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Court of Chancery Reaffirms Protective Effects of  
Informed Stockholder Approval of Merger Transactions

The Delaware Court of Chancery last week held that stockholder plaintiffs bear the burden to plead material disclosure deficiencies if they seek to escape the ratifying force of a disinterested stockholder vote. [\*In re Solera Holdings, Inc. Stockholder Litig.\*, C.A. No. 10485-CB \(Del. Ch. Jan. 5, 2017\)](#).

The decision concerned a stockholder challenge to the all-cash sale of Solera Holdings, Inc. to a private equity firm. The plaintiff argued that its putative class action should proceed because Solera's directors had breached their *Revlon* duty to obtain the best sale price reasonably available and because stockholder approval of the transaction was not fully informed.

In a thorough opinion, Chancellor Bouchard dismissed the suit. Invoking the important recent line of Delaware decisions beginning with the [\*KKR Financial Holdings\*](#) case, the decision reiterated [previous holdings](#) of the Court that business judgment review should apply in the circumstances presented because the only transactions "that cannot be cleansed by proper stockholder approval are those involving a controlling stockholder." And while defendants bear the ultimate burden of proving that the vote was fully informed, the Chancellor held, stockholder plaintiffs must "plead disclosure deficiencies in the first place" to avoid dismissal on the basis of a fully-informed vote. Here, the Court rejected the plaintiff's allegations of inadequate disclosure, holding that some allegedly omitted information was in fact disclosed in filings incorporated by reference into the merger proxy and that the rest was either immaterial or already in the proxy. The Court also rejected the plaintiff's claim that all "troubling facts" regarding director behavior must be disclosed, confirming again that materiality remains the touchstone of Delaware disclosure. Because the plaintiff failed to identify a material deficiency in Solera's disclosures, the business judgment rule applied and dismissal followed.

*Solera* establishes that approval by disinterested stockholders effectively cuts off post-closing challenge to a non-controlling stockholder transaction unless a plaintiff can identify a material deficiency in the disclosure document. Attentive drafting of disclosure documents thus remains essential to minimizing both pre- and post-closing litigation risk to merger transactions.

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