COURT OF CHANCERY
OF THE
STATE OF DELAWARE

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VICE CHANCELLOR

New Castle County Court House
500 N. King Street, Suite 11400
Wilmington, Delaware 19801

Submitted: July 6, 2005
Decided: July 8, 2005

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RE: In re SunGard Data Systems, Inc. Shareholders Litigation
C.A. No. 1221-N

Dear Counsel:

Certain shareholders of SunGard Data Systems, Inc. ("SunGard" or the "Company"), filed this purported class action suit claiming breach of fiduciary duty in the proposed merger of the Company with Solar Capital Corp. ("Solar").[1] Pursuant to the merger agreement, if approved, the Company's shareholders are to receive $36 per share, representing a 44.4% premium over the prior market price of the shares. The plaintiffs' basic claims are two-fold. First, they claim that the defendants breached their fiduciary duties by agreeing to inadequate consideration,

[1] The named defendants in the suit are SunGard, Solar, and the individual directors of SunGard.

i.e. an unfair price claim. Second, they claim that the defendants breached their fiduciary duties by failing to provide adequate disclosure of the proposed merger.

The plaintiffs have moved for an order expediting proceedings for the purpose of presenting a motion for preliminary injunction. I heard that motion by teleconference on July 6, 2005. For the following reasons, the request to expedite proceedings is denied.

A. Factual Allegations

It is unnecessary to the disposition of this motion to describe in detail the complex facts surrounding this large merger transaction. Indeed, the plaintiffs made it clear during the teleconference that they were not seeking preliminary injunctive relief in their fair price or *Revlon* type claims. Instead, they seek expedited discovery and proceedings only with regard to their disclosure claims. Nevertheless, a few facts are necessary to understand the weakness of these limited disclosure claims.

- In October of 2004, the Company announced that its board of directors had unanimously approved a plan to spin off one of its three business segments to stockholders through a distribution of shares. In adopting the proposal to merge with Solar, the Company abandoned this spin-off plan.

- In connection with the proposed merger, Credit Suisse First Boston ("CSFB") and Lazard Freres & Co. LLC ("Lazard") both provided fairness opinions that the merger price was within the range of fairness.

- On April 12, 2005, the Company filed a Schedule 14A preliminary proxy statement with the SEC disclosing the proposed transaction. That same day, the Company also filed a Schedule 13E-3 Transaction Statement (the "Schedule 13E-3"), attaching as exhibits each of the written presentations made by CFSB to the Company's board of directors, and both the preliminary and final valuation materials prepared by Lazard for the board.

- On June 27, 2005, the Company filed with the SEC and mailed to the Company's shareholders a definitive proxy statement (the "Proxy Statement") soliciting the shareholders' votes on the merger.

B. Standard

"This Court does not set matters for an expedited hearing or permit expedited discovery unless there is a showing of good cause why that is necessary."[2] To make the necessary showing, a plaintiff must articulate a sufficiently colorable claim and show a sufficient possibility of a threatened irreparable injury to justify imposing on the defendants and the public the extra (and sometimes substantial) costs of an expedited preliminary injunction proceeding.[3]

[2] *Greenfield v. Caporella*, 1986 Del. Ch. LEXIS 493, at *5 (Del. Ch. Dec. 3, 1986).
[3] *Giammargo v. Snapple Beverage Corp.*, 1994 Del. Ch. LEXIS 199 at *6 (Del. Ch. Nov. 15, 1994).

C. Analysis

The defendants argue that the plaintiffs have failed to make the necessary showing of either a colorable claim or a possibility of irreparable harm. The defendants also contend that the plaintiffs have been dilatory in bringing their motion, waiting a full five business days after the final proxy statement was filed to amend their complaint and move for expedition. Due to that delay, the defendants contend, there is too short a period left in which to fairly present the issues in advance of the stockholder meeting date. The defendants also argue that the plaintiffs have failed to demonstrate any likelihood of a material failure in disclosure.

The record does not support a conclusion that the plaintiffs unduly delayed in making their application. While it is true that they could have filed their motion a few days earlier than they did, that delay is not fatal to their application, which is, in any event rather narrow in scope and easily discovered into. Moreover, the optimal time to bring a disclosure claim in connection with a proposed merger, or in a like context where the company requests shareholder action or approval, is before the stockholder vote is taken and the deal closes.[4] Before a transaction

[4] *See, e.g., In re MONY Group Inc. S'holder Litig.*, 852 A.2d 9, 32 (Del. Ch. 2004) (holding that a misinformed stockholder vote on a merger threatens irreparable harm).

closes, the court is best able to provide a full and adequate remedy to the class of stockholders if the likelihood of a material disclosure violation is shown—namely, requiring the company to correct its false or misleading disclosures. Therefore, the court is generally amenable to motions for expedited proceedings in this context and will not deny expedition on account of the minor delay encountered here.

That being said, a plaintiff still needs to raise a colorable claim of a disclosure violation. In this case, the plaintiffs have not done so. The amended complaint lists ten deficiencies in the Proxy Statement, all of which involve alleged failures to disclose information. None allege any active misrepresentation. The plaintiffs urge two of these ten as supporting their application for expedited proceedings.

The plaintiffs complain that the Company failed to adequately disclose the investment bankers' analysis of the merger in the Proxy Statement. Among other things, they claim that Lazard's analysis fails to disclose whether Lazard considered a control premium in its calculations. This claim, and similar ones advanced by the plaintiffs, viewed in the context of this premium transaction, is, at best, of marginal significance and is aptly characterized as merely "quibbl[ing] with the analyses and conclusions reached by Lazard."[5]

[5] Letter to the court from Gregory P. Williams, Esquire, dated July 6, 2005, at 13.

The Proxy Statement devotes over 15 pages to a description of the investment bankers' analyses.[6] None of these disclosures are alleged to be affirmatively misleading. Moreover, the Company filed the full text of the CSFB written opinion and the Lazard opinions as attachments to its Schedule 13E-3. Thus this information is public and readily available to the shareholders. Viewed in relation to the "total mix" of available disclosure, this claim does not give rise to a colorable claim of breach of the duty of disclosure.

The plaintiffs also complain that the Company failed to adequately disclose why it chose to abandon its spin-off strategy. This claim is also weak. The Proxy Statement specifically stated that the Company believes that the merger provided greater value for the Company's shareholders than did the spin-off. Specifically, the Proxy Statement stated that the "previously announced spin off of [the Company's] availability services business into a separate publicly traded company would not provide greater value to stockholders . . . ."[7] No more elaborate explanation would seem necessary.

[6] *See* Proxy Statement at 28-44.
[7] *Id.* at 24.

CONCLUSION

For reasons likely related to their assessment of the weakness of their challenge to the fairness of the terms of the proposed merger, the plaintiffs have chosen to seek expedition only as to their allegations of improper disclosure. Because those claims do not appear to present colorable issues for litigation, the court, in the exercise of its discretion, declines to order expedited proceedings or to schedule a hearing on the plaintiffs' motion for preliminary injunctive relief. Thus, the plaintiffs' motion to expedite is DENIED. IT IS SO ORDERED.

/s/ Stephen P. Lamb
Vice Chancellor