value of $5.5 1; if the effects of the issuance are ignored, the Petitioners would seek a per share

[2] Cofiniti is a Texas corporation formerly known as MarketKnowledge, Inc.

value of $17.63. The Petitioners also assert a claim for interest, at the legal rate, compounded quarterly, from the date of the Merger until the date of payment, on the determined value of their holdings.

This letter opinion sets forth my decision.

I. BACKGROUND

A. *The Company*

SinglePoint[3] was a provider of high technology services for the financial sector, enabling financial advisors and their clients to manage assets online. Specifically, SinglePoint served the middleware[4] market by developing what the Petitioners described as business process management ("BP,") technology. BPM technology "[m]anages an enterprise's [information technology] system and facilitates inter-enterprise, business-to-business integration through mapping and controlling the business process."[5]

[3] SinglePoint was formerly known as OpTeamaSoft, Inc.
[4] "Middleware" is a "[g]eneric term for software which sits between different levels of an [information technology] system." Pet'rs' Ex. ("PX") 20 at 7.
[5] *Id.* at 9.

Thus, through the use of BPM technology, the information technology of two separate companies can be integrated.

At the time of the Merger, the market was enthusiastic about the possibilities of BPM technology, which represented the newest generation of integration tools. SinglePoint's BPM technology had reached the "beta stage" of product development, and the Company had entered into contracts with a number of financial service providers. In the year prior to the Merger, SinglePoint reported $1.208 million in revenue? Therefore, despite the lack of a lengthy product history, one could conclude that SinglePoint had a viable product.

B. The *Events Leading Up to the Merger*

A figure central to the evolution of SinglePoint's capital and corporate structure is Pasquale David Rossette ("Rossette"). Beginning in early 1996, Rossette extended credit to the Company. As of March 2000, Rossette, by then one of two directors constituting the Company's board of directors (the

[6] The Petitioners apparently derive this amount from the summation of monthly revenues for the period from October 1999 to, and including, September 2000, as reported in the Company's unaudited income statements.

"Board"),' had advanced at least $3,074,039.[8] As consideration for this financing, Rossette received promissory notes that were convertible into shares of SinglePoint common stock. Under the terms of the Debt Conversion Agreement, dated January 13, 1999, each dollar of debt was convertible into 1 and 1/3 shares of common stock. The Board altered this conversion ratio through the Amended Loan Agreement of October 23, 1999 (the "Amended Loan Agreement"), to allow each dollar in debt to be converted into two shares of common stock.[9]

SinglePoint's capital structure, prior to March 27, 2000, principally consisted of 5,904,566 outstanding shares of common stock[10] and debt payable to Rossette. However, the large amount of debt owed to Rossette deterred any additional investment by others in SinglePoint. The solution devised to resolve this problem was to convert Rossette's substantial debt

[7] The other director was Douglas Bachelor ("Bachelor").
[8] Interest of at least $146,912 had accrued on this debt.
[9] Although the Amended Loan Agreement was not presented as an exhibit at the evidentiary hearing, I grant the Petitioners' request to reopen the record to allow the inclusion of the Amended Loan Agreement, as transmitted by Letter from David A. Jenkins, Esq., dated August 30, 2002, at Tab A.
[10] Rossette at this point held approximately 52% of SinglePoint's equity.

holdings into equity holdings in the Company. This engendered another quandary: because Rossette's debt holdings would convert into more shares than were authorized, an amendment to the SinglePoint certificate of incorporation would be needed. Accordingly, at a special meeting of the Company's shareholders on March 27, 2000, the number of authorized shares was increased from 10,000,000 to 60,000,000.[11]

That same day, Rossette and Bachelor convened a meeting of the Board (the "March Meeting") at which it was agreed that over $2,200,000 of Rossette's debt would be converted into SinglePoint equity. However, instead of using the ratio established in the Amended Loan Agreement and thereby converting each dollar of debt into two shares of common stock, the Board agreed to allow Rossette to convert each dollar of debt into 20 shares of common stock, in other words, Rossette would receive one share of SinglePoint common stock for every $.05 of debt. Therefore, the over $2.2 million dollars of debt would become 44,419,020 shares of SinglePoint

[11] The Petitioners question the validity of this action but have not challenged it in this proceeding.

common stock instead of approximately 4.4 million shares. Accordingly, on March 27, 2000, SinglePoint entered into a new Debt Conversion Agreement (the "New Debt Conversion Agreement") converting all but $1 million in principal of Rossette's debt holdings into shares of common stock at a rate of one common share for every $.05 of debt.[12] The shares that Rossette obtained from this conversion constituted at least 77% of SinglePoint's then-issued and outstanding stock.

Rossette personally retained The Harman Group Corporate Finance, Inc. ("The Harman Group") to render a fairness opinion (the "Fairness Opinion") regarding whether the new debt conversion ratio was fair to the Company. The Harman Group concluded that the fair value of SinglePoint

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[12] As a result of the New Debt Conversion Agreement and related agreements, SinglePoint further restructured its remaining obligations to Rossette. All prior promissory notes and instruments evidencing indebtedness were terminated. The New Debt Conversion Agreement revised the terms of repayment of the remaining $1 ,OOO,OOO in debt; accordingly, SinglePoint executed and delivered to Rossette a convertible demand note in the principal amount of $1 ,OOO,OOO. Additionally, pursuant to the New Debt Conversion Agreement, SinglePoint executed and delivered to Rossette a convertible revolving demand note in the principal amount of $500,000.

common stock was $.04 per share.[13] In its analysis, The Harman Group appraised SinglePoint using only a discounted cash flow ("DCF") analysis, ignoring all other methodologies. Other facts also call into question the accuracy of such a conclusion.

Actions undertaken by Rossette and Bachelor less than three weeks before the March Meeting indicate that the fair market value per share of the Company's common stock was $.75. The SinglePoint stock option plan required that the exercise price of certain options be equivalent to the fair market value of the Company's stock. Rossette and Bachelor, presumably in accordance with this requirement, voted to increase the exercise price of those stock options from $.50 per share to $.75 per share. Thus, the inference is that Rossette and Bachelor believed, less than three weeks

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[13] **Though** Bachelor claimed in his deposition that the Board relied upon the Fairness Opinion at the March Meeting, see PX 19 at 63, I seriously doubt his claim. First, the minutes of the March Meeting indicate the Fairness Opinion was not yet in existence. See PX 11 at 2 ("The Harman Group among other things ***will*** . . . review various current and historical financial statements and information about the Company.") (emphasis added). Second, the final copy of the Fairness Opinion is dated May 4, 2000, and contains references to sources published in May 2000.

earlier, that the fair market value per share of the common stock of SinglePoint was $.75.[14]

The Board made one more alteration to SinglePoint's capital structure before the Merger. On April 4, 2000, in another action questioned by the Petitioners, but not contested here, a 1 for 10 reverse stock split was approved by the Board. Thus, by the Merger date, the Company had $761,789 shares outstanding? However, despite these adjustments to SinglePoint's capital structure, SinglePoint continued to decline. More drastic measures were in order.

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[14] The Petitioners criticize the Fairness Opinion for ignoring the existence of approximately $8 million in net operating loss tax credits. However, the Petitioners fail to address the impact, if any, of such an asset on their valuation *efforts. See infra* pp. 19-23.

[15] This figure is taken from the information statement sent to SinglePoint shareholders on October 13, 2000, in connection with obtaining shareholder approval of the Merger (the "Information Statement"). The Information Statement presumed the validity of the change in the debt conversion ratio and, thus, calculated the number of outstanding shares under the assumption that each dollar of debt surrendered by Rossette had been converted into twenty shares of SinglePoint common stock.

If one were to disregard the March Meeting's increase in the conversion rate and the conversion ratio of the Amended Loan Agreement (two shares of common stock for each dollar of debt) were used, the number of shares of SinglePoint common stock outstanding would be 1,801,789. This number is derived from the Information Statement's stated number of common shares outstanding (5,761,789 post-reverse stock split), less the shares issued to Rossette under the new conversion ratio (4,400,000 post-reverse stock

C. *The Merger*

Despite the strategy of converting Rossette's debt into SinglePoint equity, Rossette and Bachelor concluded that in order for SinglePoint to survive, a merger should be pursued. Hence, apparently beginning in May or June of 2000, they began to discuss a possible transaction with Cofiniti. On September 15, 2000, SinglePoint entered into an Agreement and Plan of Reorganization pursuant to which Cosmo Merger Corp., a Delaware corporation wholly-owned by Cofiniti, was to merge into SinglePoint, with SinglePoint, the surviving entity, thus becoming a wholly-owned subsidiary of Cofiniti. As consideration, SinglePoint shareholders received 0.49 shares of Cofiniti common stock for each share of SinglePoint common stock.[16] Additionally, Cofiniti guaranteed repayment of the $2,062,070.48 in debt owed to Rossette and paid to Rossette certain compensation that SinglePoint

split), plus the number of shares that would have been acquired by Rossette under the old conversion ratio (440,000 post-reverse stock split).

[16] This had an approximate value of $2.46 per share.

had not paid to him.[17] The Information Statement also reported that several large shareholders in the Company, including Rossette and Bachelor, had already executed agreements to vote their shares in favor of the transaction. The Merger became effective on October 23, 2000. The Petitioners neither consented to, nor voted their shares in favor of, the Merger.

D. ***Procedural History***

After concluding that they did not receive fair consideration for their SinglePoint holdings through the Merger, the Petitioners, who have satisfied all requirements of 8 *Del.* C. $262, commenced this appraisal proceeding on February 15, 2001. SinglePoint filed its response on March 23, 200 1. However, during the following year, SinglePoint failed to respond properly to the Petitioners' discovery requests and, furthermore, did not cooperate with its California or Delaware counsel. As a result of this discord, the

[17] The Information Statement noted that "[i]n connection with the [M]erger, SinglePoint and Mr. Rossette have entered into an [a]greement . . . which replaces the [p]romissory [n]otes [held by Rossette] with a new Consolidated Promissory Note . . . and terminates the [New] Debt Conversion Agreement and related agreements effective immediately prior to the [M]erger. The amount of the Consolidated Promissory Note is $2,062,070.48." PX 20, Tab 28 at 21. The Petitioners apparently rely upon this figure

Company's Delaware counsel sought to withdraw; that motion was granted on March 21, 2002.[18] SinglePoint did not retain substitute counsel and persisted in its failure to comply with this Court's discovery rules. On April 12, 2002, the Petitioners moved for entry of a default judgment against SinglePoint; that motion was granted on May 13, 2002.

An evidentiary hearing to determine fair value of the Petitioners' shares was scheduled for July 9, 2002. However, on July 8, 2002, a letter (the "Letter") arrived from Marc Ferguson ("Ferguson") taking issue with the Petitioners' characterization of SinglePoint's financial status.[19] In the Letter, Ferguson described himself as "not and never hav[ing] been an officer, director, or employee of SinglePoint," and further noted that he "was not associated with SinglePoint . . . in any form or capacity and that [he] had

($2,062,070.48) as the aggregate amount of debt owed by SinglePoint at the time of the Merger.

[18] SinglePoint's California counsel had never been admitted pro *hac vice.*

[19] Ferguson claims that he is the founder and former Chairman of Cofiniti. In addition, Ferguson is the Vice-President of SinglePoint Acquisition Group, an Ohio corporation that may be involved in the liquidation of Cofiniti and which may have purchased Cofmiti's assets.

no authority to represent or bind SinglePoint . . . in any way."[20] A copy of Bachelor's deposition, in which he claimed that SinglePoint essentially had no value before the Merger, was attached to the Letter.

At the evidentiary hearing held on the following day, the Petitioners, unopposed, presented a single witness who testified to the fair value of their shares. The Petitioners claim that the total enterprise value of SinglePoint, as of the date of the Merger, was $33,830,000. Thus, depending upon whether their 98,750 shares are measured against 5,761,789 or 1,801,789 shares of SinglePoint common stock outstanding, they seek an award collectively of $544,112.50 or $1,740,962.50, respectively. Additionally, the Petitioners seek interest, calculated at the legal rate at the time of the Merger (1 1%), compounded quarterly, from the date of the Merger until payment.

II. ANALYSIS

Under 8 ***Del.*** C. § 262, dissenting shareholders can seek a judicial determination of the fair value of their interests in the acquired corporation

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[20] Letter at 1.

instead of accepting the merger consideration. "Fair value, as used in Section 262(h), has been defined as 'the value of the Company to the stockholder as a going concern, rather than its value to a third party as an acquisition.'"[21] This fair value is to be determined "exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation."[22] Because "the dissenting shareholders are entitled to receive 'fair value' representing their 'proportionate interest in a going concern,'"[23] the Court must also ascertain the number of shares outstanding.[24]

A. *The Number of SinglePoint Common Shares Outstanding*

Though typically a ministerial act, in this case the determination of how many common shares were outstanding at the time of the Merger poses a question regarding the scope of the appraisal process under 8 *Del. C.*

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[21] *Gray v. Cytokine Pharmasciences, Inc.,* 2002 WL 853549, at *6 (Del. Ch. Apr. 25, 2002) (quoting *M.P.M. Enters., Inc. v. Gilbert, 73* 1 A.2d 790,795 (Del. 1999)).
[22] *8 Del. C.* §262(h).
[23] *Rapid-American Corp. v. Harris,* 603 A.2d 796, 802 (Del. 1992) (citation omitted).
[24] *See, e.g., Paskill Corp. v. Alcoma Corp., 747* A.2d 549,556 (Del. 2000); *Gonsalves v. Straight Arrow Publishers, Inc., 2002* WL 31057465, at *2-3 (Del. Ch. Sept. 10, 2002).

$262. Certainly, the facts, presented without the benefit of an opposing point of view, cast a shadow over the validity of the adjustment of the conversion ratio of Rossette's debt. The Petitioners argue that "this Court should decide the propriety of that issuance as part of this proceeding."[25] Ultimately, they request that the Court disregard those additional shares resulting from the alleged self-dealing and calculate the Petitioners' proportionate interests based upon 1,801,789 shares of common stock outstanding, instead of the 5,761,789 shares of common stock identified in the Information Statement[26] (the "Share Dilution Claim").

The Petitioners assert that nothing in 8 *Del. C.* § *262* or the case law interpreting that statute prohibits this Court from deciding the Share Dilution Claim. Previously in appraisal actions, this Court has been required, as part of its valuation process, "to value breach of fiduciary duty claims . . . [when] those claims are part of the going concern value of the corporation whose

[25] Pet'rs' Post-Trial Br. at 17.
[26] No evidence has been presented that the Information Statement contradicts the records of the Company.

entity value is being determined.“*’ However, “[i]t is settled law that a breach of fiduciary duty claim arising from the merger . . . must be brought as a separate action directly challenging the merger.“*’ The Petitioners posit that it is impossible to determine the per share fair value of SinglePoint’s common stock without resolving the Share Dilution Claim. I conclude that the Share Dilution Claim is not within the scope of this appraisal action.

A similar issue was presented in *Cavalier Oil Corp. v. Harnett*.[29] In that appraisal action, the plaintiff claimed that a fraudulently assigned option to purchase an underlying 29,000 shares of stock diluted his interest, from 1.74% to 1.26%, in the companies being appraised. The plaintiff ultimately argued “that his stockholdings in [the companies subject to the appraisal process] must be equitably enlarged to 1.74% by eliminating 29,000 shares

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[27] *Nagy v. Bistricer*, 770 A.2d 43, 55 (Del. Ch. 2000).

[28] *Bomarko, Inc. v. International Telecharge, Inc.*, 1994 WL 198726, at *3 (Del. Ch. May 16, 1994). Conversely, derivative “breach of fiduciary duty claims that do not arise from the merger are corporate assets that may be included in the determination of fair value.” Id.

[29] 1988 WL 15816 (Del. Ch. Feb. 22, 1988), *aff’d*, 564 A.2d 1137 (Del. 1989).

each from the total outstanding shares."[30] The Court rejected his request, alternatively holding that

> [t]he right to an appraisal is derived from, and is limited by, the terms of the statute.. . . The appraisal statute does not contemplate a judicial determination of issues that are extrinsic to its scope and purpose. [The plaintiffs] claim of equitable entitlement to a greater ownership interest in [the companies subject to the appraisal process] falls into that category, because that claim would have no bearing on the "fair value" of the corporations or their stock. To permit such an adjudication of stock ownership as part of a § 262 appraisal would undermine the purpose of the appraisal statute, whose design "requires the avoidance of complexities in proceedings under it."[31]

The Supreme Court, in affirming the decision of this Court, held "that the question of entitlement to a specific number of shares is alien to an appraisal action under Delaware law."[32] The Supreme Court explained that, in an appraisal action,

> the focus continues to be on the determination of the intrinsic worth of the merged corporation, not on the distribution of shares among shareholders.. . . To require the Court of Chancery to conduct a preliminary reallocating of shares based on intra-shareholder disputes, such as dilution claims, would inject into

[30] *Id.* at *3.
[31] *Id.* at *6 (citations omitted).
[32] *Cavalier Oil Corp. v. Harnett, 564* A.2d 1137, 1146 (Del. 1989).

> the proceeding a nonvaluation task incompatible with the appraisal purpose.[33]

Here, a resolution of the Share Dilution Claim would not affect the fair value of SinglePoint or its stock. The Petitioners' argument, in essence, is that "[b]ecause this Court cannot determine *the per share* ***fair value of SinglePoint's*** *common stock* as of the Merger date, it should decide [the Share Dilution Claim] ."[34] Faithfulness to the statute and cases interpreting it precludes the Court from inquiring into allegations that shareholders had dilution claims arising months before the Merger.[35] Therefore, I refrain from deciding the Share Dilution Claim and find that there were 5,761,789 shares of SinglePoint common stock outstanding as of the date of the Merger.[36]

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[33] ***Id.***

[34] Pet'rs' Post-Trial Br. at 18 (emphasis added).

[35] I also reject the Petitioners' arguments to the extent that they attempt to recharacterize the Share Dilution Claim as a claim for corporate waste, and thereby have the value of such a derivative claim added into the total enterprise value of SinglePoint as an asset of the Company. Pet'rs' Post-Trial Br. at 19-20 (citing ***In re Brae Corp. S'holders Litig.***, 1991 WL 80213, at *6 n.8 (Del. Ch. May 15, 1991)). The Petitioners cannot escape the rule and policy concerns set forth by the Supreme ***Court*** in ***Cavalier Oil*** by merely switching the label on what, in essence, is a claim for share dilution.

[36] Although not critical to my resolution of this issue, I note that the classification of the Share Dilution Claim as direct or derivative in nature has important ramifications upon

B. The Petitioners ' Comparable Transaction Approach

The Petitioners at trial presented one witness, a valuation expert, who testified to the fair value of SinglePoint. Because the Court does not consider the Letter,[37] the Court's determination of the fair value of the Company's common stock necessarily focuses upon the Petitioners'

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whether the Petitioners could have elsewhere asserted the Share Dilution Claim. The determination of whether a claim is direct or derivative in nature is a difficult task. *Kramer* v. *Western Pac. Indus.,* Inc., 546 A.2d 348, 351-52 (Del. 1988). Claims for share dilution have typically been treated as derivative claims because of the lack of a "special injury." See, e.g., *In re Berkshire Realty Co. S'holder Litig., 2002* WL *31888345,* at *4 (Del. Ch. Dec. 18, *2002); Behrens v. Aerial Communications Inc.,* 2001 WL 599870, at *3 (Del. Ch. May 18, 2001). In contrast, dilution claims emphasizing the diminishment of voting power have been categorized as direct claims. *See, e.g., Oliver v. Boston Univ.,* **2000** WL 1091480, at *6 (Del. Ch. July 18, 2000).

Derivative claims, as opposed to direct claims, cannot be enforced by the acquired corporation's shareholders after the merger. *See Parnes v. Bally Entertainment Corp., 722* A.2d 1243, *1244-46* (Del. *1999); Tooley v. Donaldson. Lufkin & Jenrette, Inc., 2003* WL 203060, at *2-3 (Del Ch. Jan. 21, 2003). Furthermore, claims for share dilution do not add value to the corporation. Thus, given this legal landscape, no forum may be available for injured shareholders to assert their dilution claims.

[37] I reject the arguments presented in the Letter as they are asserted by an individual who is not a party to this case. Ferguson, the author of the letter, admitted that he is neither associated with nor authorized to represent SinglePoint in any capacity. I have, however, reviewed Ferguson's submission. Even though (except for the deposition of Bachelor) his submittal is hearsay and, thus, not tested by cross-examination, I find nothing in his submittal which persuades me that I should rethink the conclusions set forth in this letter opinion. No one, however, disputes his underlying argument that valuation of "emerging" entities, such as SinglePoint, presents many difficult challenges.

unchallenged arguments and a consideration of all relevant facts properly presented to the Court.[38]

"[A]ll generally accepted techniques of valuation used in the financial community" may be used to determine the fair value of a company and its shares.[39] However, for a variety of reasons, the Petitioners have rejected several of the alternative approaches for failing to predict accurately the fair value of the Company's common stock given its circumstances. Instead, the Petitioners rely primarily upon a comparable transaction analysis to ascertain the fair value of their proportionate interest in SinglePoint as a going concern.

The Petitioners assert that an asset-based valuation of SinglePoint would not produce an accurate result because SinglePoint, as an emerging growth company, would not derive its value as a going concern from the

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[38] See Gray, 2002 WL 853549, at *6 ("Obviously, the underlying assumptions that drive these valuations must be tested to ensure that all relevant facts are properly and reasonably considered.").
[39] ***Cede & Co. v. Technicolor, Inc., 542*** A.2d 1182, 1186-87 (Del. 1988).

collective value of its assets.[40] The Petitioners also decline to rely principally upon a DCF analysis, noting that the lack of earnings history. and the highly speculative nature of forecasts for the new generation of BPM technology prevent a DCF analysis from reliably indicating SinglePoint's value as a going concern.[41] Instead of the asset-based and DCF approaches, the Petitioners have utilized a comparable transaction analysis. This methodology is justified on the basis that, because "the 'year 2000 was an extremely active year for the merger and acquisition of middleware companies,'"[42] the abundance of data increases the accuracy of any predictive model.[43]

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[40] Indeed, as the testimony demonstrated, the value of a company which is pioneering an emerging technology lies in its future. Even though such a company may record losses and have few tangible assets, its value is theoretically the summation of the discounted stream of future revenues. Thus, although the risks may be high, the rewards may be even higher.

[41] The Petitioners did use a DCF analysis as a "reality check" on results from the comparable transaction analysis. *See infra* note 45.

[42] Pet'rs' Post-Trial Br. at 27 (quoting Tr. at 60).

[43] The Petitioners acknowledge that the selected time period that serves as the basis for their comparable transaction analysis arguably produces a skewed result due to the existence of a speculative bubble for "dot-corn" companies. However, they contend that because many of the transactions comprising their data set had been entered into or closed after the bursting of the bubble in spring of 2000, the effects of such an anomaly are minimized. Pet'rs' Post-Trial Br. at 33-34.

The Petitioners first developed two data sets of comparable transactions: comparable transactions involving acquired emerging growth companies of similar revenue size and comparable transactions involving companies with analogous software technology. For the first set of transactions, specifically for companies of $3 million in revenues or less, the Petitioners derived a mean price of $123 million, a median price of $37 million, and a median revenue multiple of 36.8; for companies of $1 million to $2 million in revenues, the Petitioners found a mean price of $128 million, a median price of $71 million, and a median revenue multiple of 44.19.[44] For the second set of transactions, after analyzing eleven comparable transactions for middleware companies, the Petitioners computed a median revenue multiple of 27.8 1 .[45]

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[44] I pause to note the obvious: acquiring companies may pay vastly different multiples of target companies' revenues for different target companies of equal revenue size. The existence of synergies between the target and the acquiror will influence the purchase price. Additionally, industry specific trends will create disparities between the purchase prices of two companies, of equal revenues, in different industries. Thus, the range of median revenue multiples derived from this first set of "comparable" transactions is of limited value.

[45] The Petitioners employed a DCF analysis as a "reality check" upon the revenue multipliers, which, at first glance, may appear excessive. The Petitioners heavily discounted revenues beyond the first few years, a practice consistent with the less than

The Petitioners then chose 28 as the revenue multiplier. This number is well below the range of median revenue multiples for companies with similarly sized revenues and is the rounded median revenue multiple for companies with comparable technology. Multiplying the Company's $1.208 million in revenues by the revenue multiplier of 28 produced a total enterprise value for SinglePoint of $33.83 million. The Petitioners then subtracted the $2,062,070.48 in debt owed to Rossette to derive the Company's equity value. Therefore, dividing by the 5,761,789 shares outstanding, the per share value of SinglePoint common stock becomes $5.51.

In conclusion, I find the Petitioners' analytical methodology properly and reasonably reflected all relevant facts and, therefore, conclude that the fair value of SinglePoint's common stock at the time of the Merger was $3 1,767,929.52. Thus, the per share fair value of SinglePoint common stock

certain future facing a start-up technology company. The implicit growth rates for SinglePoint, given discount rates ranging from 25% to 55%, comprised a range of 17.6% to 45.8%. These implicit growth rates were consistently slightly less than those generated by acquisitions of companies similar to SinglePoint in product and size of revenues.

was $5.51. Again, because of the default judgment, no contradictory valuations or arguments were asserted. The Petitioners, as holders of 98,750 shares of common stock, are therefore entitled collectively to receive $544,112.50.

C. Interest

The Petitioners have asked for an award of interest pursuant to 8 *Del. C.* § 262(h)-(i) at the legal rate, which, at the time of the Merger, was 11%,[46] and have requested that any interest awarded be compounded quarterly. This Court "has broad discretion under the appraisal statute to award either simple or compound interest."[47] However, a decision by this Court to award compound interest must be explained based upon the record established in the case.[48]

While each party bears the burden of proving an appropriate rate of interest to be awarded in a particular case, "[i]n the absence of sufficient

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[46] See 6 *Del. C.* § 2301.
[47] *M. G. Bancorporation, Inc. v. Le Beau, 737* A.2d 513, 527 (Del. 1999).
[48] *Gonsalves v. Straight Arrow Publishers, Inc.,* 725 A.2d 442 (Del. 1999) (Table) (Order ¶ 14); *M. G. Bancorporation, Inc., 737* A.2d at 527.

evidence, the less individually tailored legal rate may be awarded."[49] Given the unchallenged demands of the Petitioners for an award of the legal rate at the time of the Merger, I conclude that 11% is the appropriate rate of interest given the circumstances of this action.

The appraisal statute provides that "[t]he Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the stockholders entitled thereto. Interest may be simple or compound, as the Court may direct."[50] Here, I note that, although the record here was not particularly well-developed, this shortcoming was not attributable to the Petitioners. The Petitioners moved expeditiously to assert their appraisal rights, but their efforts were thwarted by the Company's abuse of the discovery rules. In addition, "[a]n award of simple interest . . . would not force the defendant company to disgorge the full benefit it received from having use of the [Petitioners'] funds."[51] Given SinglePoint's unresponsiveness in this matter, the Court should calculate any

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[49] *Gonsalves, 2002* WL 31057465, at *10.
[50] *8 Del. C.* § 262(i).
[51] *Gonsalves, 2002* WL 31057465, at *10.

award by using compound, rather than simple, interest. Therefore, I award to the Petitioners interest at 11% per annum, compounded quarterly,[52] from the date of the Merger until the date of payment.

III. CONCLUSION

For the foregoing reasons, the fair value of SinglePoint, as of the date of the Merger, was $3 1,767,929.52. The Petitioners, as the holders of **98, 750** shares of its common stock, out of 5,761,789 shares outstanding, are entitled to a total award of $544,11 2.50.[53] Interest thereon at 11% per annum, compounded quarterly, from the date of the Merger, is also awarded. I ask that counsel prepare and submit an implementing form of order.

Very truly yours,

JWN/cap
cc: Mr. Marc Ferguson
oc: Register in Chancery-NC

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[52] While interest is frequently compounded monthly in appraisal actions, see, e.g., Gray, 2002 WL 853549, at *12 (noting that the company subject to appraisal loaned money to the company into which it merged "a few months prior to the [m]erger at a rate of 10% compounded monthly"), the Petitioners have only sought compounding on a quarterly basis, a request that I deem appropriate under the circumstances.

[53] Thus, the individual awards are: Gentile (90,500 shares), $498,655; Cashman and Martin (2,500 shares), $13,775; Dyad Partners (3,750 shares), $20,662.50; and Knight (2,000 shares), $11,020.