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Case No. 2023-0921-SG

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE SCULPTOR CAPITAL MANAGEMENT, INC. STOCKHOLDER LITIGATION

Consolidated
C.A. No. 2023-0921-SG
Redacted Version Dated:
November 3, 2023

AMENDED CLASS ACTION COMPLAINT
FOR INJUNCTIVE RELIEF

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Plaintiff Gilles Beauchemin ("Beauchemin" or "Plaintiff"), a stockholder of Sculptor Capital Management, Inc. ("Sculptor" or the "Company"), on behalf of himself and all other similarly situated stockholders of Sculptor, respectfully submits this Amended Class Action Complaint for Injunctive Relief (the "Complaint"). The allegations in the Complaint are based on Plaintiff's knowledge as to himself and on information and belief, including the investigation of counsel, documents produced in this action (the "Action") and review of publicly available information, as to all other matters.

INTRODUCTION

1. This action arises from a truly extraordinary series of events in which the Sculptor Board of Directors (the "Board"), and a special committee thereof (the "Special Committee"), have consistently acted—in flagrant breach of their fiduciary duties—to lock up a sale of Sculptor to a favored bidder, denying Sculptor's public stockholders an opportunity to accept undeniably superior consideration offered by a credible and motivated competing bidder.

2. The action now also involves a seemingly unprecedented breach of fiduciary duty by class representatives—Beauchemin's former co-plaintiffs, the so-called "Founders" group[1]—who, in violation of Rule 23 and their obligations to the

[1] The "Founders" include former Plaintiffs, and now Defendants, Daniel S. Och, Harold A. Kelly Jr., Richard Lyon, James O'Connor, and Zoltan Varga.

class, have reached a disloyal accord to drop their prosecution of the action and support the favored bidder in exchange for millions of dollars worth of unique consideration not shared with the class that the Founders vowed to represent.

3. The favored bidder is Defendant Rithm Capital Corp. ("Rithm"). The disfavored bidder is a Consortium led by Saba Capital Management, LP ("Saba").[2] The story of Rithm and the Consortium's competition for Sculptor is complex, but has at its heart a simple and undeniable truth: at every turn, the Consortium has been willing to pay a higher price, but has been stymied by disloyal fiduciaries who have continually tilted the playing field in favor of Rithm.

4. Sculptor initially agreed to be acquired by Rithm at a price of $11.15 per share. Due in part to Plaintiff's litigation efforts, Rithm and Sculptor have twice amended their deal—first to $12.00 per share, and now to $12.70 per share. But when Rithm was at $11.15, the Consortium was at $12.76. When Rithm was at $12.00, the Consortium was at $13.00. And now, with Rithm at $12.70, the Consortium is at $13.50.

5. Yet the Board and Special Committee have stuck by Rithm, taking an increasingly aggressive series of defensive actions to shut out the Consortium and

[2] The Consortium includes Saba, led by its founder Boaz Weinstein ("Weinstein"), affiliates of Bill Ackman ("Ackman"), Marc Lasry ("Lasry") and Susquehanna International Group LLP ("Susquehanna International"), led by Jeff Yass (individually "Yass" and collectively with Saba, Weinstein, Ackman, Lasry, and Susquehanna International, the "Consortium").

ensure Rithm's victory, escalating from the imposition of unique and blatantly pretextual "conditions" on the Consortium to, now, brazen efforts to rig the vote of Sculptor stockholders. Why? Simply put: because Rithm has been perceived as friendlier to Sculptor's incumbent CEO, Jimmy Levin. As Bloomberg's Matt Levine wrote on September 18, 2023, when Rithm was at $11.15 and the Consortium was at $12.76: "The board isn't just turning down a higher offer for a lower one; it's turning down a higher offer for a lower one that *preserves Jimmy Levin's job.* That is a classic conflict of interest[.]"[3]

6. The record demonstrates that Sculptor's directors are beholden to Mr. Levin. In recent years, Mr. Levin has shaped the composition of the Board and wielded his resulting leverage to extract a series of ever-escalating pay packages. His nine-figure compensation, approved by the Board, made him the 14th highest paid public-company CEO in the United States despite Sculptor's relatively small market capitalization, and was excoriated by *Bloomberg* as "staggering"[4] and by Institutional Shareholder Services ("ISS") as "extraordinary" and "excessively

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[3] Matt Levine, *Sculptor Sticks with the Deal It Knows*, BLOOMBERG at 4 (Sept. 18, 2023).

[4] Anders Melin, *Outrage at Hedge Fund Proves Futile as U.S. CEOs Reap Record Pay*, BLOOMBERG (Aug. 18, 2022), https://www.bloomberg.com/graphics/2022-highest-paid-ceos/. ("Even in the moneyed world of high finance, advisers warned, Jimmy Levin's pay deal was an exceedingly rich one. The newly appointed chief executive officer of Sculptor Capital Management Inc. would almost certainly make around $100 million a year, they told the hedge fund's board. And if results were good, Levin's haul could very well approach twice that—a staggering amount at a firm with a market value then around $1 billion.").

dilutive."[5] Consistent with this history, the still-developing discovery record in this action reflects that, throughout Sculptor's sale process, the Board and Special Committee have favored a deal that benefited Mr. Levin and have worked backwards from that result.

7. As a result, Sculptor stockholders are now faced with a November 16, 2023, vote on the Special Committee's $12.70 deal with Rithm, notwithstanding the Consortium's previously-expressed willingness to pay at least $13.50 per share. The Defendants have, however, taken numerous steps to rig that vote in favor of Rithm, necessitating injunctive relief.

8. *First*, the Special Committee—while holding the Consortium to onerous standstill obligations—waived Rithm's standstill obligations to enable Rithm to cut a private deal with Delaware Life Insurance Company ("Delaware Life"), which has a Board representative, to purchase warrants (the "Warrants") that would provide Rithm with an additional 6.5% voting power in the Company. The Special Committee further took the extraordinarily unusual step of delaying the record date for the impending stockholder vote to ensure that Rithm would be able to exercise the Warrants and vote the underlying, newly-acquired shares in favor of its proposed deal.

[5] *See* ISS Proxy Analysis & Benchmark Policy Voting Recommendations Report, at 1, 14 (Apr. 25, 2022).

9. *Second*, and relatedly, the Special Committee agreed to remove a majority disinterested vote requirement that had existed in its original merger agreement with Rithm (the "Disinterested Vote"). The Disinterested Vote provided unaffiliated stockholders the right to vote down the deal, but given the Consortium's superior proposal, the Special Committee and Rithm feared they would lose that vote and thus disloyally eliminated it.

10. *Third*, the Special Committee agreed to increase the breakup fee in its merger agreement with Rithm from $16.6 million to $22.4 million in an effort to further disincentivize a vote against the Rithm deal.

11. *Fourth*, the Board's proxy disclosures in support of the Rithm deal are riddled with material omissions, slanted partial disclosures, and misrepresentations designed to promote the Rithm deal and unduly disparage the Consortium's proposed alternative.

12. *Fifth*, the Special Committee has tilted the playing field in favor of Rithm through prejudicial application of standstill obligations emanating from NDAs. Among other things, the Special Committee continues to unreasonably hold the Consortium to standstill terms preventing it from communicating with Sculptor stockholders to promote—and correct the record concerning—its bids.

13. *Sixth*, and perhaps most troubling of all, Rithm has—with the evident support of the Special Committee and Board—brazenly bought off Beauchemin's

former co-plaintiffs, the Founders group, contractually ensuring their support for Rithm's underpriced deal.

14. Specifically, on October 19, 2023, the Founders group—which controls approximately 15.2% of the total voting power in Sculptor—filed a class action complaint and sought injunctive relief based on allegations that, *inter alia*, Sculptor's directors breached their fiduciary duties by agreeing to an "inferior deal" with Rithm that "insulates and protects Sculptor management at the expense of the public stockholders receiving a superior bid[.]" The Founders' action was quickly consolidated with this action and Beauchemin and the Founders began jointly prosecuting the action as co-plaintiffs, with their respective counsel as co-lead counsel, on behalf of a putative class of Sculptor stockholders.

15. Without informing Beauchemin and his counsel, however, the Founders and their counsel simultaneously negotiated with Rithm an agreement that would provide substantial unique benefits to the Founders that would *not* be shared with the class that the Founders and their counsel had vowed to represent. On October 27, 2023—eight days after the Founders filed their class action complaint, three days before depositions were set to commence (with a deposition of Mr. Levin to be taken by the Founders' counsel), and less than a week before Beauchemin and the Founders were due to jointly file an opening preliminary injunction brief—Rithm, Sculptor, and the Founders announced that the Founders had entered a

contract to support a sale of Sculptor to Rithm at $12.70 and end their prosecution of claims on behalf of the class in exchange for, *inter alia*, Rithm's agreement to pay the Founders $5,500,000.00 in cash and to provide the Founders with a "TRA Guaranty" which operates, in essence, as a guarantee that Rithm will pay the Founders in excess of $173 million that the Founders stand to receive in connection with a Tax Receivables Agreement that they worried would be at risk following completion of a sale of Sculptor.

16. This disloyal accord—achieved by buying off a group of class representative plaintiffs with substantial compensation not shared by the class—operates to lock-up an additional 15.2% of the Sculptor stockholder vote. Combined with the voting power the Board arranged for Rithm to purchase by disloyally facilitating its purchase of the Warrants and the voting power of members of Sculptor management who previously signed voting agreements, the deal between Rithm and the Founders functionally locks up nearly 48% of the voting power in Sculptor.

17. In these circumstances, injunctive relief to protect the interests of Sculptor stockholders is warranted. No vote on Rithm's deal should go forward until the Defendants' breaches of fiduciary duty have been remedied. The Consortium should be released from its standstill which is being disloyally maintained by the Board, the disloyally-increased termination fee should be reduced, the disloyally-removed Disinterested Vote requirement should be reinstated, stockholders should

receive full and fair disclosures consistent with the Board's duty of candor, and in no circumstance should the greater than 21% of the stockholder vote locked up through the Board's disloyal facilitation of the Warrants purchase and the Founders' disloyal agreement with Rithm be counted in favor of any deal.

THE PARTIES AND RELEVANT NON-PARTIES

18. Plaintiff Beauchemin is a current Sculptor stockholder and has continuously held shares of Sculptor common stock at all relevant times.

19. Sculptor is a global alternative asset manager and a specialist in opportunistic investing. Sculptor invests across credit, real estate and multi-strategy platforms in all major geographies. As of August 1, 2023, Sculptor had approximately $34.0 billion in assets under management. Sculptor is a Delaware corporation with its principal place of business located at 9 W. 57th St., 39th Floor, New York, NY 10019. Sculptor is named as a party because the Company is a necessary party for the relief Plaintiff seeks. Plaintiff does not bring a claim against the Company.

20. Defendant James Levin joined Sculptor in 2006 and has been a Director since June 2020. He has served as the Company's Chief Executive Officer since April 1, 2021, and Chief Investment Officer since February 14, 2017.

21. Defendant Wayne Cohen joined Sculptor in 2005 and has been a Director since April 2021. He has served as the Company's President and Chief Operating Officer since 2009.

22. Defendant Marcy Engel has been a Director since June 2018 and has been chairperson of the Board since February 2021.

23. Defendant Charmel Maynard has been a Director since November 2021.

24. Defendant Bharath Srikrishnan has been a Director since November 2020.

25. Defendant David Bonanno has been a Director since March 2021.

26. Defendant Rithm is a publicly traded asset manager focused on the real estate and financial services industries. Rithm is a Delaware corporation that is organized to qualify as a real estate investment trust with its principal place of business at 799 Broadway, 8th Floor, New York, NY 10003.

27. Defendant Daniel S. Och is the founder, chairman and former CEO of Och-Ziff Capital Management, a predecessor of the Company.

28. Defendant Harold A. Kelly Jr. is a founder and former executive managing director of Sculptor.

29. Defendant Richard Lyon is a founder and former executive managing director of Sculptor.

30. Defendant James O'Connor is a founder and former executive managing director of Sculptor.

31. Defendant Zoltan Varga is a founder and former executive managing director of Sculptor. Och, Kelly, Lyon, O'Connor and Varga, are referred to by the Company and in this Complaint as the "Founders."

32. Non-party Boaz Weinstein is the founder and chief investment officer of Saba, an investment firm with approximately $9.7 billion in discretionary assets under management. Saba is named as "Bidder J" in the Proxy Statement..

33. Non-party Marc Lasry is a founder and chief executive officer of Avenue Capital Group, an investment firm with approximately $7.2 billion in discretionary assets under management.

34. Non-party Bill Ackman is a founder and chief executive officer of Pershing Square Capital Management, L.P., an investment firm with approximately $16 billion in discretionary assets under management.

35. Non-party Susquehanna International Group LLP is one of the largest proprietary trading firms in the world. Jeff Yass is its founder.

36. The "Consortium" is led by Weinstein and includes affiliates of Ackman, Lasry and Susquehanna International.

SUBSTANTIVE ALLEGATIONS

I. Background of Sculptor, Its Leadership and Mr. Levin's Excessive Compensation

37. Sculptor was founded as Och-Ziff Capital Management LLC by Daniel Och, who was also its CEO. In 2016, Och and the Company settled an investigation under the Foreign Corrupt Practices Act in connection with which Och and the Company, respectively, paid disgorgement, fines and penalties of approximately $2.2 million and $412 million. Och resigned as CEO effective February 5, 2018. He continued as chairman of the Board until his resignation from that position on March 31, 2019. Levin replaced Och as CEO.

38. During his tenure as CEO, Mr. Levin has repeatedly and successfully renegotiated purportedly "long term" deals with the Board, despite Mr. Levin continuously failing to serve out the term of his prior deal before initiating renegotiations for the next. On at least four separate occasions, or nearly every year, Mr. Levin renegotiated his "long-term" compensation packages with the Board for an increase in pay. In 2021, Mr. Levin used his new CEO title to extract the heftiest pay package to date. The Compensation Package netted Mr. Levin $145.8 million in 2021 alone,[6] placing his pay in the 99th-percentile of public company executives

[6] Hema Parmar & Tom Maloney, *Hedge Fund Millions Are At Stake In Sculptor CEO Pay Dispute*, BLOOMBERG (Feb. 8, 2022), https://www.bloomberg.com/news/articles/2022-02-08/the-hedge-fund-millions-at-stake-in-sculptor-ceo-pay-dispute.

and making him the 14th highest paid executive in the United States that year. ISS excoriated the Compensation Package for its "extraordinary magnitude" and "excessively dilutive" features, finding that Mr. Levin's "total pay is 17.7 times the median of peers."[7]

39. In a five-to-one vote, the Board approved the Compensation Package even though the Company's investment performance had lagged behind its industry peers during Mr. Levin's CEO tenure.

40. Strikingly, Mr. Cohen—Sculptor's President and Chief Operating Officer and Mr. Levin's direct subordinate—cast the deciding and necessary fifth vote to approve the Compensation Package. In addition to being beholden to Mr. Levin, Mr. Cohen also directly benefitted from management equity awards approved with the Compensation Package. Under any standard, including basic NYSE rules regarding public company directors, Delaware law, and the Company's own conflict practices, Cohen was conflicted and should have been recused from the vote. But for Mr. Cohen's participation, the Compensation Package would not have received the supermajority approval required by the Company's Governance Agreement.[8]

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[7] *See* ISS Proxy Analysis & Benchmark Policy Voting Recommendations Report, at 1, 14 (Apr. 25, 2022).

[8] The Company's Governance Agreement required five Board members to vote in favor to approve any changes to executive compensation. *See* Sculptor Capital Management, Inc., Current Report (Form 8-K, Ex. 10.10) at § 4.13 (Feb. 11, 2019) https://www.sec.gov/Archives/edgar/data/1403256/000119312519032705/d696214dex1010.htm.

41. The Board approved the Compensation Package despite Sculptor's stock price suffering during Mr. Levin's tenure. On the day that the Board approved the Compensation Package, Sculptor's stock price closed at $20.02, which was 8% lower than when Mr. Levin took over as CEO—notwithstanding that the S&P 500 Index increased over 15% during that same eight-month period. In 2021, "when Sculptor's main fund returned 5%—near the bottom of the pack compared with its multistrategy peers—Levin collected a bonus of almost $48 million, mostly in cash."[9]

42. On October 4, 2022, Och sent the Board a letter expressing concern that "especially over the past two years, [] the Company's board has failed to discharge its duties by, among other things, enabling and enriching a management team that is more focused on its own compensation than the Company's future."[10] The October 2022 letter asserted that Och had been contacted by "several third parties who have asked us whether the Company might be open to a strategic transaction that would not involve current senior management continuing to run the Company."[11] Och also

[9] Hema Parmar and Tom Maloney, *Hedge Fund Millions Are At Stake In Sculptor CEO Pay Dispute*, BLOOMBERG (Feb. 8, 2022) https://www.bloomberg.com/news/articles/2022-02-08/the-hedge-fund-millions-at-stake-in-sculptor-ceo-pay-dispute.

[10] Sculptor Capital Management Inc., Amended Statement of Beneficial Ownership (SC 13D/A, Ex. 25) (Oct. 4, 2022), https://www.sec.gov/Archives/edgar/data/1403256/000119312522257217/d382105dex25.htm.

[11] *Id*.

stated that he had "reason to believe that one or more representatives of senior management has reached out to one or more third parties about a potential transaction."[12]

II. Special Committee Is Formed to Field an Offer that Never Comes

43. On May 23, 2022, months before Och sent his letter to the Board in October 2022, the Company had formed the Special Committee, comprised of Defendants Engel and Maynard. The Special Committee was formed in response to an overture from Bidder A in March 2022 that led to an NDA between Bidder A and the Company. The NDA between Bidder A and the Company did not include a standstill provision.

44. The purported mandate of the Special Committee was to conduct a review of a potential transaction with Bidder A, evaluate strategic alternatives and take all other actions relating to such a potential transaction and any alternatives as the Special Committee may deem necessary. The Special Committee retained Latham & Watkins as its counsel. The Special Committee, however, promptly relinquished its duties to Sculptor management.

45. While Bidder A sent its proposal to the Board, the Special Committee did not engage with Bidder A directly and instead instructed the Company's management "to engage with Bidder A to determine whether a proposal regarding a

[12] *Id.*

potential transaction would be forthcoming."[13] While ceding engagement to the Company's management, the Special Committee also purported to instruct management "that any discussion or negotiation regarding the terms of such a proposal must be led by the Special Committee."[14]

46. On June 13, 2022, the Special Committee discussed retaining a financial advisor. The Special Committee did not retain a financial advisor of its own until October 2022. Meanwhile, just a week after the discussion about retaining a financial advisor for the Special Committee, the Special Committee authorized the Company and management to retain J.P. Morgan as the Company's financial advisor.

47. As the process unfolded, J.P. Morgan assumed the primary role dealing with potential bidders. J.P. Morgan would not provide the Board a memorandum disclosing its relationships with bidders until almost a year later, on June 10, 2023. Those relationships include fees of approximately $40 million paid by Rithm in the previous two years. The Company will also pay J.P. Morgan an estimated fee of $17.5 million in connection with the transaction with Rithm, $5 million of which is currently payable, with the remainder payable upon consummation.

[13] October 12 Proxy Statement at 37.

[14] *Id.*

48. The communications with Bidder A—first, that Bidder A expected to make a proposal, and second, that Bidder A would not make a proposal—were received by and filtered through the Company's management. According to management, Och and the Founders caused Bidder A to refrain from making a proposal.

49. On August 24, 2022, while Bidder A was apparently considering making a proposal, the Founders filed a Section 220 action, C.A. No. 2022-0748-SG. The Section 220 action stemmed from a demand for books and records made on April 28, 2022. According to management, Bidder A cited Och's Section 220 action and his Schedule 13D filings (which were not made until October 2022) in not making a bid.

50. In October 2022, management also told the Special Committee that the Founders were to blame for a myriad of other problems at the Company, including investor redemptions, investors declining to commit additional capital, and purported risk of investment professionals leaving the Company. The Proxy Statement[15] does not note the impact Sculptor's poor performance almost certainly

[15] The October 12 Proxy Statement superseded earlier Preliminary Proxy Statements filed by the Company on October 5, 2023, September 14, 2023, and August 21, 2023. The latter two proxy statements amplified certain of the August proxy statement's disclosures in a manner that seems to have been calculated to respond to the initial Complaint filed in this action, including by referring to facts that were known at the time of, and thus should have been included in, the earlier proxy statements.

had on such issues, but as the Founders noted in their Section 220 complaint, "Sculptor's main fund returned just 5%, running 10% behind its competitors, and ranking 'near the bottom of the pack compared with its multistrategy peers.'" Compl. C.A. No. 2022-0748-SG at ¶ 6. While Sculptor was underperforming and had an equity value of significantly less than $1 billion, Defendant Levin was being paid more than $100 million in annual compensation.

51. In October 2022, the Special Committee determined that it would initiate a process to engage with third parties that may be interested in a potential acquisition of the Company. The Proxy Statement stated that the impetus for this was to finally resolve the disputes with the Founders.

III. A Wider Process Commences

52. On October 12, 2022, Bidder B and Bidder C each separately contacted J.P. Morgan to express interest in a potential transaction with the Company. The Special Committee authorized J.P. Morgan to engage in discussions with both.

53. In October 2022, the Special Committee determined to retain PJT Partners as its financial advisor. Nevertheless, the Company's advisor, J.P. Morgan, continued to lead the process. On October 31, 2022, J.P. Morgan proposed a list of thirty-one potential acquirors to contact. PJT Partners contributed one additional potential suitor on November 2, 2022.

54. On November 13, 2022, the Special Committee received a preliminary offer from Bidder B to acquire 100% of the equity of the Company for an equity valuation of $800 million.

55. On November 14, 2022, Rithm entered into an NDA with the Company.

56. Meanwhile, the Company's litigation counsel had been negotiating with the Founders regarding their Section 220 action, and the Company entered into a settlement agreement with the Founders on November 17, 2022 (the "Settlement Agreement"). In connection with the Settlement Agreement, the Company announced on November 18, 2022, that it had formed the Special Committee to explore potential strategic alternatives and retained legal and financial advisors.

57. On November 22, 2022, the Company and Bidder D entered into an NDA.

58. On December 2, 2022, the Special Committee met and received an update from the financial advisors in which they reported that 70 potential acquirors had been in contact with J.P. Morgan or PJT Partners following the November 18, 2022, press release regarding the Settlement Agreement and formation of the Special Committee.

59. Of the 70 potential acquirors, 25 signed NDAs. Twenty-four of the NDAs contained standstill provisions and 22 contained "don't ask/don't waive" standstill provisions. Five of the standstill provisions fell away in their entirety upon

announcement of the Merger Agreement. The Board waived one aspect of the remaining "don't ask/don't waive" provisions on August 18, 2023, approximately one month after announcing the transaction with Rithm.

60. The Board communicated that partial waiver to the counterparties on August 21, 2023, but otherwise left the standstills intact. Significantly, the waiver is partial in that it does not waive the standstill altogether, but instead only permits the potential acquirors to submit confidential proposals to the Board. The partial waiver does not permit potential acquirors to communicate publicly with stockholders regarding potential bids for the Company that compete with the signed transaction with Rithm. At the time of the limited waiver, the Consortium had already made a topping bid of $12.25 on August 12, 2023.

IV. The Special Committee Receives Indications of Interest but Treats Saba Differently

61. On November 29, 2022, the deadline set for preliminary indications of interest in the first-round process letter sent to interested bidders, J.P. Morgan and PJT Partners received a number of indications of interest. Bidder E proposed an equity valuation of $574 million for 100% of the equity of the Company; Rithm proposed $700 million; and Bidder C proposed $750 million. Bidder F proposed a transaction that involved selling the Company's collateralized loan obligation ("CLO") business and did not submit a bid with a cash value for 100% of the equity of the Company.

62. The Special Committee accepted initial bids after the deadline passed. Additional competitive bids arrived in the ensuing days. On December 1, 2022, Bidder D proposed a range of values from $640 million to $830 million for 100% of the Company. On December 2, 2022, Bidder G proposed $800 million for 100% of the Company. On December 4, 2022, Bidder H proposed an enterprise valuation between $705 million and $800 million for 100% of the equity of the Company. Both bidders were invited to participate in the second-round process despite submitting late indications of interest.

63. On December 19, 2022, Saba expressed interest in a potential transaction with the Company. On December 21, 2022, Saba signed an NDA with the Company. Saba's NDA contained a standstill that expired one year after signing the NDA.

64. On January 3, 2023, the Special Committee launched the second-round process with Bidders B, C, D, G, and H, knowing an indication of interest from Bidder J (Saba) was imminent. The Special Committee deployed the excuse that Saba was a "late entrant" who was "behind" in the process to discount Saba's interest and offers throughout the rest of the merger process.

65. In fact, the Special Committee disfavored Saba because, unlike the other bidders who moved forward, Saba did not commit to retain Sculptor's existing management, including Mr. Levin.

66. The second-round process letter and enclosed merger agreement were not distributed to Saba.

67. On January 11, 2023, the Special Committee met and authorized high-level conversations between the Company's management and potential acquirors regarding "post-closing compensation philosophy[.]"[16] No price terms regarding the consideration to be paid to the Company's public stockholders had been agreed between the Special Committee and any bidders at this time.

68. On January 16, 2023, notwithstanding that it had not received a second-round process letter, Saba submitted a proposal at a price of $11.00-12.00 per share of Class A Common Stock.

69. Three bids from the second-round group arrived between January 25 and January 29. Rithm's bid was the lowest of the three and lower than Saba's January 16 bid. On January 25, 2023, Bidder B proposed $11.50 per share of the Company's Class A Common Stock and Bidder D proposed $11.75-12.50. Rithm submitted a bid of $550 million, less than any of the other bids. Rithm's bid also excluded any liability to the Founders under a tax receivable agreement that provides for certain substantial payments (approximately $173.4 million) from the Company, which further reduced the headline price Rithm was offering.

[16] October 12 Proxy Statement at 45-46.

70. On February 1, 2023, J.P. Morgan and PJT Partners discussed management compensation with Rithm. This discussion is characterized in the Proxy Statement as "preliminary high-level compensation philosophy[.]"[17] Following this discussion, Rithm's legal counsel sent a revised version of the issues list with respect to the draft merger agreement.

71. While other bidders remained in the running, Bidder D had provided a list of issues with the draft merger agreement, and no best and final offer had been requested by the Special Committee. The Proxy Statement states that by February 2, 2023, there was a "tentative agreement with Bidder D on price and material terms[.]"[18] With this purported agreement on price and material terms, the Special Committee apparently authorized the Company's management and Defendants Levin and Cohen to begin compensation discussions with Bidder D. On February 2, 2023, the Company's management and Bidder D discussed "compensation philosophy." At this point, the Company had yet to provide a second-round process letter to Saba despite Saba having submitted its initial offer more than two weeks prior.

[17] October 12 Proxy Statement at 47.

[18] *Id*.

72. Also on February 2, 2023, the Special Committee met with its advisors and J.P. Morgan.[19] This meeting occurred roughly three weeks after the second-round process letter had enclosed a draft merger agreement. But the Proxy Statement indicates that the draft circulated in January had not included a client consent condition: "Latham & Watkins discussed that the auction draft merger agreement *would* contain a condition to the buyer's obligation to consummate the transaction that Company clients representing a threshold amount of revenue run rate have provided their consent to the transaction."[20] Including such a provision is "customary in asset management transactions in which the potential acquiror is not proposing to materially change the investment strategy or team of key investment professionals at the Company."[21] The Special Committee, with input from Company management and its counsel, set the threshold for the client consent condition at 80%. In other words, a buyer could decline to close if clients representing less than 80% of the revenue run rate did not provide their consent to the transaction. These terms were shared with potential acquirors on February 10, 2023.

[19] [redacted]

[20] October 12 Proxy Statement at 47 (emphasis added).

[21] *Id.* at 47-48.

V. Saba Continues to Express Interest and the Special Committee Belatedly Provides a Process Letter; Exclusivity Provided to Bidder D

73. On February 7, 2023, the Company's management, along with J.P. Morgan and PJT Partners, but not the Special Committee, met with Saba, "including its founder and one of its partners … to provide an overview of the Company and discuss investment strategies."[22]

74. On February 8, 2023, the Special Committee finally instructed J.P. Morgan, the Company's banker, to provide Saba with "bid instructions[,]"[23] as opposed to a bid process letter of the sort provided to every other bidder, that requested a bid as soon as possible along with a list of high priority diligence requests. The Special Committee also authorized its advisors to provide Saba with certain materials in the virtual data room. By contrast, the Special Committee had granted Bidders B, C, D, G, H, and Rithm access to the data room more than two months before.

75. Singling Saba out as a purportedly unique competitor "with portions of the Company's business[,]" the Special Committee decided that it would withhold certain diligence materials from Saba because it purportedly worried that "certain diligence information could be used by [Saba] to solicit employees and clients of the

[22] *Id.* at 48.

[23] *Id*.

Company or to otherwise gain a competitive advantage over the Company."[24] But the Proxy Statement does not provide any basis for the belief that Saba would violate its NDA, which protects the Company from these very concerns, much less how this situation differed from normal course due diligence done routinely between competitors in merger negotiations. Nor does the Proxy Statement explain why Saba was so differently situated from Bidders B, C, D, E, F, G, and H, all of whom were also described as "asset management" companies but nevertheless apparently received unfettered access to the data room. To the contrary, the Special Committee meeting minutes note that Saba is a competitor, unlike "most" other bidders, indicating that at least some other bidders, unlike Saba, were provided full access to the data room despite being a competitor.

76. On February 8, 2023, the Company's management provided the Special Committee with projections under two scenarios, one in which a transaction occurred and the other in which a transaction did not occur. In the scenario with no transaction, the Company's management presented a negative outlook and noted that "the Company was experiencing elevated redemption requests and negative impact on the Company's ability to raise new capital" which Company management again

[24] October 12 Proxy Statement at 48.

characterized as being "primarily" the fault of the Founders. Company management's poor performance is not noted as a secondary or other factor.[25]

77. The Proxy Disclosure purports that a tentative agreement on price and terms had been reached with Bidder D before the February 2, 2023, discussion about management compensation, but that was not actually true. The conclusion that an agreement had been reached appears to have been reverse-engineered to allow the management compensation discussion to happen after such purported tentative agreement. In reality, the terms and conditions were still very much in flux. On February 12, 2023, Bidder D submitted a revised proposal at a transaction price of $11.80, a revised issues list with respect to the merger agreement and a markup of the client consent condition, and a request for further discussions with Company management regarding post-closing compensation.

78. On February 15, 2023, Bidder D increased its price to $12.00 per share in response to discussions with J.P. Morgan and requested exclusivity. Meanwhile, Rithm was expected to submit a revised offer of $10.00 per share that included assumption of the tax receivable agreement liabilities. Saba submitted a bid of $700 million, but J.P. Morgan cast this proposal in a negative light, noting that Saba did not have committed debt or equity financing and was behind with respect to a

[25] *Id*. at 48-49.

markup of a merger agreement. Yet, J.P. Morgan had only provided "process instructions" to Saba a week earlier.

79. The Special Committee authorized the Company to enter into an exclusivity agreement with Bidder D at this time. Again, while final price terms had not been set with Bidder D, the Special Committee gave an even more liberal license to Company management to have compensation discussions with Bidder D following the execution of an exclusivity agreement.

80. On February 18, 2023, the Company and Bidder D entered into an exclusivity agreement.

81. On the same day, Saba, who had only been provided process instructions ten days earlier, offered $12.00-$14.00 per share of Company Class A Common Stock, to which the Special Committee could not respond because of the exclusivity agreement with Bidder D.

82. Saba reached out again on February 21 to provide a further update, and was ignored.

VI. The Exclusivity Agreement with Bidder D Breaks Down and the Process is Re-Opened, but Rithm Is Favored while Saba Continues to Respond to the Purported Concerns with its Bid

A. Bidder D Backs Out and the Process Reopens

83. During the remainder of February, March and April 2023, the Special Committee and its advisors, J.P. Morgan, Company management, Bidder D and the

Founders discussed issues relating to the Founders' support or lack of support for a transaction with Bidder D and whether such support was critical to Bidder D proceeding with the transaction. In early May 2023, after these discussions did not produce agreement among the constituencies, Bidder D stopped responding to outreach from the Special Committee. On May 11, 2023, the Special Committee authorized the Company to terminate the exclusivity agreement with Bidder D.

84. On May 13, 2023, the Special Committee authorized Company management to share updated projections with Rithm, which management did on May 15, 2023. The Proxy Disclosure does not indicate whether or when these projections were shared with Saba.

85. On May 16, 2023, Rithm, Bidder H and Saba were provided with an updated merger agreement.

B. Rithm Gets Preferential Treatment

86. On May 24, 2023, Rithm proposed a transaction at $11.00 per share of Company Class A Common Stock, which was updated the next day to also indicate that Rithm would require Mr. Levin and other key executives to enter into new employment agreements concurrently with the merger agreement and later clarified to identify Mr. Levin as the only executive whose employment agreement would be required.

87. On June 6, 2023, Saba proposed a transaction at $11.00 per share of Company Class A Common Stock that addressed the purported shortcomings with its previous proposal that J.P. Morgan had identified. The updated proposal "provided details regarding [Saba]'s expected sources of financing to support the payment of consideration in its proposal" but "did not provide evidence of commitments with respect to such financing."[26] Saba further asked to co-bid with Bidder H, a party that had interest in buying the Company's CLO business, and asked to speak with the Founders. The Special Committee allowed the co-bid, but did not allow Saba to speak with the Founders.

88. On June 7, 2023, Rithm asked to speak with Mr. Levin regarding his compensation.

89. On June 11, 2023, the Special Committee met and discussed that Rithm had conditionally agreed to increase its proposed price to $12.00 per share of Company Class A Common Stock, subject to the accuracy of its assumptions regarding how much it would have to pay in employee compensation. No firm price from Rithm for the public stockholders' shares had been set at this time. The Special Committee then authorized Rithm and Mr. Levin to fully negotiate Levin's employment and compensation package. Ultimately, Rithm's offer to the public

[26] October 12 Proxy Statement at 56.

stockholders was reduced after the further compensation-related discussions with Mr. Levin.

90. Also on June 11, 2023, J.P. Morgan requested that Saba provide a markup of the draft merger agreement, another purported shortcoming of Saba's proposal. Saba provided the markup three days later on June 14, 2023. At a meeting on June 15, 2023, Saba's markup and bid in general were cast in a negative light, purportedly because, in addition to purported issues with the creditworthiness of the financing sources and amount the Company could collect upon a breach, "[Saba] had indicated its intent to not have Mr. Levin (considered a 'key man'[27] under certain client arrangements) continue in a long-term role at the Company."[28] Since Mr. Levin would not be retained, the Special Committee discussed that his non-retention would make it more difficult to obtain client consents and close the deal. Thus, the fact that Saba did not plan to retain Mr. Levin was, for the first time, identified as a risk to closing. In fact, the first process letter had expressly "specified that interested

[27] The Proxy Disclosure asserts that key man provisions in agreements with clients representing "over half of the [Company's] Signing Revenue Run Rate" contain one or the other of the following "triggering" formulations: (1) triggered if Mr. Levin himself exits or (2) triggered if four members of the Portfolio Committee (of which Mr. Levin himself is a member) exit within an 18-month period. October 12 Proxy Statement at 59. Tellingly, the Proxy Disclosure provides no breakdown of the percentage or number of agreements containing only the first triggering formulation (or, for that matter, the number of agreements containing only the second). In any event, as discussed *infra*, Saba (acting through the Consortium) later amended its offer to permit Mr. Levin to remain with the Company.

[28] October 12 Proxy Statement at 59.

parties would not be required to retain any Company personnel following the closing of the potential transactions[.]"[29]

91. On June 30, 2023, after its discussions with Mr. Levin and after holding out the prospect of $12.00 per share as long as its expectations about employee compensation were correct, Rithm revised its proposal back down to $11.00 per share.[30]

C. The Proxy Statement Mischaracterizes the Special Committee's Negotiations with Saba and the Terms of Saba's Proposals

92. On July 1, 2023, Saba provided the Special Committee's financial advisors a letter that [redacted][31] Saba noted that it [redacted][32]

[29] *Id.* at 41.

[30] Although the Company claimed that this reduction had nothing to do with Mr. Levin's compensation, during this period Mr. Levin was holding out for compensation concessions and did not agree to a revised employment agreement until July 10, 2023. October 12 Proxy Statement at 61. The Proxy confirms that Rithm reduced its price because of money necessary to reach separate deals with Sculptor management, and after negotiation with Mr. Levin, Rithm later increased its offer from $11.05 to $11.15. Consequently, Mr. Levin's compensation represented the lion's share of executive compensation that Rithm would have to pay, and additional money not available to the stockholders.

[31] SABA_000000013-14.

[32] SABA_000000013.

93. The Proxy Statement omits any description of the July 1 letter, which is a material omission. The July 1 letter [redacted] As Saba stated in its July 1 letter, [redacted][33]

94. The July 1 letter [redacted] As Saba explained, [redacted] Again, [redacted] the letter explains that [redacted]

[33] SABA_000000014.

[redacted]" While claiming that clients will not consent because of their reaction to the Board's one-sided narrative, the Special Committee has refused to allow Saba to explain publicly its commitment to Sculptor. These omissions and mischaracterizations mislead stockholders about how clients would receive Saba if its deal went forward.

95. The July 1 letter also [redacted][34]

96. Because of its focus on retaining substantially all employees, [redacted]

[34] SABA_000000015 (emphasis added).

[redacted][35]

97. The July 1 letter also explained that, [redacted][36]

98. The July 1 letter attached [redacted]. The Proxy Statement notes that on August 31, Saba provided "additional biographical information regarding Boaz Weinstein, Kieran Goodwin, and Mike Jacobellis, who, along with Mr. Levin, were proposed to occupy an 'Office of the CIO' that would oversee the Company's investments following the closing." This disclosure is misleading because it suggests that Saba had not provided sufficient biographical information on these

[35] SABA_000000015.

[36] SABA_000000015.

individuals before August 31. This misleading disclosure is part of the overall narrative that Saba was slow to respond or lagging-behind in providing information. This narrative is false in general and with respect to the biographical information. [redacted] (SABA_00000017-18) [redacted] (SABA_000001551) [redacted].

99. Finally, the July 1 letter [redacted]

D. Saba Continues to Revise its Proposals to Demonstrate its Commitment and Address the Special Committee's Purported Concerns

100. On July 7, 2023, Saba proposed a purchase price of $11.50 per share and a lower (more favorable to the Company) client consent threshold of 75%. Nevertheless, the Special Committee was told by the Company's management that

[37] SABA_00000016.

management "remained concerned about its ability to retain current employees, and the likelihood of achieving the client [lower] consent condition" if the Special Committee pursued a transaction that did not contemplate management's continued employment at the Company. In contrast, the Company's management conveyed its optimism about facilitating a transaction with Rithm that maintained their positions: "the Company's management informed the Special Committee of the Company's management's expectation that the Company would likely be able to meet the client consent condition and other closing conditions contained in the draft merger agreement with Rithm."

101. There is no question that management was conflicted with respect to maintaining their positions. Their livelihood depended on the Board approving a transaction that contemplated their continued retention. They had the strongest incentives to skew the Special Committee's consideration of bids by tying "deal conditionality" to their retention through the client consent condition and that is exactly what they did. This conflict was obvious and known to the Special Committee, or if it was not known, it should have been. Yet the Special Committee never took steps to address this conflict and ensure that the Special Committee was provided with unconflicted information about client consent achievability and employee retention. Nor did the Special Committee take any steps to ensure that

management acted even-handedly with clients as it concerned potentially competing bids.

102. The Special Committee later hired a consultant regarding achieving the client consent thresholds, but the Special Committee limited the consultant's base of information in a way that renders the consultant completely ineffective to address the obvious root conflict. The consultant's information base was the same conflicted garbage-in, garbage-out structure; the consultant was not allowed to actually speak with clients and management alone provided all the information about clients' supposed feelings toward potential bidders that the consultant used for its analysis.

103. On July 8, 2023, PJT Partners told Saba's financial advisor that the Special Committee wanted Saba to further revise its proposed client consent condition. The next day, Saba's legal counsel confirmed that Saba was willing to further revise the proposed client consent condition.

104. From July 10 to July 17, 2023, Saba negotiated with the Special Committee's advisors regarding the client consent provision, eventually proposing $11.00 per share of Company Class A Common Stock with an 80% client consent threshold for the Company's CLO business line, an 80% client consent threshold for the Real Estate line and potentially forgoing a client consent threshold for the Company's Multi-Strategy and Opportunistic Credit Funds business lines.

105. On July 12, 2023, Saba sent a proposal [redacted] omitted from the Proxy Disclosure, in another instance of leaving a misleading impression that Saba's transaction did not sufficiently account for obtaining client consents.

106. The July 12 proposal from Saba notes that [redacted][39] Saba noted [redacted][40] And Saba's offers only improved from there. There is no record of anyone from the Special Committee or its representatives disputing to Saba this characterization of Saba's concessions on the client consent condition. Plaintiff has been unable to find precedents from the Company's counsel with

[38] SABA_00000051.

[39] SABA_00000051.

[40] SABA_00000052.

similarly seller-friendly client consent conditions. But the Proxy Disclosure leaves the misleading impression that the Special Committee's demands with respect to the client consent condition are within a range of reasonableness. They are not. The demands are unprecedented and unreasonable.

107. One of the themes of the Proxy Disclosure is that Saba would cause significant disruption to the investment function of the business that would ultimately endanger client consents. But this is materially misleading. Saba repeatedly emphasized that it would not do so. In the July 12 proposal, for example, Saba noted that [redacted][41]

108. The July 12 proposal noted, [redacted][42] The Proxy Statement fails to disclose that at the very time the Special

[41] SABA_00000051 (emphasis added).

[42] SABA_00000052.

Committee was allowing Rithm to have discussions with Och and the Founders it was prohibiting Saba from doing so. This is materially misleading when the Proxy Disclosure later disparages the Saba bids in September on the basis that "the September 30 Proposal did not include any discussion of whether the Consortium would impose any further conditions to execution of a definitive merger agreement (including, for example, whether the Consortium would require an opportunity to engage with the [Founders] prior to executing a definitive agreement with respect to the September 30 Proposal)."[43] The impression given is that the Consortium's bid should be discounted because it was un-baked, showing that the Consortium had not been sufficiently active when it was the Special Committee that has kept the Consortium from engaging with the Founders.

109. On July 17, 2023, Saba reiterated, [redacted] [44] These continued commitments to address closing certainty are not included in the Proxy Disclosure. To the contrary, the false narrative the Proxy Disclosure spins is that Saba's bids continually fell short on closing certainty.

[43] October 12 Proxy Statement at 86.

[44] SABA_00000064.

110. In its July 17 message, [redacted]

111. Maintaining the status quo was the plan as to the multi-strategies business: [redacted][45]

112. And maintaining the status quo was the plan for the CLO business as well: [redacted]

[45] SABA_00000064 (emphasis added).

[redacted][46]

113. In its July 17 message, Saba also asked for detail about the Special Committee's purported [redacted] details of any [redacted] so that Saba could address them. [redacted][47] It appears the Special Committee demurred any response to any of these questions or offers to solve the purported problems.

[46] SABA_00000064 (emphasis added).

[47] SABA_00000065.

114. While Saba had sent a draft merger agreement in mid-June, the Special Committee and the Company still had not turned it back to Saba by July 17. The Proxy Disclosure creates a false impression that Saba had moved slower than other bidders in an effort to show that Saba had not seriously pursued a transaction, which is false. In the Proxy Disclosure, the Board claims that Saba "was not prepared to execute a definitive agreement with respect to a potential transaction at the time of the meeting" on July 22, 2023, but omits that Saba had been asking for the Company's comments on its merger agreement since mid-June. This is materially misleading.

115. In its July 17 message, [redacted]

[48] SABA_00000064.

[49] SABA_00000064.

116. It appears the Special Committee [redacted] Particularly puzzling for a process that the Directors knew at that point would result in a cash-out that they were duty-bound to maximize, [redacted] As Saba notes, [redacted][51]

E. The Board Approves the Inferior Rithm Transaction

117. On July 22, 2023, Rithm made a proposed offer of $11.15 per share of Company Class A Common Stock. The Special Committee met the next day, July 23, 2023, and received a fairness opinion from PJT Partners regarding the Rithm transaction. After withholding comments to the merger agreement Saba had sent for over a month, the Special Committee pretextually concluded that Saba was not ready to sign definitive documentation and recommended entry into the merger agreement with Rithm. A Board meeting was held later that day at which J.P. Morgan rendered a fairness opinion on the Rithm transaction, and the Board approved the transaction.

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[50] Saba notes, [redacted] SABA_00000987.

[51] SABA_00000987.

118. On July 24, 2023, the Company and Rithm announced a transaction whereby Rithm would acquire Sculptor for $639 million, with the Company's public stockholders receiving $11.15 per share of Class A Common Stock. The Class A Unit Holders would receive roughly an equivalent amount (accounting for differing tax and accounting considerations).

119. Rather than using a sale of the Company as an opportunity to correct or mitigate the Board's mistakes in passing the Compensation Package, the Company ensured that the Merger Agreement locked in Mr. Levin's exorbitant terms and crystallized the losses to the stockholders. Pursuant to the agreement reached between Rithm and Mr. Levin (the "Side Agreement"), Mr. Levin largely keeps the terms set by the Compensation Package and may negotiate future compensation shortly after the Merger closes in 2024. In the event that he is not satisfied with such negotiations, Mr. Levin has a "walk away" right that provides him with, at a minimum, an additional $10 million in cash, acceleration of any outstanding deferred cash interests, and acceleration of any unvested retention awards. Critically, Mr. Levin will be paid in cash millions of dollars in performance-based awards that were underwater due to the Company's poor performance under his leadership and therefore only payable because of the Rithm transaction. The Side Agreement also releases Mr. Levin from any claims that the Company might have in connection with the Compensation Package.

120. Because the Side Agreement provides Mr. Levin both a guaranteed compensation floor, performance-based awards only payable upon a transaction, and the option to "walk away" with additional payments and accelerated vesting, Rithm ensured that Mr. Levin's interests in the Merger are entirely misaligned with those of ordinary Company stockholders. Mr. Levin also negotiated go-forward compensation that includes a $10 million price floor and a $5 million retention bonus. Rithm also agreed to Mr. Levin's demand that it create a Long-Term Incentive Plan ("LTIP") for him and his management team and allocate at least 20% of the LTIP awards to him.

121. Although the Side Agreement purports to limit Mr. Levin's compensation in 2023 and 2024 by providing a ceiling of $30 million on some of his total compensation, that ceiling contains numerous exceptions that ensures that Mr. Levin will get paid well above that already significant amount. For example, Mr. Levin's carried interest is excluded from the cap.

122. In addition, Rithm secured voting agreements with Mr. Levin Mr. Cohen, Brett Klein, and Peter Wallach (the "Voting Agreements") obligating them to vote all their shares in favor of the Merger and against any alternative acquisition proposals. Those four managers collectively control approximately 26% of the total stockholder voting power.

VII. Post-Signing, the Special Committee Blocks Saba's Attempts to Provide Stockholders with More Consideration

A. Saba Increases its Offer and the Special Committee Continues to Find Fault with the Offer

123. On August 12, 2023, Saba, with the Consortium comprised of some of the wealthiest financiers in the world, made a substantially higher bid for the Company. The Consortium offered $12.25 per share of Company Class A Common Stock. This time, the Consortium included binding equity commitment letters to assuage one of the concerns the Special Committee had raised with Saba's previous bid; made it clear that certain members of management, including Messrs. Levin and Orbuch, would be retained post-closing; and stated that the Company's post-transaction investment function would be overseen by an "Office of the CIO," to be staffed by Levin, among others. But the Special Committee continued to find fault with the offer even though it provided stockholders approximately 10% more consideration than the Special Committee had accepted from Rithm.

124. Despite the Consortium having addressed the Special Committee's articulated concerns regarding financing commitment letters (now provided) and conditionality around obtaining client consents (which the Consortium approached by requiring substantially lower thresholds than those required by the Rithm transaction and by agreeing to retain Levin and Orbuch), the Proxy Disclosure

describes the topping offer in negative terms and highlights its purported issues as compared to the Rithm deal.

125. The goalpost-moving issues raised by the Company relate to questions regarding (i) the comparative financing conditionality of the Consortium's Proposal and the financing conditionality of the Merger Agreement; (ii) a sale of the Company's CLO business as part of the Consortium's bid; (iii) purported shortcomings in the ability of the Company to obtain damages upon breach of the merger agreement; (iv) ill-evidenced claims concerning the Special Committee's "degree of confidence that the Rithm Client Consent Condition Could actually be satisfied" and its doubt that the Consortium Client Consent Condition could be, all based on the conflicted information provided by management; and (v) the details of the Consortium's proposed "Office of the CIO" to oversee the Company's investment function.

126. The Proxy Disclosure is materially misleading regarding these aspects. The sale of the CLO business was not a condition to the merger with the Consortium. Nor did the sale of the CLO business add any additional conditionality to the merger. As the Consortium stated, and its merger agreement provided, [redacted]

[redacted][52] If the merger closed, so would the CLO sale transaction, but in any event, since the CLO sale was not a condition to the merger, it would not affect the merger. To the extent there were any legitimate questions about the Consortium's ability to finance the transaction, the Consortium offered that [redacted][53] The Proxy Disclosure, however, falsely implies that the Consortium proposed additional conditionality with respect to the CLO business line.

127. The Proxy Disclosure claims that the Consortium's August 12 bid did not specify "the ongoing role [Levin and Orbuch] would have in the Company's Investment Function going forward."[54] This is false. The August 12 bid stated, [redacted][55] As noted above, in earlier discussions, Saba had already iterated and reiterated how the Office of the CIO was envisioned, Levin's anticipated role in

[52] SABA_00000077.

[53] SABA_00000077.

[54] October 12 Proxy Statement at 65.

[55] SABA_00000077.

ensuring a smooth transition and facilitating client consents as well as Orbuch's anticipated role.

128. The Proxy Disclosure makes no mention of Saba's pledges to add new complementary products at Sculptor that would [redacted][56] Disclosing these facts would have disrupted the Special Committee's preferred narrative that Sculptor was in danger of being a side project for Saba and the other members of the Consortium.

129. The Proxy Disclosure describes the August 12 bid as reflecting a willingness "to employ certain key executives of the Company[.]"[57] This is false and misleading given the Special Committee's conflation of client consents with employee retention. The disclosure falsely suggests that Saba's bid contemplated it would dispense with all but "certain key executives." But Saba had earlier declared its intention to retain effectively all of the Company's employees and the August 12 bid further confirmed, [redacted]

[56] SABA_00000078.

[57] October 12 Proxy Statement at 65.

[redacted][58]

130. Saba once again reiterated, [redacted][59]

131. On August 13, 2023, the Special Committee met to discuss the Consortium's topping bid, but despite the bid's financial superiority, less conditionality compared to the Rithm transaction and inclusion of some of the most serious investment management firms in the world, the Special Committee did not conclude that the topping bid was—or was reasonably expected to lead to—a Superior Proposal (as defined in the Rithm merger agreement). The Rithm merger agreement defines Superior Proposal to mean:

> … a *bona fide* written Acquisition Proposal … (other than an Acquisition Proposal resulting from a material breach of Section 6.02) that the Company Board (acting upon the recommendation of the Special Committee) determines in good faith, after consultation with its outside financial and outside legal advisors, taking into account such factors as the Company Board considers to be appropriate, including the timing, likelihood of consummation, legal, financial, regulatory and other aspects of such Acquisition Proposal (including the sources and terms of any financing, financing market conditions and the existence of a financing contingency and the identity of the Person making the proposal) and any revisions to the terms of this Agreement made or proposed in writing by Parent, is reasonably likely to be consummated in accordance with its terms, and if consummated, would be more

[58] SABA_00000077.

[59] SABA_00000077.

> favorable, from a financial point of view, to the Company Stockholders (in their capacity as such) than the Transactions.[60]

132. The Special Committee requested clarification from the Consortium regarding the funding commitments, the CLO business sale, the sources and uses of the transaction (with respect to which it requested an information table), the scope of regulatory approvals that would be required, the rollover of certain equity, employee compensation matters, and governance following closing.

B. Saba Provides Additional Requested Clarifications to the Special Committee but the Special Committee Continues to Treat Saba Differently from Other Bidders

133. On August 14, 2023, the Consortium provided the additional clarifications regarding sources and uses, estimates of total funds needed and its anticipated timeline, but, according to the Proxy Disclosure, did not have a binding commitment from Bidder H to fund $260 million in respect of the debt financing of the CLO sale. This is false and misleading. What the August 14 clarifications actually stated with respect to the commitment from Bidder H was the following:

[redacted]

[60] Annex A to October 12 Proxy Statement at A-18.

[redacted]

134. On August 16, 2023, the Special Committee met and formulated additional purported issues with the Consortium topping bid. As the correspondence with Saba makes clear, the Special Committee's purported issues were pretextual and contrived. According to the Proxy Disclosure, these include:

(a) that the Consortium bid purportedly underestimated the amount of financing needed to consummate the transactions,

   i. This was based on a strained mis-reading of the sources and uses table that required an incredible leap to conclude that Weinstein, Lasry, Ackman, Yass, their associated affiliates and advisors all made a colossal mathematical error. In reality, it was the Special Committee that was mistaken, but they did not even reach out to clear up the misunderstanding. Instead, the backed into the conclusion that the Consortium was so unsophisticated as to make such a mistake.

(b) whether the Consortium really intended to pay $12.25 per share of Company Class A Common Stock if it knew how much more financing would be required,

   i. This was nonsense on the stilts of the foregoing willful mis-reading of the sources and uses table.

(c) the Consortium's delivery of documentation evidencing $288 million of the $650 million required to consummate the topping offer (the remainder of which was listed as available cash on the Company's balance sheet),

   i. The Proxy Disclosure fails to reveal that the Company's CFO told Saba, and presumably other bidders, that this cash was available.

(d) the Consortium's unwillingness to provide documentation of a commitment from Bidder H until after the Special Committee determined that it has made a superior proposal, and

   i. The commitment from Bidder H, one of the most sophisticated institutional debt investors in the world, was unnecessary given that the sale of the CLO business to Bidder H was not a condition to Saba's proposed merger.

(e) that the topping bid's financing conditionality was purportedly greater than the financing conditionality associated with the Merger Agreement because, among other reasons, the acquirer (though backed by five creditworthy entities) would be a shell entity (as is typical in many mergers), the commitment letters were cross-conditioned (as, again, is often the case), and the Consortium sought to cap its liability at $19.6 million.

i. If these were real concerns, private equity would be out of the business of buying companies. These purported concerns were pretext.

135. Presciently, when the Consortium responded to the purported issues on August 14, 2023, it voiced its [redacted][61] In early October, the Special Committee imposed a two-day deadline to complete documentation when the Consortium had been pleading for engagement since mid-August and before. Then, when the Consortium could not finish in two days, the Special Committee threw up its hands and claimed the Consortium was unwilling or unable to move fast enough.

136. The Proxy Disclosure attempts to explain away the clear superiority of the Consortium's client consent condition to the higher client consent condition proposed by Rithm. With respect to the August 12 proposal, the Proxy Disclosure speculates and bases the Board's position on flimsy or conclusory justifications, including that the Special Committee had "substantial concerns as to the likelihood of satisfying the Consortium Client Consent Condition included in the August 12 Proposal" and a "higher degree of confidence" that the Rithm condition would be satisfied because Rithm had "stated [an] intention" not to meaningfully change the

[61] SABA_000000962.

Company's investment function. The Proxy Disclosure is materially misleading in that by August 12 Saba had already stated, repeatedly, that it would not meaningfully change the Company's investment function or investment strategy.

137. The Special Committee also claimed (i) there was, in the Proxy Disclosure's conclusory terms, a "lower likelihood of client withdrawals and redemptions" under the Rithm proposal, and (ii) the Rithm transaction was supported by unspecified (and unquantified) "general client feedback" received anecdotally in "ordinary-course calls and other discussions with clients occurring in connection with the Company seeking client consents to satisfy the Rithm Client Consent Condition[.]"[62]

138. The Special Committee also blamed the Consortium for the Special Committee's own efforts to obstruct Saba and the Consortium's bid by noting that "the Consortium would require additional time to negotiate and enter into definitive agreements,"[63] thus holding its own dilatory conduct against the Consortium and leveraging it as a basis to deprive Company stockholders of the benefits of a topping bid.

139. Finally, the Special Committee also faulted the Consortium because it (i) contemplated a sale of the Company's CLO business shortly after or immediately

[62] October 12 Proxy Statement at 68.

[63] *Id*.

prior to consummation of a transaction, which the Special Committee counted against the Consortium despite the sale not constituting a condition and Bidder H being one of the most respected institutional debt investors; (ii) had not provided draft employment agreements for Messrs. Levin or Orbuch (both of whom the Consortium had agreed to retain but to whom the Special Committee refused access); and (iii) had not provided color regarding the operations of its proposed "Office of the CIO" or responded to questions regarding the post-closing investment function of the Company. This was simply false. Saba had repeatedly described in detail the Office of the CIO and the post-closing investment function of the Company over the previous months. Saba, once again, reiterated that the only change related to the Office of the CIO was that Levin would report to Weinstein instead of the Rithm CEO.

140. Based on the purported issues identified above, the Special Committee declined to declare the Consortium's August 12, 2023, topping bid a Superior Proposal or reasonably likely to lead to a Superior Proposal under Section 6.02(c)(ii) of the merger agreement with Rithm.

141. On August 18, 2023, the Special Committee recommended, and the Board adopted, a resolution waiving in a limited way all existing standstill provisions applicable to bidders, but only insofar as to allow potential bidders to submit confidential proposals to the Board or the Special Committee. Five of the

NDAs included provisions that terminated the standstill obligations upon announcement of the Rithm merger agreement, but the Board and Special Committee did not even the playing field among potential bidders. The standstill provisions continue to prevent the Consortium from communicating with stockholders directly to provide its view of the issues identified by the Board. The continued adherence to the standstill provisions against the Consortium constitutes an ongoing breach of Defendants' fiduciary duties for the reasons detailed herein.

142. On August 21, 2023, the limited waiver of the standstills was communicated to the NDA counterparties.

143. Meanwhile, on August 22, 2023, the Founders served a demand to inspect Sculptor's Merger-related books and records pursuant to 8 *Del. C.* § 220. That same day, the Founders publicly filed a letter to the Special Committee (i) criticizing the Committee for its refusal to allow the Founders to engage with potential bidders, including the Consortium; (ii) accusing the Special Committee of agreeing to a transaction with a management-preferred bidder, Rithm; and (iii) requesting that the Special Committee waive the restrictions in the relevant NDAs to enable the Founders to negotiate with third-parties for the purpose of obtaining a superior proposal.

144. On August 29, 2023, the Company sent the Founders a letter accusing them of making "self-interested demands"—*i.e.*, that "Rithm agree to accelerate tens

of millions of dollars as a prepayment at a favorable discount rate of the Tax Receivable Agreement and pay you an additional $5.5 million in cash"—and stating that "[n]otably missing from those discussions were meaningful concessions by any of you for the benefit of public stockholders."[64]

VIII. The Consortium Raises its Bid Again and Responds Repeatedly to the Special Committee's Moved Goalposts

A. Saba Increases its Offer and Indicates its Flexibility on Price

145. On August 24, 2023, the Consortium submitted a letter to the Special Committee. The Consortium addressed the issues identified by the Board in the August Proxy Statement's discussion of the August 12, 2023 proposal, [redacted][65]

146. In its August 24 bid, the Consortium noted, [redacted]

[64] Sculptor Capital Management Inc., Current Report (Form 8-K, Ex. 99.1) (Aug. 30, 2023), https://www.sec.gov/Archives/edgar/data/1403256/000119312523224270/d494456dex991.htm (some emphasis added).

[65] SABA_00000976.

[redacted][66] The Proxy Statement omits the material information that the Consortium intimated that [redacted]

147. Given the Special Committee's repeated requests for detail regarding the plans for Mr. Levin, the Consortium also noted, [redacted][67]

[66] SABA_00000976.

[67] SABA_00000976.

B. Saba Calls Out the Special Committee for Presenting a Misleading One-Sided Narrative in the Proxy Statement and Requests an Even Playing Field

148. In a separate August 24, 2023 letter, the Consortium pointed out some of the myriad mischaracterizations and misleading statements in the then-current Proxy Statement, which have not been corrected in the Proxy Statement. [redacted] [68] The Consortium demanded that the Company correct its misleading statements, but the Board and Special Committee have declined to do so. [redacted] [69]

[68] SABA_00000979.

[69] SABA_00000979.

149. The August 24 letter related that the Special Committee [redacted][70] And the Consortium was clear about the motivations that were steering what it called a [redacted] process: [redacted][71] While preventing Saba from talking with management, the Special Committee [redacted][72] And then the Special Committee counted the failure to have employment agreements against the Consortium.

150. The August 24 letter points out other absurdities. [redacted][73] And

[70] SABA_00000980.

[71] SABA_00000980.

[72] SABA_00000981.

[73] SABA_00000984.

[redacted][74]

151. The August 24 letter reiterates, again, that since the Consortium was [redacted]

152. The August 24 letter highlights numerous misrepresentations of Saba's interactions with the Special Committee. Some of these include:

(a) [redacted]

(b) [redacted]

(c) [redacted]

[74] SABA_00000984.

[redacted]

(d) [redacted]

(e) [redacted]

[redacted]

(f) [redacted]

153. These details are important, but even more important is the misleading overall narrative the Proxy Disclosure tells, a narrative that is false when compared to the documentary evidence. As Saba summarized, [redacted]

[redacted][75]

154. Once again in the August 24 letter, the Consortium suggested that if they were allowed to talk to Mr. Och, they would be able to further increase the price, a material fact the Proxy Disclosure omits. [redacted][76]

155. In a parting frustrated plea that the Special Committee continued to prevent the Consortium from paying the Company's stockholders more for their shares, the August 24 letter closed by stating: [redacted]

[75] SABA_00000987.

[76] SABA_00000988.

[redacted][77]

156. But the Special Committee returned to issues to which the Consortium had already responded and once again declined to declare the topping bid of approximately 15% greater consideration a Superior Proposal. The Special Committee's headline objection simply shifted from financing to the client consent condition.

157. The Consortium's previous proposal already reduced the required client consents to substantially lower than Rithm's 85% consent requirement. The overall client consent run-rate was estimated to be around 54% in the aggregate, across the business lines. In addition, while the Special Committee had purportedly been concerned that not retaining Mr. Levin would make it harder for the Consortium's bid to obtain the requisite consents, the Consortium's previous proposal also addressed this concern by offering to retain Mr. Levin on terms substantially similar to the Rithm transaction. [redacted][78]

[77] SABA_00000988.

[78] SABA_00000977.

158. On August 25, 2023, the Special Committee met to discuss the August 24, 2023, topping bid. At the meeting, despite the Consortium's efforts to address the Special Committee's purported concerns, the Special Committee doubled down on purported issues that the Consortium had addressed. With respect to the client consent condition, the Proxy Disclosure asserts that the anecdotal evidence came from clients representing a "material percentage" of the Company's client revenue run rate, but by the Board's own admission, the Special Committee drew its conclusions concerning the client consent condition without conducting any "systematic affirmative outreach to the Company's clients[.]"[79] All of the Special Committee's information regarding client consents was provided by conflicted management who had successfully tied the client consent condition to their own retention.

159. Based on these purported concerns and the other concerns raised in response to the Consortium's August 12, 2023, proposal, the Special Committee declined to declare the Consortium's topping bid, as refined by its August 24, 2023, proposal, a Superior Proposal or reasonably likely to lead to a Superior Proposal under Section 6.02(c)(ii) of the merger agreement with Rithm.

[79] October 12 Proxy Statement at 70.

C. The Special Committee Declines to Consider Saba's Improved Proposal as Superior and Imposes More Onerous Requirements on Saba

160. On August 26, 2023, the Consortium further improved its proposal by increasing its bid to $12.76 per share and informing the Special Committee that it had secured $758 million in committed financing ($304 million in equity, $217 in shareholder loans, and $237 in debt financing), exceeding the funding needed to consummate the transaction, and no longer required any financing from Bidder H (while reserving the right to proceed with a sale of the Company's CLO business between signing and closing).

161. On August 27, 2023, the Special Committee met to discuss the Consortium's August 26 proposal. The Special Committee (i) obstinately stuck to its refrain that the financing conditionality of the Consortium's proposal was greater than Rithm's because, even though the commitments obtained by the Consortium covered more than the entire amount needed to consummate the transaction, the financing included incremental conditions and risks associated with the funding of debt commitments and (ii) rehashed its tired purported fears concerning the client consent condition. Based on these purported concerns, and resting on others that it had previously relied upon, the Special Committee again declined to declare the Consortium's topping bid a Superior Proposal or reasonably likely to lead to a Superior Proposal under Section 6.02(c)(ii) of the merger agreement with Rithm.

162. On August 29, 2023, the Special Committee delivered a letter to the Consortium rejecting the topping bid, citing concerns related to "financing uncertainty," the client consent condition and "closing uncertainty," and "signing uncertainty." As to purported "financing uncertainty," the Special Committee took issue with the inclusion of debt financing, an issue that it claimed was magnified by the Consortium's $39.2 million liability limitation.

163. As to the client consent condition, the Special Committee lamented the Consortium's purported lack of clarity concerning its plans for managing the Company's investment strategy. The Special Committee, completing its about-face regarding whether retaining Levin would have any impact on its consideration of bids, fully equated the concepts of management retention and deal certainty: although "retaining the Company's management is not a condition to acquiring the Company[,]" "deal certainty" is.[80] Put more directly, with a focus on the actual upshot of its words, the Special Committee was conveying that retaining management was a condition to acquiring the Company.

164. As to "Signing Uncertainty," the Special Committee expressed purported uncertainty as to whether the Consortium would require voting agreements with persons who signed voting agreements in favor of the Rithm

[80] October 12 Proxy Statement at 74.

transaction, employment agreements with key employees of the Company, and/or discussions or definitive documentation securing the support of the Founders.

165. The Special Committee's letter purported to identify several modifications that the Consortium could adopt to assuage the Special Committee's concerns.

166. As to "Financing Certainty," despite the fact that the Consortium had already secured committed financing for more than the full transaction amount, the Special Committee demanded the Consortium (i) provide equity (as opposed to debt) financing commitments (along with certain financial information) from each member of the consortium totaling to the full $743 million necessary to fund the transaction, (ii) agree to cap damages at $743 million, (iii) name the Company as a third-party beneficiary with rights to enforce the equity commitment letters, and (iv) cause each sponsor to agree to remain principally liable on its commitment and jointly and severally liable for the commitments of the others.

167. As to the consent condition and "Closing Certainty," the Special Committee demanded that the Consortium remove *all* such conditions from the merger agreement and specify that the risk of business deterioration (including the risk of adverse client or employee reactions) due to the announcement of the transaction would lie solely on the Consortium.

168. The Special Committee's insistence on no conditions whatsoever with respect to client consents was flatly unreasonable. Plaintiff has identified the following public merger agreements in the asset management space (SIC Code 6282) in which counsel for the Company advised a party and client consents were at issue.

(a) TPG Operating Group II, L.P. – Angelo, Gordon & Co., L.P. (May 14, 2023) – client consent threshold of 85%

(b) SB Foundation Holdings LLP – Fortress Investment Group LLC (Feb. 15, 2017) – client consent threshold of 87.5%

169. As to "Signing Certainty," the Special Committee requested that the Consortium (i) require no additional documentation to be executed or any other action to be taken prior to the execution of a definitive merger agreement and (ii) define the scope of any due diligence that the Consortium would require relating to regulatory approval requirements prior to execution. The Special Committee's requirements imposed on the Consortium were thus, again, more onerous than the requirements imposed on Rithm, which the Special Committee allowed to confer with the Founders and Levin and others regarding compensation or employment agreements.

170. Also on August 29, 2023, the Special Committee authorized the engagement of a consultant, Casey Quirk of Deloitte, purportedly to assist it in

analyzing closing risks presented by the Consortium's client consent condition. Deloitte was specifically forbidden from directly contacting any of the Company's clients, and instead based its analysis on inputs from Company representatives who were conflicted in favor of a transaction with Rithm.[81]

D. Saba Calls Out the Special Committee's Refusal to Engage as Being Indicative that the Special Committee is Beholden to Management's Preference for a Deal with Rithm

171. On August 31, 2023, the Consortium sent a further revised proposal to acquire the Company at a price of $12.76 per share. The revised proposal (i) stated that the $743 million of financial obligations of the acquirer would be guaranteed by Susquehanna International assuaging the Special Committee's purported concerns regarding partial debt financing and the purported cross-conditionality of the commitments; (ii) agreed to increase the liability cap to $743 million, assuaging the Special Committee's purported concerns regarding the $39.2 million liability limitation; (iii) took the same position as the previous offer with respect to the client consent condition (on which the Special Committee had remained entrenched with its unprecedented 0% client threshold demand); (iv) requested permission to speak to Mr. Orbuch and Mr. Och—concessions that had been granted to Rithm and the

[81] October 12 Proxy Statement at 76, 92-93. In a lengthy qualification in the October 12 Proxy Statement concerning the consultant's role, the Board stresses that the consultant "had no responsibility for the accuracy or completeness of the information provided by, or on behalf of, the Special Committee[.]" *Id*. at 93. The information base consisted of information supplied by conflicted management.

Consortium had been requesting for months—and requested a waiver of its NDA in connection with that request; (v) again provided biographical information for Boaz Weinstein and other individuals who, along with Mr. Levin, were slated to occupy its proposed "Office of the CIO,"; and (vi) stated that the Consortium could execute documentation within a week of engagement.

172. The Special Committee's August 29 response again focused on Levin's position. The Consortium's August 31 letter notes, [redacted][82]

[82] SABA_000001544 (emphasis added).

173. The Consortium made clear it was [redacted]

174. On September 1, 2023, the Special Committee sent the Consortium a set of picayune questions purportedly related to the Consortium's August 31 proposal but versions of which had been asked and answered since early July with respect to the Office of the CIO. The clarifying questions included a variety of questions purportedly related to the client consent condition that did not arise from the August 31 proposal that were simply the latest pretext for delay and lack of real engagement. Other questions concerned (i) the proposed role, duties and composition of the Office of the CIO; (ii) the role of members of the Consortium in determining the investment function of the Company; (iii) the nature of governance arrangements relating to the Consortium's control of the Company; and (iv) the Consortium's plans for identifying and addressing any conflicts of interest that may be held by members of the Consortium or members of the Office of the CIO. The questions also addressed the form of financial guarantee proposed by the Consortium, the Consortium's requirements with respect to regulatory approvals, and diligence required before entry into a definitive merger agreement.

[83] SABA_000001546.

175. On September 3, 2023, the Consortium responded to the clarifying questions by stating that (i) the Office of the CIO would have decision-making authority over the Company's investments and risk profile; (ii) the Office of the CIO would consist of Mr. Levin, Mr. Weinstein, and two individuals unaffiliated with the Company or the Consortium, with Mr. Weinstein having ultimate decision-making authority and the ability to add or remove members; (iii) other members of the Consortium may sit on the Company's board, but would not be involved in the Company's day-to-day operations or investment decisions; (iv) the Board would be tasked with reviewing and approving procedures to address conflicts of interest and risk management matters; and (v) Mr. Weinstein would lead a "tail hedging strategy" through a sub-advisory arrangement with the Company, and Saba would earn a fee from the Company in return for this service.

176. According to the Proxy Disclosure, the Consortium's response also stated that (i) the form of its guarantee was subject to the same conditions to funding as its August 26, 2023, proposal, (ii) the Consortium did not require any voting or employment agreements or releases or rollover agreements with the Founders as conditions to signing (a possibility that the Special Committee had allowed Rithm to explore), (iii) the Company would be required to cooperate with seeking client run-rate consents for a transfer of the CLO business to the Consortium and for a sale of that business if the Consortium decided to sell it prior to closing, and (iv) the

Consortium would need to conduct certain additional due diligence, including diligence related to a recent criminal plea by the Company and the Company's regulatory status.

177. The Proxy Disclosure creates the misleading impression that the Consortium was suggesting that there was significant diligence remaining, but this impression is false. The remaining diligence items were what one would expect, such as the "terms of any employment agreements agreed to as part of the Rithm transaction" (the Consortium had offered to match), an update of fund flows (simply necessary), any redemption requests or expected redemption requests, understanding the mechanics of Mr. Och's tax deferral, and any other material developments since the parties had last spoken.

178. On September 5, 2023, at a meeting of the Special Committee, the committee claimed to find fault with the Consortium's purported changes to the Company's investment function that might, based, again, on anecdotal evidence provided by conflicted management, raise concerns for certain unspecified clients and employees.

179. At a meeting on September 7, 2023, according to the September 14 version of the Preliminary Proxy Statement, the recently-hired consultant identified

certain "typical drivers" of client loss after a change in control without tying its analysis to the specific circumstances of the Company.[84]

180. On September 8, the Consortium wrote to the Special Committee because, once again, the Special Committee had failed to respond timely, this time since the September 3 letter from the Consortium five days earlier. Once again, the Consortium reiterated, [redacted][85]

181. On September 13, 2023, based on purported input from the consultant that did not incorporate data from client interviews or polling (because the consultant relied solely on conflicted management information sources), the Special Committee met and declined to declare that the Consortium's August 31, 2023 topping bid, as illuminated by the Consortium's responses to the Special Committee's clarifying

[84] This meeting is omitted from the Proxy Disclosure.

[85] SABA_000001998.

questions, was a Superior Proposal or reasonably likely to lead to a Superior Proposal under Section 6.02(c)(ii) of the merger agreement with Rithm.

182. The Special Committee purportedly based this conclusion on pretextual bases including that (i) the Consortium had not complied with the request that it deliver equity commitment letters covering the full amount of the transaction (despite having offered to have the necessary amount guaranteed by a single Consortium member), (ii) the Consortium had failed to deliver a standard unconditional guarantee to fund all obligations of the Consortium buyer when and as required under the definitive transaction documentation (again despite the aforementioned offer of a guarantee), (iii) certain unspecified and unenumerated clients had expressed concern about a transaction with the Consortium, creating purported closing risk, and (iv) the Special Committee had a higher degree of confidence that the Rithm client consent condition could be satisfied based on Rithm's stated, but not bargained-for, intention not to meaningfully change the Company's investment function. Reasoning circularly, the Special Committee also purported to base its decision on its conclusion that the Consortium had failed to resolve threshold issues.

183. Also at the September 13, 2023, meeting, the Special Committee determined not to provide further feedback to the Consortium and instead chose to

rest on its letter dated August 29, 2023, which it believed expressed its position as to all threshold issues.

IX. The Consortium's Efforts to Acquire the Company Attract Favorable Public Attention

184. During the back-and-forth between the Consortium and the Company, the Consortium's efforts to acquire the Company, were endorsed by the Company's former CEO and 6% stockholder, Rob Shafir, belying the Special Committee's oft-repeated refrain that the Consortium was unpalatable to clients.

185. On August 31, 2023, Mr. Shafir submitted an open letter to the Special Committee in which he observed that the Special Committee's "fiduciary duties require [the Special Committee] to maximize value for Sculptor's shareholders" and, based on publicly leaked information, noted that "$12.76 with committed financing is clearly superior to $11.15." The letter further decried as "not credible" the Special Committee's assertion that a deal at such a price with the Consortium—which Shafir noted was comprised of "leading investors" Weinstein, Yass, Ackman and Lasry—would "not be acceptable to [the client] limited partners, especially at the 50.1% threshold publicly reported as compared to the 85% in the deal with Rithm Capital Corp." The letter observed that it was "also not credible to maintain the position that this group does not have the funds and resources to complete this transaction." Based on this reasoning, Shafir announced his intention not to support the Rithm transaction.

X. The Consortium Makes Yet Another Series of Superior Follow-Up Proposals

186. On September 18, 2023, the Consortium sent a letter to the Special Committee in which it requested that the Company make disclosures concerning the identities of the members of the Consortium and release the Consortium from obligations under Saba's NDA preventing it from making public statements and engaging with third parties, including Company clients. While the Consortium had previously made requests that the Special Committee identify the members of the Consortium, the Special Committee insisted on hiding this information in the September 14 Preliminary Proxy Statement.

187. The Consortium reiterated, once again, [redacted], (SABA_000002002), presumably the Founders and Mr. Och. The Consortium also requested that it be allowed to discuss post-closing employment with Mr. Levin and other members of Company management. The September 18 letter reiterated and re-attached its financing commitments, which included the [redacted]

[redacted][86] The Proxy Disclosure omits the letter's reassurance with respect to financing and the guarantee.

188. The letter also reiterated, once again, that the Consortium did not intend to change the investment function of the Company. The Consortium also offered to eliminate the concept of the "Office of the CIO" from its proposal and to simply refer to Mr. Weinstein as the CIO of the Company if that is what the Special Committee preferred.

189. On September 19, 2023, the Special Committee met and determined that, despite the Consortium's directly contrary statement that it would not significantly change the Company's investment function, the Consortium's proposals continued to present significant changes to the Company's investment function and thus gave rise to closing risk due to failure of client consent. The Proxy Disclosure repeats the falsity that the Consortium planned changes to the investment function in the face of the September 18 letter's clear statement that [redacted]

[86] SABA_000002002-03.

[redacted][87]

190. [redacted]

[redacted][88]

191. The Proxy Disclosure states that the September 18 letter "did not provide any further details regarding the Consortium's plans with respect to operation of the Company's Investment Function under such new construct."[89] This

[87] SABA_000002003.

[88] SABA_000002003-04.

[89] October 12 Proxy Statement at 80.

creates a misleading impression that the Consortium had failed to respond to some pending question about the Company's investment function or that the Consortium's offer to do away with the Office of the CIO construct was confusing. This is false. The Consortium had responded, repeatedly, to questions about the lack of changes to the Company's investment function and the Office of the CIO construct since July.

192. The Consortium's offer to do away with the Office of the CIO was born of the Special Committee seemingly wanting a different answer to the Consortium's repeated responses on the issue because it kept asking the same questions over and over. The Proxy Disclosure misleadingly paints this offered concession from the Consortium to simply have Weinstein act as CIO rather than have an Office of the CIO as "continued changes to the Consortium's descriptions of the way the Company's funds would be managed" which the Proxy Disclosure then seizes on to claim "resulted in there continuing to be meaningfully higher risk that the Consortium Client Consent Condition would not be satisfied[.]"[90] This is completely misleading and circular nonsense that lays bare the Special Committee's pretextual attitude toward the Consortium. [redacted]

[90] October 12 Proxy Statement at 80.

[redacted].[91] The Consortium's description of the way the funds would be managed was not changing at all, unless the Special Committee thought such change would be helpful.

193. On September 19, the Special Committee also concluded the Consortium should not be allowed to communicate with stockholders, third parties or members of Company management. The Special Committee did not communicate these conclusions to the Consortium and again decided not to provide the Consortium with further feedback, resting instead on its letter dated August 29, 2023.

194. On September 20, 2023, the Consortium sent the Special Committee a further update of its $12.76 per share proposal in which it lowered its client run-rate consent threshold for the Company's Multi-Strategy and Opportunistic Credit business lines from 50.1% to 40% and stated that it might be able to further lower the threshold if it could speak to certain Company clients constituting a substantial amount of the revenue associated with these business lines. The Consortium also stated its intention to conduct a cash tender offer for the Company at a price of $12.25 per share upon the expiration of Saba's standstill on December 22, 2023.

[91] SABA_000002007.

The Special Committee, while expressing purported concerns that the proposal did not address issues that it had identified, took this offer under advisement.

195. On September 21, 2023, the Special Committee received a report that, as a result of discussions that it had authorized between Rithm and the Founders, the group had agreed to support the Rithm transaction subject to certain proposed amendments to the merger agreement and Mr. Levin's employment agreement.

196. On September 22, 2023, Rithm sent an outline of these amendments to the Special Committee. The proposed amendments included, among other things, increasing the public merger consideration and consideration payable to the Company's partnership units to $12.20 per share/unit; certain changes to Mr. Levin's compensation structure (including in the event of certain types of termination); Rithm's reimbursement of $5.5 million of the Founders' legal fees; elimination of equity rollovers contemplated by the initial merger agreement; certain changes related to the tax receivables agreement, including Rithm's provision of a guarantee thereof; and the Founders' entry into a voting agreement to support the Rithm transaction.

197. After discussing this proposal on September 22, 2023, the Special Committee, in a post hoc attempt to standardize its criteria between the two bidders, determined to ask Rithm to eliminate its client consent condition, which Rithm

agreed to do on September 23, 2023, subject to the Special Committee's acceptance of the other amendments.

198. On September 26, 2023, the Consortium proposed to eliminate the client run rate consent threshold for the Company's Multi-Strategy and Opportunistic Credit business lines from the September 20 Proposal (but not the client run-rate consent threshold for the Company's CLO and Real Estate business lines, which each remained at 80%) and acquire the Company for $12.00 per share. The proposal also provided, however, that if 51% of the clients of those business lines consented to a transaction with the Consortium and agreed to remain as clients of the Company for at least four fiscal quarters following closing, then the Consortium would increase its purchase price to $12.76 per share of Class A Common Stock.

199. On September 29, 2023, Rithm requested an increase in the total termination fee payable in the event that the Company terminated the Rithm merger agreement to accept a superior proposal. The Special Committee determined to consider such an increase. At the same meeting, purportedly based on the conditionality required by the Consortium's latest offer to achieve a price of $12.76, the Special Committee determined to evaluate the offer as one for $12.00 per share.

200. Also on September 29, 2023, Rithm and the Special Committee tentatively agreed to raise the termination fee to $16.57 million.

201. On September 30, 2023, the Consortium sent a further proposal to eliminate the client consent condition for the Company's Multi-Strategy and Opportunistic Credit Business Lines and to acquire the company at a price of $12.76 per share. The Consortium also requested permission to contact the Founders to discuss its willingness to roll over its investments in the Company, in which case the Consortium would consider increasing its offer to $13.00 per share. The Special Committee informed Rithm of this proposal as required by the merger agreement.

202. On October 1, 2023, while it continued to review and await further potential modifications to the Rithm agreement, the Special Committee considered the Consortium's September 30, 2023, proposal, noted that it did not resolve the committee's purported issues with the client consent conditions required of the Company's CLO and Real Estate business lines, and sought certain clarifications from the Consortium by requesting that the Consortium provide revised transaction documentation.

XI. The Consortium Increases its Offer to $13.00 Per Share, Prompting Public Expressions of Support

203. On October 2, 2023, the Consortium provided revised documentation to the Special Committee and offered to increase its price to $13.00 per share if the Special Committee engaged with the Consortium regarding its proposals by October 6, 2023. In the October 2 letter, Weinstein reiterated that the Consortium [redacted]

[redacted]

[redacted][92] Finally, the Consortium reiterated its intent to launch a fully financed all-cash tender offer at an increased price of $12.76 per share upon the expiration of its standstill agreement on December 22, 2023, if Company shareholders had not yet approved the Rithm transaction at this time. The October 12 Proxy Statement failed to disclose the increased tender offer price.

204. On October 3, 2023, the Founders issued a statement to the press indicating that, based on press reports concerning the Consortium's latest proposals, the Founders believed that the Consortium's offer was more attractive than the Rithm transaction.

[92] SABA_000002910.

205. On October 4, 2023, the Special Committee met and learned from J.P. Morgan that Rithm was not prepared to enter into an amended merger agreement without the support of the Founders or to improve the terms of its offer.

XII. The Special Committee Yet Again Shows its Bias Against the Consortium By Rejecting Yet Another Superior Proposal

206. On October 6, 2023, the Special Committee met and discussed what the Proxy Disclosure refers to as the "September 30 Proposal," though the Proxy Disclosure notes only in passing the October 2, 2023, $13.00 price increase. The Special Committee finally sent a letter to the Consortium recognizing the Consortium's bid as reasonably expected to lead to a Superior Proposal, which allowed the Board and Special Committee to negotiate freely with the Consortium.

207. But, true to form, the Special Committee erected unreasonable hurdles to engagement with the Consortium that were designed to protect the favored deal with Rithm rather than engaging in good faith with the Consortium.

208. On Friday October 6, 2023, the Special Committee communicated to the Consortium that it would have to execute definitive agreements before 7:00 a.m. on Monday, October 9, 2023. The Special Committee adhered to its previous unreasonable positions as to "Financing Certainty," "Closing Certainty," and "Signing Certainty." The Committee [redacted]

[redacted][93] Indeed, the Committee's proposal would [redacted] a clear attempt to impede the Consortium that provided no conceivable benefit to Sculptor or its stockholders.[94] As the Consortium explained, [redacted][95]

209. As to financing certainty, the committee demanded that the Consortium, comprised of some of the most well-known and sophisticated investors in the world, and about which there was no legitimate question of financial wherewithal, provide a balance sheet and other information related to liquidity. As to purported closing certainty, the draft merger agreement removed all client-related conditions and required the Consortium to bear certain unidentified closing risks.

210. Not surprisingly, the Consortium could not fully meet the Special Committee's unreasonable artificial deadline that provided just two days of engagement after the Consortium had pleaded for months to engage with the Special Committee. The Special Committee had repeatedly spent many days and weeks to

[93] SCM00000169264.

[94] SCM00000169264.

[95] SCM00000169264.

respond to the Consortium's many improved offers, and at other times did not respond at all.

211. Nonetheless—and despite the Committee [redacted][96]—the Consortium immediately engaged with the Special Committee and its advisors, setting forth its response in an email on October 9. The Consortium again improved its bid in response to the Special Committee's unreasonable hurdles, lowering the client consent condition to 70% for the Company's real estate business and 80% for its CLO business line and eliminating the client consent condition altogether for the main part of the Company's business, its multi-strategy business line. The Consortium requested meetings with management and data-room access, which had been provided to other potential bidders. The Consortium also conveyed that it believed the process could be completed six days later, by October 16, 2023. Additionally, the Consortium confirmed that it had acquiesced to the Special Committee's requests from October 6 (just two days earlier) having revised the form guarantee to incorporate the Special Committee's markups and revised commitments consistent with the Special Committee's comments and prepared the financial information requested from Susquehanna, which the Consortium would

[96] SCM00000169264.

provide [redacted] The Consortium also cleared up [redacted] The Consortium explained that it was [redacted][97]

212. The Special Committee rejected the Consortium's proposal and sent a letter to that effect to the Consortium on the following day.

213. Meanwhile, on October 9, 2023, after Rithm purportedly failed to meet the Founders' prior demand that "Rithm agree to accelerate tens of millions of dollars as a prepayment at a favorable discount rate of the Tax Receivable Agreement and pay you an additional $5.5 million in cash,"[98] the Founders sent the Special Committee a letter requesting that Sculptor release all parties that had

[97] SABA_000003224-3226.

[98] Sculptor Capital Management Inc., Current Report (Form 8-K, Ex. 99.1) (Aug. 30, 2023), https://www.sec.gov/Archives/edgar/data/1403256/000119312523224270/ d494456dex991.htm (some emphasis added).

entered into NDAs with Sculptor from their standstill restrictions to allow the Founders to engage with potential bidders.[99]

214. On October 10, 2023, after the Board had made its long-overdue determination that the Consortium's proposal was reasonably expected to lead to a Superior Proposal as the original complaint in this action demanded, Rithm increased its offer to $12.00 per share (among other modifications to the prior agreement). The Company accepted this increase and closed its pretextual three-day period of engaging with the Consortium. Despite determining that the Consortium's proposal was reasonably expected to lead to a Superior Proposal, the Special Committee breached its fiduciary duties by not entering into an Acceptable Confidentiality Agreement (as defined in the Rithm merger agreement) with the Consortium that released the Consortium from its standstill obligations.

215. On October 11, Saba wrote to PJT Partners and J.P. Morgan, reiterating the Consortium's commitment to a transaction with the Company and repeating its prior requests to speak directly to the Special Committee to [redacted] But the Special Committee continued to keep the Consortium gagged through its NDA despite the Consortium's

[99] October 12 Proxy Statement at 89.

repeated requests to be released and the merger agreement's authorization to release the Consortium in connection with the Superior Proposal determination.

216. But the Special Committee readily provided a standstill waiver to Rithm at its first request. Rithm requested, and the Special Committee acceded to, the Company waiving Rithm's standstill agreement to permit Rithm to discuss the transaction with Delaware Life and buy its warrants. The Special Committee thus provided Rithm with a lock-up of 12.8% of the Company's outstanding stock by facilitating the purchase of the warrants. The Company also agreed to increase the Rithm deal's termination fee to 3.75% of the equity value, with the sole purpose of protecting the deal with Rithm in the face of the Consortium's higher bid.

XIII. The Special Committee Agrees To An Inferior Transaction With Rithm While Allowing It To Buy Votes

217. On October 11, 2023, the Special Committee determined to agree to the transaction with Rithm.

218. On October 12, 2023, Rithm and the Company entered into the amended merger agreement (the "Amended Merger Agreement"), which increased the price per share to $12.00—but contained fundamentally inequitable provisions that depressed the overall value stockholders would receive from the Merger and biased the stockholder vote needed to effectuate the Merger in Rithm's favor.

A. The Amended Merger Agreement Allows Rithm To Buy Sculptor Stock Worth Approximately 6.5% Of Sculptor's Outstanding Voting Power, Effectively Locking Up 2/3 Of The Stockholder Vote Required To Effectuate The Merger

219. The Amended Merger Agreement provided for the waiver of the standstill restrictions in Rithm's NDA "solely to the extent such restrictions prohibit [Rithm] from acquiring and/or exercising (and negotiating such acquisition with Delaware Life Insurance Company)" warrants for the sale of Sculptor stock held by Delaware Life (previously defined as the "Warrants").[100]

220. On the same day Rithm and the Company entered the Amended Merger Agreement, Rithm and Delaware Life executed a definitive agreement for Rithm to purchase the entirety of the Warrants: all 4,338,015 shares of Sculptor Class A Common Stock at $7.95 per share, for an aggregate price of $27,568,961. That same day, Rithm exercised the warrants for the full number of shares.

221. On October 13, 2023, Sculptor issued all 4,338,015 shares, representing approximately 6.5% of the total voting power of Sculptor's outstanding voting stock, to Rithm. Notably, the $14.33 per-share price paid by Rithm for those shares significantly exceeded both (i) Rithm's $12 per share acquisition proposal, and (ii) the $12.25 intra-day high trading price of Sculptor stock on October 13. The sole economically rational explanation for Rithm's willingness to purchase those roughly

[100] Annex B of the October 12 Proxy Statement at B-2.

4.4 million shares at that price was that Rithm anticipated voting those shares in support of its bid for Sculptor.

222. In a Schedule 13D filing made the same day, Rithm disclosed its purchase and exercise of the Warrants. It stated that it "accelerated the payment of the consideration to purchase the Warrants in order to purchase and exercise the [Warrants] ***so that [Rithm] would be able to vote the 4,338,015 shares of Class A Common Stock thereunder in connection with the Issuer's special meeting of stockholders in connection with the*** **[*Merger*.]**"[101]

223. Yet Rithm would have been unable to vote those shares in favor of the Merger had the Board not taken the extraordinary step of establishing, for purposes of the stockholder vote on the Merger, a record date falling five days *after* the filing of the definitive proxy. That highly unusual extension of the record date several days into the future provided Rithm sufficient time to exercise the warrants and hold the underlying shares in sufficient time to vote them in favor of its underpriced acquisition of Sculptor.

224. The Amended Merger Agreement also maintained the Voting Agreements obligating Mr. Levin, Mr. Cohen, Brett Klein, and Peter Wallach obligating them to vote all their shares, totaling approximately 26% of voting power,

[101] Sculptor Capital Management, Inc., Statement of Beneficial Ownership (Schedule 13D) at 4 (Oct. 13, 2023) (emphasis added), https://www.sec.gov/Archives/edgar/data/1556593/000114036123048215/ef20012588_sc13d.htm.

in favor of the Merger and against any alternative acquisition proposals. This, combined with Rithm's 6.5% stake, meant that Rithm had already locked up approximately two-thirds of the stockholder vote needed to approve the Merger.

B. The Amended Merger Agreement Removes The Disinterested Vote Requirement, Further Disenfranchising Dissenting Stockholders

225. In the initial Merger Agreement, Sculptor and Rithm agreed that the Merger would require not only a vote of all stockholders, but also a majority vote of independent stockholders (previously defined as the "Disinterested Vote"). The Disinterested Vote would have ostensibly ratified the Merger by providing unaffiliated stockholders the opportunity to approve a transaction that had the potential to favor management and other parties. However, under the October 12, 2023 Amendment, amidst clear indications of a significant risk that Sculptor's disinterested stockholders would reject Rithm's proposed Merger, Sculptor and Rithm agreed to strike the Disinterested Vote requirement.

226. There was little doubt the Merger would have failed the Disinterested Vote. Sculptor's stock was trading above the deal price (closing at $12.27 on October 16, 2023), demonstrating public stockholders' ongoing that the Company was worth more than what Rithm was offering.

227. In another attempt to lock out Saba, the Company also agreed to increase its own break-up fee from $16,576,819 to $20,307,196. That 22.5% increase rendered the fee preclusive under Delaware law, particularly when

considering the significant breakage costs that a topping bidder would bear if it were to choose to terminate existing management following closing.

228. It is apparent that the Company and Rithm waived the standstill, eliminated the Disinterested Vote, and increased the break-up fee for the sole purpose of pushing through the Merger against the interests of the stockholders as a whole. An unconflicted Board of Directors would never have agreed to such measures.

XIV. The Consortium Documents the Board's Disloyal Conduct

229. On October 13, 2023, Mr. Weinstein sent the Board and Special Committee a letter (the "October 13 Letter") expressing [redacted][102] Mr. Weinstein memorialized the Board and Committee [redacted][103] Mr. Weinstein reiterated [redacted][104]

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[102] SCM00000169264.

[103] SCM00000169264.

[104] SCM00000169264.

230. The October 13 Letter further confirmed that there would be [redacted][105] The October 13 Letter also noted, among other things:

[redacted][106]

231. The letter then provided several specific examples of that disloyal conduct.

XV. The Founders File their Class Action

232. On October 19, 2023, the Founders filed a putative class action lawsuit and sought injunctive relief based on allegations that Defendants breached their fiduciary duties by agreeing to an "inferior deal" with Rithm that "insulates and protects Sculptor management at the expense of the public stockholders receiving a

[105] SCM00000169264.

[106] SCM00000169264.

superior bid." Each Founder submitted and Rule 23 affidavit vowing, *e.g.*, "I… ***will not accept***…any form of compensation, directly or indirectly, for serving as a representative party," outside of certain enumerated exceptions.[107]

233. The Founders' class action was quickly consolidated with Beauchemin's action, with Beauchemin and the Founders jointly prosecuting the consolidated action as co-plaintiffs, and with their respective counsel as co-lead counsel, for the Class. Beauchemin's counsel and the Founders' counsel divided responsibility for the prosecution of this extraordinarily expedited case.

234. Unbeknownst to Beauchemin and his counsel, the Founders and their counsel were simultaneously exploiting their positions as representatives of the Class to secure an agreement providing themselves lucrative unique benefits not shared with the Class.

XVI. The October 25 Proxy Supplement

235. As revealed in the proxy supplement filed on October 25, 2023, the Consortium made an even higher offer of $13.50 per share just one day after the Rithm Merger was announced (the "October 13 proposal"). Notably, the higher offer represented a nearly 4% increase on the September 30 proposal, a *12.5%* premium to the Rithm deal on the table at the time, and a *6.2%* premium to Rithm's

[107] *E.g.*, Verification and Rule 23(aa) Affidavit of Daniel S. Och (Oct. 17, 2023) (Trans. ID 71108175) at ¶ 6 (emphasis added).

current $12.70 offer. The Special Committee, however, refused to let the public know about this higher offer until nearly two weeks had elapsed.

236. The Consortium's October 13, 2023 proposal also met the Special Committee's exacting conditions, by providing (i) the offer was not contingent on an agreement with the Founders, and (ii) the "Consortium-Specific Transaction Risks" would not constitute a Company Material Adverse Effect that terminates the deal. The client-consent conditions remained unchanged, and thus at a substantially lower level than those entailed by the Rithm Merger.

237. The Special Committee met on October 13 to discuss the Consortium's $13.50 bid and decided that it represented a Potential Superior Proposal. Despite the Consortium's months-long engagement and endless overtures to provide all of the information that the Special Committee needed, the Board did not determine that the October 13 proposal actually constituted a Superior Proposal.

238. Later on October 13, the Consortium sent its revised merger agreement to the Special Committee. According to the Proxy Disclosure, the merger agreement "did not reflect a full acceptance of the Consortium-Specific Transaction Risks and thus imposed such risks on the Company Stockholders."[108] The Proxy Disclosure

[108] Sculptor Capital Management Inc., Additional Proxy Soliciting Materials (Schedule 14A) (Oct. 25, 2023) ("October 25 Proxy Supplement") at 6.

does not, however, specify what provisions were deemed insufficient or even ***who*** reviewed the agreement to make such a determination.

239. On October 17, after days of back-and-forth discussions, the Consortium submitted another revised merger agreement. The Consortium further offered to meet more Sculptor employees and to close the transaction as soon as October 23, 2023. The proxy supplement notes provisions in its agreement with Rithm that would make such a timeline impossible but does not suggest that the Special Committee's determination was changed at all by the new proposal.

240. On October 20, 2023, the Special Committee met to discuss the Consortium's offer and related due diligence conducted in the previous week, including a meeting with Mr. Weinstein. Despite the fact the Consortium exceeded all other bidders on the client-consent condition and reiterated that it would accept all Consortium-Specific Risks, the Special Committee did not determine that the October 13 proposal was a Superior Proposal. Their excuses remained the same, namely "concerns about the Consortium Client Consent Condition[.]"[109]

241. In response to the Special Committee's concerns, the Consortium submitted yet another draft merger agreement on October 21, 2023. In a call later the same day, the Special Committee's counsel expressed its opinion that the

[109] October 25 Proxy Supplement at 9.

Consortium still had not done enough to address supposed "Consortium-Specific transaction risks," and that the Consortium would need to take certain actions that the Special Committee purportedly believed would increase the probability that a transaction with the Consortium would close.

242. In response, on October 22, 2023 the Consortium asked to speak with the Company's Client Partner Group so that it could gather information that could help inform whether the Consortium could accept greater risks with respect to a transaction and to discuss the possibility of gaining client consents. Later the same day, Mr. Weinstein participated in a call along with members of the Client Partner Group, the Special Committee's counsel and financial advisor, and explained the Consortium's plans for how it would run the Company and why it believed its ownership would benefit clients. According to the Company's Client Partner Group, any transaction structure where Mr. Weinstein would replace Mr. Levin as CIO would create a "material risk that a majority of the assets under management of the Company's Multi-Strategy and Opportunistic Credit business lines would redeem[.]"[110] Steve Orbuch, the head of Sculptor's real estate team, purportedly told the Special Committee that Mr. Weinstein "did not adequately address key terms that would be important to the Real Estate team[,]" but the Proxy Disclosure again

[110] *Id.* at 10.

does not specify what terms were discussed or how the Consortium failed to meet them.[111]

243. On October 24, 2023, in an email to the Special Committee, the Consortium stated that it would be willing to accept all Consortium-Specific Transaction Risks if they were given permission to speak with the Company's ten largest clients and additional members of the Company's senior management. Later that evening, the Special Committee met and discussed the latest Communication from the Consortium. In spite of the Consortium again showing flexibility and willingness to address the Special Committee's concerns, the Special Committee again moved the goalposts and gave new pretexts for rebuffing the Consortium. For example, the Special Committee opined that even though the Consortium was willing to waive its client consent condition on the Company's Multi-Strategy and Opportunistic Credit business lines, the mere fact that the Consortium wished to speak with the Company's ten largest clients was "functionally a signing condition."

244. Similarly, the Special Committee claimed that the Consortium even *meeting* with clients "could be highly disruptive and potentially cause clients to redeem their investments even prior to the Consortium executing a definitive agreement[,]" although the Proxy Disclosure does not make clear what, if anything,

[111] *Id.*

was the basis for this concern.[112] Further, the Proxy Disclosure states that no other bidders—including Rithm—had been able to speak with clients, but omits to note that (as later disclosed) the Company was actively seeking client consents for the Rithm deal while continuing to stall the Consortium. And, circularly, the Proxy again claimed that the Special Committee believed that the Consortium was "not yet prepared to accept and acknowledge the Consortium-Specific Transaction Risks" while the Special Committee was at the same time refusing to take reasonable steps to determine if clients would consent to a Consortium deal (while at the same time taking steps to ensure client consent to a Rithm deal).

245. On October 25, 2023—the same day Sculptor filed a proxy supplement, it also filed with the SEC a slide presentation entitled "Rithm's Acquisition of Sculptor." The presentation further emphasized supposed "Closing Risk" from the Consortium's proposal, stating that it was "likely to lead to significant client redemptions," but failed to provide any evidence for this conclusion; in fact, the presentation cites deal terms that the Consortium had already clearly expressed willingness to forego, such as certain proposed changes to the Sculptor funds' investment structure that Mr. Weinstein had already told the Special Committee he would not make. And while the presentation dubiously claims that clients "provided

[112] *Id.* at 11.

substantial negative feedback on the proposal from the Consortium," it is unclear which "proposal" it is even referring to, how (if at all) any such feedback was gathered, or whether the terms of the proposal were ever actually presented to clients.

246. Citing these pretexts, the Special Committee elected not to accommodate the Consortium's requests and refused to deem the Consortium's October 13 proposal a Superior Proposal.

XVII. The Company Enters A Second Amended Merger Agreement With Rithm And A Transaction Support Agreement With The Founders

247. On October 27, 2023, Sculptor announced its entry into a second amended merger agreement (the "Second Amended Merger Agreement"), under which Rithm increased the deal consideration to $12.70 per share of Company Class A Common Stock.[113]

248. In addition, the Second Amended Merger Agreement: (i) waives the client consent condition of the Amended Merger Agreement so long as the closing of the Merger occurs on or prior to November 17, 2023, (ii) increases the already-preclusive termination fee payable to Rithm to $22,426,831, and (iii) increases the

[113] Sculptor Capital Management Inc., Current Report (Form 8-K) (Oct. 27, 2023), https://www.sec.gov/Archives/edgar/data/1403256/000114036123049833/ny20013518x2_defa14a.htm.

cap on the amount of Rithm expenses that the Company is required to reimburse in certain circumstances to $5,677,679.[114]

249. In connection with the entry into the Second Amended Merger Agreement, Rithm entered into a transaction support agreement (the "Transaction Support Agreement") with the Founders, pursuant to which the Founders agreed to vote all of their shares in favor of the Merger and against any alternative acquisition proposals.[115] As of the date of the Transaction Support Agreement, the Founders controlled approximately 15.2% of Sculptor's voting power.[116] Given Rithm's pre-existing 6.5% voting power and the Voting Agreements obligating Mr. Levin, Mr. Cohen, Brett Klein, and Peter Wallach to vote their 26% of Sculptor's shares in favor of the Merger, the Transaction Support Agreement allowed Rithm to lock up, in total, approximately 48% of the stockholder vote.

250. Pursuant to the Transaction Support Agreement, the Founders also agreed not to commence any proceeding or pursue any legal claims relating to the Merger prior to the Closing, and to dismiss with prejudice any existing litigation against Rithm and Sculptor and their affiliates and representatives, including those

[114] *Id.*

[115] *Id.*

[116] *Id.*

asserted in the above-captioned matter.[117] Thus, on the morning of October 27, 2023, the Founders sought to voluntarily dismiss the claims asserted in this action.

251. Additionally, under the Transaction Support Agreement, the Company agreed to pay the sum of $5,500,000 to the Founders no later than two days prior to the closing of the Merger.[118] Similar payments would not be made to the public shareholders.

252. Also notably, the Transaction Support Agreement entailed the so-called "TRA Guaranty," which effectively requires Rithm to guarantee the Founders' receipt of $173 million pursuant to a Tax Receivables Agreement.

253. Beauchemin and his counsel did not learn of the Founders' agreement with Rithm—nor, therefore, the Founders' agreement to now *support* Rithm in exchange for receiving lucrative benefits not shared with the Class—until viewing a public press release on the morning of October 27. Shortly thereafter, at 6:56 AM Rithm's counsel filed with the Court a letter alerting the Court to (i) the Second Amended Merger Agreement, (ii) the Transaction Support Agreement, and (iii) the Founders' desire to now abandon its representation of the Class based on its agreement to support Rithm in exchange for receiving valuable benefits *not* shared with the Class.

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[117] *Id.*

[118] *Id.* at Ex. 99.2.

XVIII. The Special Committee Lacks Independence from Levin and Failed to Screen Him from the Process

254. The Special Committee's breaches of fiduciary duty can be explained by the two members' lack of independence from Mr. Levin. The Proxy confirms as much by noting that during the sale process, the Special Committee "discussed that the transaction proposed by [Saba] may make client consent more difficult to obtain because [Saba] had indicated its intent to not have Mr. Levin (considered a "key man" under certain client arrangements) continue in a long-term role at the Company following the closing of the potential transaction . . . ."[119]

255. As described above, the Special Committee appears to have used Mr. Levin's interest as a repeated excuse to reject Saba and the Consortium. Even if the "key man" risk had some factual basis (it does not), the Board failed to take steps necessary to negate the improper influence that Mr. Levin could exert over the sale process due to the control he obtained from the "key man" arrangements, his position as CEO and CIO, and as a significant stockholder of the Company.

256. Mr. Levin has repeatedly proven that he will maximize his leverage at the Company to extract value for himself at the expense of stockholders, both when he first was named CEO in 2020 and again when he pushed the Company to award him the Compensation Package in 2021. Despite that history, the Special Committee

[119] October 12 Proxy Statement at 59.

did not require Mr. Levin or any other members of Sculptor management to execute standard agreements that would lock in their support for a deal that best serves stockholders.

257. Mr. Levin has continued to exert control over the Special Committee's sale process. Beyond the client-consent condition, the Proxy Disclosure acknowledges that Mr. Levin's compensation has played a significant role in what bidders have offered for the Company. Moreover, the Proxy repeatedly notes his and/or his management team's regular attendance at Special Committee meetings. In total, at least ten separate pages of the Proxy's background section note the participation of Sculptor management at Special Committee meetings.[120] And Special Committee meeting minutes indicate that Mr. Levin attended three April 2023 meetings in which the Proxy conspicuously admits management's attendance—despite describing the attendance of other participants.

258. Moreover, the Special Committee invited Mr. Levin to attend its April 25, 2023 meeting, where meeting minutes reveal that the Special Committee held a "discussion" regarding the Founders' concern that "the value of the Company for stockholders of the Company has been diminished due to prior board actions, and that Mr. Levin stands to receive excessive compensation as a result of a potential

[120] *See, e.g.,* October 12 Proxy Statement at 38-40, 46, 48, 51-55, 57, 60, 64-67, 69-70, 72.

transaction." The Special Committee could not have possibly held an independent discussion to evaluate the Founders' concerns about Mr. Levin's outsized compensation negatively impacting transaction value while Mr. Levin was in the room. Mr. Levin's inclusion in this conversation single-handedly demonstrates the Special Committee's abysmal failure to run an independent sale process.

259. The Special Committee did not observe the traditional corporate protections that would isolate the sale process from Mr. Levin's control. The Special Committee consists of only two members of the Sculptor Board, Marcy Engel and Charmel Maynard. Both of those directors played a role in approving the Compensation Package in violation of their fiduciary duties. Because the Merger would effectively eliminate the risk that they would face liability from those actions by extinguishing potential derivative claims related to Compensation Package, Ms. Engel and Mr. Maynard were not truly independent, but had a unique personal interest in approving the Merger.

260. In addition, Ms. Engel has a demonstrated history of capitulating to Mr. Levin's demands. And Ms. Engel's compensation doubled in the two years following Mr. Levin's rise to the top at Sculptor. Having proven herself beholden to Mr. Levin and having capitulated to his past demands, it is evident that Ms. Engel ran the Special Committee in close consultation with Mr. Levin and in deference to his interests, rather than in the best interest of stockholders.

261. At bottom, there was no separation between the Special Committee, on the one hand, and Levin and the Company, on the other. In fact, Company management and its bankers participated in the Committee's negotiations with Rithm. And the Company's banker, J.P. Morgan, secretly forwarded the Consortium's proposals to Levin himself. Indeed the Proxy's very mention of a 'Special Committee' (which suggests both independence of the members and adherence to guardrails designed to ensure an independent process) without disclosing that the total absence of separation between the Committee and Company was materially misleading.

XIX. The Special Committee's Deference to Levin Tainted the Sale Process

262. As Mr. Levin had done in his prior compensation negotiations with the Board, he exploited his relationships with clients to secure a transaction for his own benefit. The Special Committee's evident predisposition to Mr. Levin's interests has not been lost on outside observers, and on stockholders. As Matt Levine of Bloomberg wrote on September 18, 2023, the Special Committee's estrangement of the Consortium "isn't just turning down a higher offer for a lower one; it's turning down a higher offer for a lower one that ***preserves Jimmy Levin's job***. . . . [F]aced

with the choice between a lower bid that keeps Levin and a higher bid that doesn't, it turns out that Levin is essential."[121]

263. Indeed, Saba inevitably ran into the Special Committee's interest in protecting Mr. Levin. Faced with this interest, Saba made express efforts to assuage the committee that it would retain Mr. Levin and negotiate regarding his compensation. For example, in relation to its offer from July 12, Saba requested "a discussion with Jimmy on his ongoing role in the business, including meaningful compensation for such . . . we would like to work with him on an agreement over a 6- to 12-month transition period that we believe would aid in obtaining consents."[122] Indeed, Saba went as far as to say that if there was no "positive report" from those conversations, "the Special Committee will be free to discontinue discussions with us."[123]

264. The Special Committee's inability to separate itself from Mr. Levin led directly to approving an undervalued deal for the Company, to consistent efforts to preserve such inferior deals, and to the latest efforts to ram through that deal over stockholder objections. The Merger provides security to Mr. Levin's professional, financial, and legal interests. Presented with a choice between those interests and a

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[121] Matt Levine, *Sculptor Sticks with the Deal It Knows*, BLOOMBERG at 4 (Sept. 18, 2023) (emphasis added).

[122] SABA_000000052.

[123] *Id.*

deal that maximizes value for stockholders, the Board chose the former in a quintessential violation of their fiduciary duties.

XX. The Founders Commence a Class Action Lawsuit to Gain Leverage in Self-Interested Negotiations with Rithm

265. The Founders have repeatedly and publicly voiced their concerns over the Special Committee's handling of the sale process, including their concern that the Special Committee is elevating management's interests above the interests of Sculptor's public stockholders.

266. Yet, as described below, the Founders have disloyally proceeded to leverage their positions as class representatives to elevate their own interests over the interests of Sculptor's public stockholders, severely prejudicing the Class.

267. On August 22, 2023, approximately one month after the Company announced that it had agreed to a transaction with Rithm for $11.15 per share, the Founders served a demand to inspect Sculptor's books and records pursuant to 8 *Del. C.* § 220 with respect to the proposed Merger. That same day, the Founders filed an amended statement of beneficial ownership on Schedule 13D/A attaching as an exhibit a letter to the Special Committee criticizing the Committee for its refusal to allow the Founders to engage with potential bidders, including the Consortium, accusing the Special Committee of agreeing to a transaction with a management-preferred bidder, Rithm, and requesting that the Special Committee waive the

restrictions in the relevant NDAs to enable the Founders to negotiate with third-parties for the purpose of obtaining a superior proposal.

268. On August 30, 2023, the Company filed a current report on Form 8-K attaching as exhibits the Company's responses to the Founders and their counsel with respect to the Founders' 220 demand. Tellingly, in the August 29, 2023 letter to the Founders, the Company accused the Founders of making self-interested demands:

> ***In negotiations with Rithm Capital Corp. ("Rithm"), the Och Group's focus seems to have been on self-interested demands.***
>
> Your professed concerns for the Company's public stockholders is also belied by your more recent interactions with Rithm in which you appear to have focused on maximizing your own economic interests. ***For example, you requested that, as part of any closing, Rithm agree to accelerate tens of millions of dollars as a prepayment at a favorable discount rate of the Tax Receivable Agreement and pay you an additional $5.5 million in cash for your legal expenses supposedly incurred in connection with the Company's sales process, including costs for counsel that were negotiating for your own economic benefits.*** The transaction under discussion between the Och Group and Rithm would have included the option for a rollover in order to allow you to avoid recognizing significant taxable gain received in the transaction. ***Notably missing from those discussions were meaningful concessions by any of you for the benefit of public stockholders.***[124]

269. After Rithm purportedly failed to meet the Founders' demands, on October 9, 2023, the Founders sent a letter to the Special Committee requesting that

[124] Sculptor Capital Management Inc., Current Report (Form 8-K, Ex. 99.1) (Aug. 30, 2023), https://www.sec.gov/Archives/edgar/data/1403256/000119312523224270/d494456dex991.htm (some emphasis added).

Sculptor release all parties who have entered into NDAs with Sculptor from their standstill restrictions to allow the Founders to engage with any potential bidders.[125]

270. On October 19, 2023, the Founders filed a putative class action lawsuit against the Defendants alleging they breached their fiduciary duties by agreeing to an "inferior deal" with Rithm that "insulates and protects Sculptor management at the expense of the public stockholders receiving a superior bid" and seeking injunctive relief. In connection with their complaint, the Founders each submitted affidavits pursuant to Rule 23 wherein each vowed, *inter alia*: "I have not received, been promised, or been offered—***and will not accept***—any form of compensation, directly or indirectly, for serving as a representative party, except for: (A) any damages or other relief that the Court may award me as a class member; (B) any fees, costs, or other payments that the Court expressly approves to be paid to or on behalf of me; or (C) reimbursement from my attorneys of actual and reasonable out-of-pocket expenditures incurred in prosecuting the action."

271. Thereafter, the Founders' action was quickly consolidated with this action and Beauchemin and the Founders began jointly prosecuting this action as co-plaintiffs, with their respective counsel as co-lead counsel, on behalf of the putative Class of Sculptor stockholders. Beauchemin's counsel and the Founders' counsel

[125] October 12 Proxy Statement at 89.

divided responsibility for the prosecution of this extraordinarily expedited case, in which their joint opening brief in support of a preliminary injunction was scheduled to be filed on November 2, 2023.

272. Yet, unbeknownst to Beauchemin and his counsel, the Founders and their counsel were simultaneously acting to leverage their positions as representatives of the Class to secure a settlement providing unique benefits to the Founders that would not be shared with the Class.

273. Early in the morning of October 27, 2023—just eight days after the Founders filed their complaint, three days before depositions were set to commence (with a deposition of Levin scheduled to be taken by the Founders' counsel), and less than a week before the Founders and Beauchemin were scheduled to file an opening preliminary injunction brief—without providing any notice whatsoever to Beauchemin or his counsel, Sculptor, Rithm, and the Founders jointly announced such a settlement.

274. Specifically, early on the morning of October 27, 2023, the Company filed another supplemental proxy disclosure announcing that the Founders had entered into a Transaction Support Agreement with Rithm whereby, among other things, the Founders agreed to vote their shares representing approximately 15.2% of the Company's voting power and dismiss their claims in this consolidated action in exchange for receiving, at minimum, (i) a $5,500,000.00 cash payment, and (ii)

additional value via a so-called "TRA Guaranty." The TRA Guaranty effectively requires Rithm to guarantee the Founders will receive in excess of $173 million that the Founders stand to receive from Sculptor pursuant to a Tax Receivables Agreement, but which the Founders feared would be put at risk following a sale.

275. Thus, while the Founders held themselves out as champions of the Class, the Founders ultimately betrayed the Class by agreeing to withdraw from prosecution of the claims they had filed on behalf of the Class and had agreed to litigate jointly with Beauchemin on behalf of the Class, in exchange for significant unique consideration. Indeed, it now appears the Founders' involvement in this litigation was conceived in bad faith and was at all times merely a gambit to leverage their position as class representatives to secure benefits for themselves.

276. The Founders' conduct constituted a betrayal of the Class and a serious breach of the fiduciary duties they incurred when they agreed to serve as representatives of the Class in this action. Rithm and the other Defendants, for their part, knew that the Founders possessed fiduciary duties to the Class and that they had signed affidavits vowing not to accept unique consideration. Rithm and the other Defendants further knew that the Founders' agreement to cease their prosecution of claims on behalf of the Class in exchange for unique consideration represented a serious breach of the Founders' fiduciary duties. Yet, Rithm and the

other Defendants actively induced the Founders' agreement to the TSA, aiding-and-abetting the Founders' breach of their fiduciary duties owed to the Class.

277. Notably, Rithm and the other Defendants also took steps to shield their negotiations towards the disloyal accord from Beauchemin and Sculptor's other stockholders. The October 12 Proxy Statement misleadingly implied that negotiations between Rithm and the Founders ceased in early October[126] and the proxy supplement filed on October 25, 2023 failed to disclose that the Founders had continued negotiations with Rithm after it had filed its lawsuit—less than two days before the Founders and Defendants would jointly announce the TSA.

XXI. The Special Committee and the Board Are Following a Pattern this Court Has Found Likely to Be a Breach of Fiduciary Duties

278. The Board and the Special Committee have determined to sell the Company for cash. This determination has important consequences as recognized in *In re Topps Co. Shareholders Litig.*, 926 A.2d 58 (Del. Ch. 2007), resting on *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986) and *Paramount Communications Inc. v. QVC Network Inc.*, 637 A.2d 34 (Del. 1994). The Board is "duty bound to pursue the highest price reasonably attainable." *Topps*, 926 A.2d at 89. In analogous circumstances, this Court has held that the refusal to

[126] October 12 Proxy Statement at 87.

release a viable bidder from a standstill agreement threatens irreparable injury to stockholders, justifying injunctive relief.

279. In *Topps*, the topping bid was approximately 10% greater than the existing bid. This was sufficient to preclude the incumbent buyer (Eisner) from having any "contractual basis to complain about a Topps board decision to treat Upper Deck as an Excluded Party in light of Upper Deck's 10% higher bid price." *Topps*, 926 A.2d at 89. The decision to treat Upper Deck as an Excluded Party in *Topps* was equivalent to the Board or Special Committee in the Rithm deal concluding that the Consortium's bid is reasonably expected to lead to a Superior Proposal. ("[A]n 'Excluded Party,' … was defined as a potential bidder that the board considered reasonably likely to make a Superior Proposal." *Topps*, 926 A.2d at 65.

280. The Topps board made the same type of excuses as the Special Committee is making here as to why it would not declare the topping bid reasonably likely to lead to a Superior Proposal, including limits on liability in the event the transaction did not close (*Topps*, 926 A.2d at 89) and regulatory issues (*id*). The Court found the Topps board's decision not to deem Upper Deck's offer reasonably likely to lead to a Superior Proposal "highly questionable."

281. The *Topps* situation similarly involved a chief executive, like Mr. Levin, who had strong interests in maintaining his current position. In *Topps*, the

CEO Shorin "was motivated to find a buyer who was friendly to him and would guarantee that Shorin and Silverstein, his son-in-law, would continue to play leading roles at Topps." *Id.* at 83. Levin has been paid almost $200 million in the past two years and has ample incentive to resist a transaction that will eventually oust him. Rithm has promised to retain Levin while the Consortium has indicated Levin's retention is less important.

282. In fact, the Consortium's recent concession to keep Levin after closing appears to have been intended to respond to the Special Committee identifying Levin's continuation as linked to deal certainty. The Special Committee, aligning with Levin's interests, effectively communicated that unless Levin keeps his job, the Special Committee will consider the deal subject to undue execution risk because it will risk obtaining client consents.

283. This purported concern about Levin continuing is an about-face from the Special Committee-approved first round process letter. In the first-round process letter, it was specifically noted that bidders would not have to keep any employees post-transaction. The Special Committee appears to have acceded to what amounts to a veiled threat from the Company's management: any deal that does not include continuation of Company management is subject to execution risk because investment professionals will leave and the Company's employees will find it

"difficult" to obtain client consents for a deal that will not involve their continuing employment.

284. The conflicted management dynamic in this case is far stronger than in *Topps*. Here, the Special Committee has repeatedly justified its refusal to engage with the Consortium on its purported concerns with meeting the client consent condition. This concern rests entirely on information provided by conflicted management. But management has the strongest of self-interest in steering the Special Committee toward a conclusion that the Special Committee should equate management's retention with the achievability of client consents if management feared the Consortium would jeopardize their jobs.

285. Even the Company's former CEO, Shafir, who would know better than almost anyone else, has called out the Special Committee's position as not credible. The Consortium has always offered a lower consent condition than Rithm. The Consortium has repeatedly lowered that consent condition far beyond any threshold the Company's lawyers have used in other deals. The Special Committee has resisted all efforts to obtain independently sourced information about the client willingness to consent to a deal with the Consortium, which includes asset managers with far better track records than Mr. Levin and the Company.

286. It defies belief that the Company's clients would be so loyal to Mr. Levin (who has underperformed the members of the Consortium) that merely having

him answer to the better-performing Weinstein would result in all clients leaving the Company. Until its disclosures on October 5, 2023, the Company had not even confirmed to the market the members of the Consortium, much less engaged in any systematic effort to gauge relative attractiveness to its client base.

287. Finally, the *Topps* decision also discussed how a standstill can operate to unfairly prevent a bidder from communicating with stockholders. As the *Topps* Court noted, while they have legitimate uses, "standstills are also subject to abuse. Parties like Eisner often, as was done here, insist on a standstill as a deal protection. Furthermore, a standstill can be used by a target improperly to favor one bidder over another, not for reasons consistent with stockholder interest, but because managers prefer one bidder for their own motives." *Topps*, 926 A.2d at 91.

288. Under the merger agreement with Rithm, the Board has improperly limited its ability to waive the full scope of potential bidders' NDAs, but a contractually viable path still exists to allow the Consortium to be released from its standstill and the Board must exercise its fiduciary duties to execute that path or otherwise achieve the same result.[127] The keystone to the viable path is the Board

[127] It is also a breach of fiduciary duty for the Board to have entered into a merger agreement that improperly limited its options to fully waive standstill agreements with potential bidders. Under Section 6.02(a)(ii)(C), the Board's ability to waive standstills is limited to waiving that part of the standstill that "prohibits a confidential proposal being made to the Company Board or the Special Committee" and then only if the Board or Special Committee has concluded that such limited waiver is required by its fiduciary

exercising its fiduciary duties to declare again that the Consortium's bid is reasonably likely to lead to a Superior Proposal.

289. If the Board or Special Committee concludes pursuant to Section 6.02(c)(ii) of the Rithm merger agreement that a bid is, or is reasonably likely to lead to a Superior Proposal, then the Company may enter into an "Acceptable Confidentiality Agreement" with the bidder. An Acceptable Confidentiality Agreement "need not include any 'standstill' or similar terms."

290. The Board and Special Committee are, like the directors in *Topps*, duty-bound to free the Consortium from its standstill so that the Consortium can fully present its bid to the Company and its stockholders. "If Upper Deck makes a tender at $10.75 per share on the conditions it has outlined, the Topps stockholders will still be free to reject that offer if the Topps board convinces them it is too conditional." *Topps*, 926 A.2d at 92. Refusing to release the Consortium from its standstill is a breach of fiduciary duty: "Given that the Topps board has decided to sell the company, and is not using the Standstill Agreement for any apparent legitimate purpose, its refusal to release Upper Deck justifies an injunction. Otherwise, the

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duties. If the Board or Special Committee concludes that its fiduciary duties require a broader waiver, the merger agreement does not contractually permit such a broader waiver (except for the circumstance described above involving a bid reasonably likely to lead to a Superior Proposal) and the Board is stuck between breaching the contract or its fiduciary duties. Putting the Company in such a position is a breach of fiduciary duty.

Topps stockholders may be foreclosed from ever considering Upper Deck's offer, a result that, under our precedent, threatens irreparable injury." *Id.*

291. Furthermore, the Board and Special Committee's continued enforcement of the standstill against the Consortium constitutes a breach of their fiduciary duties of disclosure. Again, as described in *Topps*:

> Topps went public with statements disparaging Upper Deck's bid and its seriousness but continues to use the Standstill to prevent Upper Deck from telling its own side of the story. The Topps board seeks to have the Topps stockholders accept Eisner's bid without hearing the full story. That is not a proper use of a standstill by a fiduciary given the circumstances presented here. Rather, it threatens the Topps stockholders with making an important decision on an uninformed basis, a threat that justifies injunctive relief.

Topps, 926 A.2d at 92.

292. Here the Board and Special Committee have provided stockholders a one-sided story, hiding behind the standstill with the Consortium, and leaving the stockholders being asked to accept the inferior Rithm acquisition "without hearing the full story" from the topping bidder.

XXII. The Suite of Deal Protection Devices, Together With the Warrants, Were Collectively Unreasonable in Locking Up the Vote

293. The Merger is the result of a flawed process infected by the rampant conflicts of Sculptor management and the Board, resulting in a bad deal for stockholders. One would therefore expect the Merger to be voted down. But here, Defendants have taken steps to skew the required stockholder vote in favor of the

Merger, and have functionally disenfranchised Sculptor's disinterested stockholders while entrenching the Director Defendants.

294. The waiver of Rithm's standstill provision, the removal of the Disinterested Vote, and the increase in the break-up fee are all instances of inequities in the Merger process resulting from the Special Committee and the Board's bad faith and self-interest. Particularly when combined with the myriad material disclosure failures set forth herein and Defendants' improper amassing of votes in favor of the unfair transaction via the Warrants and the Transaction Support Agreement, the collective impact is to entrench the Director Defendants by depriving Sculptor's public stockholders from exercising their sacrosanct voting franchise.

295. *First*, as discussed above, the Board's waiver of Rithm's standstill agreement provides Rithm with preferential treatment and allows Rithm to gain control of a significant share of the Company in order to help push through the Merger in collaboration with members of Sculptor's management. As of October 4, 2023, Rithm had ceased negotiating any effort to amend the Merger. Yet one week later, on October 10, Rithm proposed to amend its purchase price to $12.00 per share in exchange for the Board taking several measures to tilt the playing field in its favor. And the next day, Delaware Life agreed to sell the Warrants to Rithm. The Amendment, announced pre-market on October 12, was thus negotiated in a matter of ***hours***.

296. The Board's ready willingness to waive Rithm's standstill is remarkable given that the Board has refused similar standstill waiver requests from the Consortium and other bidders. Despite numerous requests over months, the Board has not released any other bidders, except for Rithm, from the standstill provisions of their NDAs. Rithm has further taken advantage of this situation by not agreeing that the Special Committee could waive the Consortium's standstill.

297. The Warrants, which Rithm purchased and exercised, represent 6.5% of the voting power of the Company. In coordination with Rithm's Voting Agreements with Sculptor management, which lock up approximately 24% of outstanding voting power, Rithm's acquisition of the Warrants locks up approximately 30.5% of the stockholder vote. That number ballooned to approximately 48% of the vote based on Rithm's entry into the Transaction Support Agreement with the Founders, pursuant to which the Founders pledged their support for Rithm's acquisition in exchange for, at minimum a $5.5 million cash payment and additional value received through the TRA Guaranty.

298. Rithm admits that it paid Delaware Life $27,568,961 to purchase the Warrants "so that [Rithm] would be able to vote the 4,338,015 shares of Class A Common Stock thereunder in connection with the Issuer's special meeting of the stockholders in connection with the Transactions scheduled to be held on November 16, 2023." Thus, by Rithm's own admission, it had no legitimate investment reason

to purchase these warrants. Rather, Rithm and the Director Defendants engaged in a collusive scheme to buy votes to stack the deck in favor of the cheaper deal preferred by management.

299. In addition to allowing Rithm to buy votes, Rithm also demanded and received the elimination of the Disinterested Vote. The Special Committee removed this provision upon Rithm's demand, because they both know that, at the current trading price of the stock, the disinterested stockholders are not likely to support the inferior Rithm deal.

300. Rithm and the Company also agreed to increase the break-up fee by more than three-and-a-half million dollars, to $20,307,196, or 3.75% of the total equity value of the Company in the Transactions. That preclusive fee amount is yet another collusive attempt to lock up an undervalued transaction that favors management.

301. Under the circumstances here, where the Board was aware that a competing bidder was offering a higher price than Rithm, the Board's agreement to these terms was unreasonable. The waiver of Rithm's standstill allowed Rithm to lock up an even larger percentage of shares in favor of its inferior, management-friendly bid, while the elimination of the Disinterested Vote decreased the number of shares needed to approve Rithm's offer. Similarly, the increase in the break-up fee acted as a tax on the deal, increasing the amount that the Consortium would have

to pay for Sculptor. Viewed as a whole, the combined effect of these provisions was preclusive and unreasonable. And particularly when combined with Defendants' disclosure failures and their amassing of votes in favor of the unfair deal, the collective impact is to entrench the Director Defendants by disenfranchising Sculptor's public stockholders.

XXIII. The Proxy Disclosure Materially Misleads Stockholders Regarding Saba's Repeated Bids

302. Stockholders know that they face a binary choice on November 16—they must vote for either the Rithm Merger or against it (with the Consortium and its higher offer waiting in the wings). To mislead stockholders into voting for Rithm, the Board resorted to filling the Proxy Disclosure with a host of material omissions and misrepresentations tailored to disparage the Saba and Consortium proposal. In doing so, the Board has breached its fiduciary duties.

303. Examples are legion, as recounted above. For example, the Proxy Disclosure suggests that the Special Committee relied on Sculptor management's representation that Saba would face issues concerning the retention of key Sculptor employees.[128] But the Proxy Disclosure entirely omits any description of Saba's July 1 letter. That letter details how [redacted]. Relevant here, the letter explains

[128] October 12 Proxy Statement at 60-61.

[redacted][129] As Saba explained, [redacted][130]

304. In other words, the letter promised [redacted][131] By omitting the July 1 letter from the Proxy Disclosure, the Board materially affected the total mix of information that stockholders have with which to assess the competing buyers and their bids. In doing so, the Board breached its fiduciary duty.

305. As another example, the Proxy Disclosure spins a false narrative suggesting that Saba could not or would not address closing certainty.[132] Again, the Board could only do that by misleadingly omitting material information. Saba's July

[129] SABA_000000015.

[130] *Id.* (emphasis added).

[131] October 12 Proxy Statement at 102.

[132] *See, e.g.*, *id.* at 64, 88, 90.

1 letter closed [redacted][133] And on July 17, 2023, Saba reiterated: [redacted][134] Yet these continued commitments appear nowhere in the Proxy Disclosure. The Board instead filled the void with a misleading narrative suggesting that Saba had failed to address closing certainty. The omissions represent another breach of the Board's fiduciary duty to disclose information material to the stockholder's choice.

306. The Proxy Disclosure similarly casts Saba, and later the Consortium, as lax and dilatory bidders that never seriously pursued the transaction. Yet again, the Board could do that only by a slanted partial disclosure. For example, the Proxy Disclosure makes much of the claim that Saba "was not prepared to execute a definitive agreement with respect to a potential transaction at the time of the meeting" on July 22, 2023. But it neglects to mention that [redacted]

[133] SABA_00000016.

[134] SABA_00000064.

[redacted].[135]

Moreover, Saba frequently requested that the Special Committee move faster and [redacted].[136] For its part, the Consortium wrote to the Special Committee on August 14, 2023, to voice its [redacted]

[redacted].[137]

Those concerns were borne out. In early October, the Special Committee imposed a two-day deadline to complete documentation. When, inevitably, the Consortium could not meet the two-day turnaround, the Special Committee faulted it for its unwillingness to meet deadlines. By omitting all of this from the Proxy Disclosure, the Board deprived the stockholders of information material to their vote. By doing so, the Board violated its fiduciary duties.

CLASS ACTION ALLEGATIONS

307. Plaintiff brings this action pursuant to Rule 23 of the Rules of the Court of Chancery, individually and on behalf of all other holders of Sculptor common stock that have been or will be harmed or threatened with harm by the conduct described herein and their successors in interest (the "Class"). Excluded from the

[135] *See, e.g.*, SABA_000002888.

[136] SABA_00000064.

[137] SABA_000000962.

Class are the Defendants named herein and any person, firm, trust, corporation, or other entity affiliated with any of the Defendants and their successors in interest.

308. This action is properly maintainable as a class action.

309. A class action is superior to other available methods of fair and efficient adjudication of this controversy.

310. The class is so numerous that joinder of all members is impracticable. As of October 10, 2023, 29,664,827 shares of Company Class A Common Stock were issued and outstanding and on information and belief are owned beneficially by thousands of dispersed public stockholders.

311. The case presents questions of law and fact that are common to all class members and predominate over any questions affecting only individuals, including, but not limited to whether:

(a) The Board and Special Committee violated their fiduciary duties by (i) acting unreasonably and failing to obtain the greatest stockholder value available to the Special Committee from known bidders, (ii) declining to release the Consortium from its standstill obligations, (iii) committing corporate waste by providing the Founders with TRA guarantees or payments exceeding or otherwise not justified by the present value of TRA obligations to the Founders; (iv) disseminating materially deficient disclosures

to Company stockholders deciding how to vote on the merger, or (v) favoring Mr. Levin's interests over those of Company stockholders, all with the effect that stockholders are losing the opportunity to accept a higher bid for the Company and the right to be fully informed regarding such competing bid;

(b) The Founders breached their fiduciary duties to the Class;

(c) Rithm aided and abetted the Board's and Founders' fiduciary breaches; and

(d) Plaintiff and the other members of the Class would be irreparably damaged by the conduct alleged herein absent injunctive relief.

312. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole. To the extent Defendants continue their unlawful conduct complained of herein, preliminary and final injunctive and equitable relief on behalf of the Class as a whole will be entirely appropriate.

313. Plaintiff is committed to prosecuting this Action and have retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class, and Plaintiff has the same

interests as the other members of the Class. Plaintiff is an adequate representative of the Class.

314. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendants or adjudications with respect to individual members of the Class that would, as a practical matter, be disjunctive of the interests of the other members not party to the adjudications or substantially impair or impede their ability to protect their interests.

CLAIMS FOR RELIEF

COUNT I

Direct Claim for Breach of Fiduciary Duty (Against the Director Defendants)

315. Plaintiff incorporates by reference all prior paragraphs as if fully set forth herein.

316. The Board and the Special Committee are breaching their fiduciary duties by blocking a superior proposal for the Company that would provide the Class with significantly greater consideration than the pending transaction with Rithm, and by not releasing the Consortium from their standstill obligations to present their competing bid to the market and/or stockholders.

317. Plaintiff and the other members of the Class will be irreparably harmed absent injunction of the Board and Special Committee from enforcing any standstill obligations against the Consortium.

318. The Board and the Special Committee are breaching their fiduciary duties by asking for stockholder approval of the transaction with Rithm on the basis of a materially false and misleading Proxy Disclosure.

319. Plaintiff and the other members of the Class will be irreparably harmed absent injunction of the Board and Special Committee from presenting a transaction with Rithm without correcting the material omissions and misstatements of the Proxy Disclosure.

320. The Board and the Special Committee breached their fiduciary duties by selectively waiving the standstill agreements to allow Rithm to purchase the warrants from Delaware Life, so Rithm could purchase the options and vote the shares in favor of their undervalued transaction. Plaintiff and the public shareholders are entitled to rescind Rithm's ability to vote these shares.

321. The Board and Special Committee breached their fiduciary duties by disloyally agreeing to remove the Disinterested Vote requirement and to unreasonably increase the termination fee in Sculptor's Merger Agreement with Rithm. Plaintiff and the public shareholders are entitled to rescission of these agreements.

322. The Board and the Special Committee breached their fiduciary duties by granting the Founders TRA guarantees or payments exceeding or otherwise not justified by the present value of TRA obligations to the Founders, and by otherwise providing unique and valuable benefits to the Founders in exchange for the Founders dismissing claims asserted on behalf of the Class.

323. Plaintiff and the Class have no adequate remedy at law.

COUNT II

Direct Claim for Breach of Fiduciary Duty (Against the Founders)

324. Plaintiff incorporates by reference all prior paragraphs as if fully set forth herein.

325. As putative class representatives, the Founders owed the finest duties of loyalty to the Class. The Founders are breaching their fiduciary duties by placing their own interests ahead of the Class, including by: (i) competing for transaction consideration with the Class, (ii) negotiating for unique and valuable financial consideration not shared with other Class members, and (iii) intentionally sabotaging (through their agents) the prosecution of this action.

326. The Founders breached their fiduciary duties by entering into the Transaction Support Agreement in which they agreed to vote their shares representing 15.2% of the voting power in favor of Rithm's $12.70 proposal and dismiss their claims in this action in exchange for receiving, at a minimum, (i) a

$5,500,000 cash payment, and (ii) additional value via the so-called "TRA Guaranty." Plaintiff and the public shareholders are entitled to rescind the Founders' ability to vote these shares.

327. Plaintiff and the Class have no adequate remedy at law.

COUNT III

Aiding and Abetting Breaches of Fiduciary Duty (Against Rithm)

328. Plaintiff incorporates by reference and realleges every allegation contained above, as though fully set forth herein.

329. Each member of the Board breached his or her fiduciary duties by colluding with Rithm to rig the stockholder vote. Additionally, each of the Founders breached their duties as representatives of the putative class by colluding with Rithm to push through the unfair transaction.

330. Rithm knowingly aided and abetted the Board's breaches of fiduciary duty. Rithm approached the Board, after stating that it was no longer willing to negotiate, and offered to enter into a transaction inferior to the Consortium's bid if the Board would waive its standstill so that Rithm could buy the Warrants. Rithm purchased the Warrants and exercised them, gaining control over 6.5% of Sculptor's voting stock, so that it could assist in voting through the Merger.

331. Rithm knew that it was assisting the members of the Board in breaching their fiduciary duties. Rithm knew that the Consortium was offering the Board a

deal that provided Company stockholders with more value—at least $12.76 per share—because Sculptor had disclosed this offer in Preliminary Proxy Statement filed in August and September 2023. Rithm further knew that a bid for $13.50 was on the table if the Special Committee and the Board simply released the Consortium from its standstill so that it could negotiate with the Founders.

332. Rithm further aided and abetted the Board's breaches of their disclosure duties. Rithm was obligated under the Merger Agreement to review the Proxy, identify material misstatements and omissions, and raise them with the Board, yet knowingly failed to correct material disclosure failures in the Proxy materials.

333. Rithm also knew that the Special Committee was refusing to release the Consortium from its standstill provisions, due to the Founders' public requests that Sculptor do so, thereby creating an unequal playing field favoring a transaction with Rithm.

334. Rithm further exploited Sculptor management's conflicts of interest by offering the Side Agreement to Mr. Levin and retention bonuses for other members of management. Rithm's efforts exacerbated the pressure that Sculptor management put on the Board to accept the undervalued Merger.

335. Rithm also aided and abetted the Founders' breaches of fiduciary duty. Rithm indisputably knew that the Founders were representatives of the putative class in connection with class claims asserted by the Founders *against* Rithm and the other

Defendants. Despite knowing this, Rithm colluded with the Founders to purchase the Founders' support of Rithm's underpriced offer in exchange for providing the Founders—but no other member of the putative class—valuable consideration. Specifically, Rithm negotiated and entered into the Transaction Support Agreement with the Founders, pursuant to which Rithm purchased the Founders' support in exchange for a $5.5 million cash payment and additional value conferred via the TRA Guaranty. In entering the Transaction Support Agreement, Rithm knew it was inducing the Founders to violate Rule 23 and breach their fiduciary duties owed to the Class.

336. The Plaintiff and the Class have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and the following relief against Defendants:

A. A preliminary and permanent injunction enjoining the Board and Special Committee from enforcing the standstill restrictions described above against the Consortium, including but not limited to provisions that would limit the Consortium's ability to communicate with stockholders and/or other potential bidders or to make a tender offer to the Company's stockholders;

B. A preliminary injunction enjoining Rithm, the Board, and the Special Committee from consummating a transaction with Rithm until the Consortium is

able to bid for the Company without restriction from the standstill obligations being imposed by the Board and Special Committee;

C. A preliminary injunction enjoining the Board and Special Committee from consummating a transaction with Rithm until the Company issues a proxy statement that corrects the material omissions and misstatements of fact of the Proxy Disclosure;

D. An order declaring that Rithm may not vote the newly acquired shares of Sculptor stock from Delaware Life in the stockholder vote to be held on the Merger;

E. An order declaring that the Founders may not vote their shares of Sculptor stock in the stockholder vote to be held on the Merger;

F. An order imposing a constructive trust for the benefit of the Class on all proceeds the Founders received from the other Defendants in connection with the Founders' support for the Merger;

G. An order reinstating the provision of the Merger Agreement requiring the approval by a majority of independent stockholders to effectuate the Merger;

H. An order reducing any termination fee associated with a rejection of a Merger with Rithm;

I. An order declaring and decreeing that this action is properly maintainable as a class action, and certifying Plaintiff as Class representative and Plaintiff's counsel as class counsel;

J. A judgment declaring and decreeing that the Defendants have breached their fiduciary duties;

K. An award of reasonable attorneys' fees and costs; and

L. Such other and further relief as this Court may find just, proper and equitable.

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Dated: October 29, 2023
Redacted Version Dated:
November 3, 2023

CERTIFICATE OF SERVICE

I, Ned Weinberger, hereby certify that on November 3, 2023, I caused a copy of the foregoing to be served via File & ServeXpress upon the following:

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