

**From:** Larry.Medvinsky@CliffordChance.com  
**Sent:** Wednesday, March 06, 2013 7:03 PM  
**To:** Kluck, Thomas; McHale, Angela R.; Orlic, David L.  
**Cc:** Larry.Medvinsky@CliffordChance.com  
**Subject:** Empire State Realty Trust, Inc.  
**Attachments:** supplement.doc

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Tom, Angela and David,

As discussed attached please find for your review a draft of the supplement we would like to send to the participants. Thanks and best regards.

Larry

<<supplement.doc>>

[CC]80-40476364[/CC]

\*\*\*\*\*

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**From:** Larry.Medvinsky@CliffordChance.com  
**Sent:** Monday, January 14, 2013 1:49 PM  
**To:** Kluck, Thomas; Orlic, David L.  
**Cc:** Larry.Medvinsky@CliffordChance.com  
**Subject:** Empire State Realty Trust, Inc.  
**Attachments:** esba wall.doc

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Tom and David,

Attached for your review, please find a letter to investors. Best Regards.

Larry

<<esba wall.doc>>

[CC]80-40476364[/CC]

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**From:** Larry.Medvinsky@CliffordChance.com  
**Sent:** Wednesday, January 02, 2013 10:28 AM  
**To:** Kluck, Thomas; Orlic, David L.  
**Cc:** Larry.Medvinsky@CliffordChance.com  
**Subject:** Empire State Realty Trust, Inc.  
**Attachments:** empire ltr..pdf; empire.pdf

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**Flag Status:** Flagged

Tom and David,

Happy New Year. I hope both of you had some time off. Attached please find a letter from Malkin Holdings to its investors for your review. They are quite anxious to send this out as soon as possible. Please let us know if you have any comments. Also attached is an email correspondence from [b:(6)] to Richard [b:(6)]. We think it is supportive of our view that they are working in concert with respect to the solicitation. Best Regards.

Larry

<<empire ltr..pdf>> <<empire.pdf>>

[CC]80-40476364[/CC]

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**From:** Larry.Medvinsky@CliffordChance.com  
**Sent:** Monday, May 06, 2013 1:59 PM  
**To:** Kluck, Thomas; Orlic, David L.; McHale, Angela R.  
**Cc:** Larry.Medvinsky@CliffordChance.com  
**Subject:** Empire State Realty Trust, Inc.  
**Attachments:** Supplement.doc

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

David, Tom and Angela,

As discussed with David last week, attached please find a draft of a supplement we would anticipate mailing to participants this week for your review. Please let us know if you have any comments or questions on the attached. Best Regards.

Larry

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**EMPIRE STATE REALTY TRUST, INC.**  
**EMPIRE STATE REALTY OP, L.P.**  
**SUPPLEMENT NO. 2, DATED MAY 2, 2013**  
**TO THE PROSPECTUS/CONSENT SOLICITATION STATEMENT**  
**DATED JANUARY 21, 2013**

This supplement no. 2 is part of the prospectus/ consent solicitation statement of Empire State Realty Trust, Inc. (the “company”) and Empire State Realty OP, L.P. dated January 21, 2013, as previously supplemented, and should be read in conjunction with such prospectus/consent solicitation statement, as supplemented. Defined terms used in this supplement and not defined herein have the meaning set forth in the prospectus/consent solicitation statement. The purpose of this supplement is to update the disclosures set forth below.

**Class Action Settlement: Approved by Trial Court**

On May 2, 2013, the court held a hearing regarding final approval of the class action settlement. At the conclusion of the hearing, the judge stated that such settlement would be approved and that he would issue a written decision approving the settlement. Of the [4600] participants in all the subject LLCs and private entities included in the consolidation, 11 opted out of the settlement. Those who opted out will not receive any share of the settlement proceeds, but can pursue separate claims for monetary damages. They are bound by the settlement agreement regarding equitable relief, so they cannot seek an injunction to halt the consolidation or IPO. The settlement will not become final until resolution of any appeal.

**Challenge under LLC Law**

As disclosed in the March 11, 2013 supplement no. 1 to the prospectus/consent solicitation, such court granted permission to six participants in Empire State Building Associates L.L.C. to submit argument by separate counsel regarding their allegation that the buyout provisions in their participating agreements deprived non-consenting participants of rights to “fair value” in violation of the New York Limited Liability Company Law (the “LLC Law”).

**Rejected by Trial Court**

Pursuant to a decision issued on April 30, 2013, the court rejected such allegation and ruled in the supervisor’s favor, holding that such buyout provisions are legally binding and enforceable and that participants do not have the rights they claimed under the LLC Law.

Accordingly, the consent solicitation is not affected by such allegation; and, as previously described in the prospectus/consent solicitation statement regarding the consolidation and the third-party portfolio transaction proposals: if you are a participant in Empire State Building Associates L.L.C. or 60 East 42nd St. Associates L.L.C., and you vote “AGAINST”, or you “ABSTAIN,” or you do not vote, then your participation

interests will be subject to a buyout for a price of \$100 if you do not vote in favor of the consolidation or third-party portfolio transaction proposal, as applicable, within ten days after notice that the required supermajority consent for such proposal (80% in Empire State Building Associates L.L.C. and 90% in 60 East 42nd St. Associates L.L.C.) has been received from the participants in your participating group.

### Appeal

The participants who challenged the buyout provision moved before the appellate court for a stay of all proceedings relating to the settlement, including such a stay as immediate interim relief. On May 1, 2013, their request for immediate interim relief was denied.

The participants who challenged the buyout provision have filed a notice of appeal. Their motion for the stay is still pending and, if they pursue it, will be submitted to the appellate court for decision. Any decision on their appeal itself could take many months. The supervisor cannot predict the timing or outcome of an appeal process or any related relief, if such appeal were successful. If the court's decision were reversed by the appellate court, there is a risk that it could have a material adverse effect on the company.

Although there can be no assurance, the supervisor believes that the trial court's decision was correct, that it will be upheld on appeal, and that the appellate court will not grant the motion to stay the proceedings relating to the class action settlement.



**From:** McHale, Angela R.  
**Sent:** Thursday, February 14, 2013 4:12 PM  
**To:** (b)(6)  
**Cc:** Kluck, Thomas; Orlic, David L.  
**Subject:** Empire State Realty Trust - investor complaint

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Karen,

David and I spoke to an investor today about a recent phone call with the solicitor. Here is the summary of the call:

2/14/13: Orlic/McHale called back (b)(6). She is an investor in ESBA and wanted to know what would happen if she returned the proxy card and did not fill anything out and also what would happen if she did not return the card at all. We pointed her to relevant disclosure and explained. She told us that she just had a telephone conversation with someone at MacKenzie Partners (the solicitor) who explained to her that if she voted "no," she could be bought out for \$100 but then went on to explain that there is a mechanism to change one's vote in order to not be bought out.

Please let me know if you have any questions.

Thanks,

Angela

**From:** Kluck, Thomas  
**Sent:** Wednesday, April 17, 2013 5:50 PM  
**To:** (b)(6)  
**Cc:** Orlic, David L.; McHale, Angela R.  
**Subject:** Empire State Realty Trust - investor complaint

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Karen,

On April 16, 2013, David Orlic, Angela McHale and I had a telephone conversation with (b)(6) and (b)(6). During the conversation, they told us that when discussing the terms of the proposed transaction with McKenzie Partners (solicitor) on or about February 4 or 5, 2013, an employee at McKenzie named (b)(6) told them the following: If a participant votes "no" on both proposals and a supermajority is received with respect to only one of the proposals, the participant would have to change his or her vote at that time to "yes" for both proposals in order to avoid the buyout. This is even if the other proposal never receives a supermajority. Following this conversation, on February 5, 2013, (b)(6) called Peter Malkin and asked him if the statement by the solicitor was true. Mr. Malkin informed them that it was his belief that this was not true and that the disclosure states that an investor would only have change his or her vote for the one proposal that received a supermajority in order to avoid the buyout.

We called Larry Medvinsky yesterday and he confirmed that such an investor would only need to change the one vote. We asked (b)(6) whether he was aware of any of these incorrect representations being made by the solicitor. He said that he was not aware of any but would look into it. We spoke with Larry again today and he said that he and the company were not aware of these statements being made and assured us that they take precautions to avoid such statements. We did not mention to him the phone call that the investors had with Peter Malkin.

We have not received any other complaints in regards to this representation by the solicitor, but we wanted to bring it to your attention. Please let us know if you have any questions.

Thanks,

Tom  
X13233

**From:** Kluck, Thomas  
**Sent:** Tuesday, May 21, 2013 5:25 PM  
**To:** [b:(6)]  
**Cc:** McHale, Angela R.; Orlic, David L.  
**Subject:** Empire State Realty Trust - investor complaints

Hi Karen,

We received two investor complaints today that we thought might be of interest to you.

Angela McHale, David Orlic and I had a telephone call today with [b:(6)] an investor in ESBA [b:(6)] [b:(6)]. She told us that another investor in ESBA recently called her asking her to change her vote from no to yes regarding the proposed consolidation/roll-up. During their conversation, the other investor told [b:(6)] that the majority has spoken and that her no vote was holding up his money. Putting aside the appropriateness of these tactics, a main concern is how did the other investor know how [b:(6)] had voted?

In the second complaint, Angela, David and I had a call today with [b:(6)] an investor in ESBA [b:(6)] [b:(6)]. [b:(6)] explained to us that in a conversation he had with a representative at MacKenzie Partners, the solicitor, he was told that two of the three participating groups in ESBA (groups 1 and 2) had reached the 80% supermajority threshold. The investor owns participation interests in both groups. The investor told the representative that he had not heard of this news. The representative told him that it is disclosed in a recent filing by Empire State Realty Trust that is available on the SEC's website. After the call, the investor looked at the filings on the SEC's website but did not find this information. The investor called back the representative and told him that the information in the filings did not indicate that two groups had reached the 80% threshold. The representative acknowledged that it was incorrect information and that only one of the participating groups in ESBA had reach the 80% threshold. (Note that in the Form 425 filed by Empire State Realty Trust on May 16, 2013, it discloses the range of the percentage of votes that have approved the consolidation in the participating groups). The concern here is the misstatement and if the investor had acted on the misinformation and changed his no vote to a yes vote in order to avoid the buyout, this could have then resulted in helping the registrant reach the 80% threshold in that group.

Please let us know if you have any questions.

Thanks,

Tom  
X13233

**From:** Larry.Medvinsky@CliffordChance.com  
**Sent:** Tuesday, January 08, 2013 4:37 PM  
**To:** Kluck, Thomas; Orlic, David L.  
**Cc:** Larry.Medvinsky@CliffordChance.com  
**Subject:** Empire State Realty Trust, Inc.  
**Attachments:** Public Entity Glue Dot Letter clean(2) (2) (2).doc; Public Entity Document Package (2).doc; ESBA NEW consent ballot CLEAN.DOC; fill out consent Draft Script 1.docx; InvestorWebsite\_letter svc comments.docx.docx.docx.docx.docx

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**Flag Status:** Flagged

Tom and David,

Attached for your review is a series of short letters/scripts that would accompany or shortly follow the mailing of the prospectus/consent solicitation. In particular, if you could review the script and sample ballot that would accompany the script (the third and fourth attachments) by early tomorrow, we would greatly appreciate it. We plan on including a voice over (a reading of the script) of the attached sample ballot in the dvd (you previously reviewed five scripts that would constitute the remainder of the dvd) that we send concurrently with the prospectus/consent solicitation, the cover letter (which you had previously reviewed) and the first two attachments. The last attachment would be mailed shortly filing the original mailing. Please let me know if you have any questions. Thank you and best regards.

Larry

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[mh letterhead]

January [X], 2013

To Participants in Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C. and 250 West 57th St. Associates L.L.C.

Dear Fellow Participant:

As mentioned in our transmittal letter which accompanied the S-4 and related documents, we have established a website ([WWW.EMPIRESTATEREALTY.COM](http://WWW.EMPIRESTATEREALTY.COM)) which is now available to you with information to assist you in your vote on our recommended consolidation and IPO. The website contains new material and copies of prior materials which have been sent to you, including:

- Videos
  - Discussions with Peter and Anthony Malkin about the proposals;
  - Property videos; and
  - Instructions on how to fill out your consent form;
- Dates of conference calls with Peter L. Malkin and Anthony E. Malkin and how to register for them;
- Copies of all prior correspondence sent to investors and other key documents; and
- An opportunity to send questions directly or ask to be called by someone to answer questions.

[WWW.EMPIRESTATEREALTY.COM](http://WWW.EMPIRESTATEREALTY.COM) is accessible only to participants in the above entities. In order to access the website, you must enter the following password:

<b>Password:</b>
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This website is private and for the exclusive use of participants and their advisors. We ask that you please not share this password with anyone else.

We will continue to add new material to the site. You can use the website to communicate questions and comments directly to us. We encourage you to visit it frequently.

As always, we strive to make sure that you understand the transaction we are recommending and address all your questions. We hope you find this website helpful. If you have trouble accessing the website, please contact [inquiries@malkinholdings.com](mailto:inquiries@malkinholdings.com) or call (212) 850-2705.

Sincerely,

MALKIN HOLDINGS LLC

Peter L. Malkin

Anthony E. Malkin

Chairman

President

*This communication shall not constitute an offer to sell or the solicitation of an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.*

*Each of the three public entities, Empire State Building Associates L.L.C., 60 East 42<sup>nd</sup> St. Associates L.L.C., and 250 West 57<sup>th</sup> St. Associates L.L.C. (the "Companies") and their agents and Malkin Holdings LLC as their supervisor, and Empire State Realty Trust, Inc. (the "REIT"), Empire State Realty OP, L.P. and each officer and director of the Companies, the supervisor, or the REIT may be deemed to be a participant in the solicitation of consents in connection with the proposed consolidation. The names of such persons and a description of their interests in the Companies and the REIT are set forth, respectively, in each Company's Annual Report on Form 10-K for the year ended December 31, 2011 and the REIT's Registration Statement on Form S-4, and the prospectus/consent solicitation, which have been filed with the SEC.*

*We urge you to review such Registration Statement on Form S-4, the prospectus/ consent solicitation, and other related documents now filed or to be filed with the SEC, because they contain important information. You can obtain them without charge on the SEC's website at [www.sec.gov](http://www.sec.gov). You can also obtain without charge a copy of the prospectus/consent solicitation and the supplement relating to the individual entities by contacting Ned H. Cohen at Malkin Holdings LLC.*

## Draft Script 1/6/13

### Instructions: How to fill out the consent form

- Scene 1
  - Read: "Instructions: How to fill out the consent form."
- Scene 2
  - Part 1
    - Read: "The consent form provides boxes for you to enter your vote separately with regard to"
  - Part 2
    - Read:
      - "The proposed consolidation, the vote shown is in favor of the proposed consolidation."
      - "The proposed third party portfolio sale, the vote shown is in favor of the proposed third party portfolio sale, and."
      - "The request for voluntary pro rata reimbursement for litigation and arbitration costs, the vote shown is in favor of the proposed voluntary reimbursement."
      - "Simply indicate your vote in the applicable box."
- Scene 3
  - Part 1
    - Read:
      - "The form also provides boxes for you to elect the form of consideration you wish to receive in the consolidation."
  - Part 2
    - Read:
      - "This form has been filled out to indicate a participant who wishes to have a vote and be subject to the least in taxes. The participant has elected 100% Operating Partnership Units with Class B shares, so that such participant will receive 98% Operating Partnership Units, 2% Class B shares, and no Class A shares."
- Scene 4
  - Read:
    - "Investors wanting what is expected to be a 100% tax deferred treatment should elect 100% Operating Partnership Units."
    - "Investors wanting a 100% taxable treatment should elect 100% Class A common stock."
- Scene 5
  - Part 1



- Read: "After you have completed the foregoing voting and election, please submit the consent form as soon as possible."
  - Part 2
    - Read: "You can submit your form by mail, fax, or you can submit a scan of your form by e-mail."
- Scene 6
  - Part 1
    - Read: "If you sign and submit your form without indicating your vote on either the consolidation proposal or third party portfolio proposal, your participation interest will be counted as a vote "FOR" such proposal."
  - Part 2
    - Read: "If you sign and submit your form without indicating your vote on the voluntary reimbursement proposal, your participation interest will be counted as "DOES NOT CONSENT TO" such proposal."
  - Part 3
    - Read: "If you do not submit your consent form, or you indicate on your consent form that you "Abstain" from any proposal, it will have the effect of voting "Against" such proposal."
- Scene 7
  - Part 1
    - Read: "Should you have any question, please contact us by phone, on our website, or by e-mail."
  - Part 2
    - Read: "Thank you for your support."

**EMPIRE STATE BUILDING ASSOCIATES L.L.C.  
PRELIMINARY CONSENT FORM**

Reference is made to the Prospectus/Consent Solicitation Statement and the related Prospectus Supplement and Notice of Consent Solicitation to Participants, each dated [                      ] 2013. The undersigned participant in the entity named above (the "subject LLC") hereby votes as set forth below with respect to all participation interests in the subject LLC which the undersigned may be entitled to vote:

*Please check the appropriate box.*

**1. PROPOSED CONSOLIDATION**

**CHECK**

**FOR**

**AGAINST**

**ABSTAIN**

The consolidation ("the consolidation") of the subject LLC into Empire State Realty Trust, Inc. (the "company") as described in the Prospectus/Consent Solicitation Statement, including the authorization of Malkin Holdings LLC (the "supervisor") to take, on behalf of the subject LLC, any and all actions that are necessary or appropriate to carry out the consolidation. By voting for the consolidation, the undersigned hereby agrees to all the terms of the Contribution Agreement attached as Appendix B to the Prospectus Supplement (the "Supplement") with respect to the subject LLC (the "Contribution Agreement").

**2. ELECTION OF CONSIDERATION IN A CONSOLIDATION**

*NOTE: In the consolidation, as described in the Prospectus/Consent Solicitation Statement:*

(i) if you elect to receive operating partnership units of Empire State Realty OP, L.P. ("**Operating Partnership Units**"), it is generally expected that you should be treated as receiving the Operating Partnership Units in a tax-deferred transaction; and

(ii) if you elect to receive any Class A common stock of Empire State Realty Trust, Inc. ("**Class A Stock**") or Class B common stock of Empire State Realty Trust, Inc. ("**Class B Stock**"), it is generally expected that you should be treated as receiving such common stock in a taxable transaction.

*Participants should read the discussion under the heading "U.S. Federal Income Tax Considerations—U.S. Federal Income Tax Consequences of the Consolidation" in the Prospectus/Consent Solicitation Statement for information regarding the tax consequences of the consolidation.*

I elect to receive my consideration in a consolidation in the following percentages, which should total 100%:

(a) \_\_\_\_\_% **OPERATING PARTNERSHIP UNITS**, without taking any Class B Stock in place of any such Operating Partnership Units.

**INSERT  
100%**

(b) **100**% **OPERATING PARTNERSHIP UNITS with CLASS B STOCK**, on the basis that I will receive one share of Class B Stock (entitling me to 50 votes) in place of one Operating Partnership Unit out of every 50 Operating Partnership Units which I would otherwise receive.

(c) \_\_\_\_\_% **CLASS A STOCK**

*Items (a), (b), and (c) must total 100%.*

*To the extent the percentages filled in above total less than 100% or are not filled in at all, the unelected amount will be deemed to be an election for Operating Partnership Units under Item (a).*

**3. PROPOSED THIRD-PARTY PORTFOLIO SALE**

**CHECK**

**FOR**

**AGAINST**

**ABSTAIN**

Authorization of the supervisor to approve an offer from an unaffiliated third-party to purchase the consolidated portfolio if a definitive agreement is signed by December 31, 2015, and to take on behalf of the subject LLC any and all actions that are necessary or appropriate to carry out the foregoing, on the terms described in the Prospectus/Consent Solicitation Statement and Prospectus Supplement.

**4. REQUEST FOR VOLUNTARY PRO RATA REIMBURSEMENT FOR LITIGATION AND ARBITRATION COSTS**

**CHECK**

CONSENTS TO

DOES NOT CONSENT TO

ABSTAIN

Voluntary pro rata reimbursement to the supervisor and Peter L. Malkin as described in the Prospectus/Consent Solicitation Statement and Supplement for the prior advances of all costs, plus interest, incurred in connection with litigations and arbitrations with the former property manager and leasing agent of the property in which the subject LLC owns an interest.

\*\*\*\*\*

**THIS CONSENT SOLICITATION IS MADE ON BEHALF OF THE SUPERVISOR, MALKIN HOLDINGS LLC. THE SUPERVISOR RECOMMENDS THAT PARTICIPANTS CONSENT TO EACH OF THE FOREGOING ITEMS.**

**WHAT EACH PARTICIPANT RECEIVES IN THE CONSOLIDATION OR THIRD-PARTY PORTFOLIO SALE WILL BE BASED ON THE ALLOCATION MADE IN ACCORDANCE WITH THE EXCHANGE VALUE SHOWN IN THE PROSPECTUS/CONSENT SOLICITATION IS MADE BY DUFF & PHELPS, LLC (THE "INDEPENDENT VALUER") AND THE ENTERPRISE VALUE DETERMINED IN THE COMPANY'S INITIAL PUBLIC OFFERING (THE "IPO") OR SUCH SALE. IF THIS CONSENT FORM IS SIGNED AND RETURNED WITHOUT A CHOICE INDICATED AS TO ITEMS 1 OR 3, THE PARTICIPANT WILL BE DEEMED TO HAVE CONSENTED TO SUCH ITEM. IF THIS CONSENT FORM IS SIGNED AND RETURNED WITHOUT A CHOICE INDICATED AS TO ITEM 4, THE PARTICIPANT WILL BE DEEMED NOT TO HAVE CONSENTED TO SUCH ITEM.**

**IF YOU HAVE ANY QUESTIONS OR NEED ASSISTANCE IN COMPLETING THIS FORM, PLEASE CALL MACKENZIE PARTNERS, INC. (888-410-7850), WHICH HAS BEEN ENGAGED BY THE SUPERVISOR TO ASSIST IN ANSWERING PARTICIPANT INQUIRIES.**

**PLEASE SIGN, DATE AND PROMPTLY RETURN THIS CONSENT FORM, INCLUDING (1) THE ENCLOSED CERTIFICATE OF NON-FOREIGN STATUS (IF APPLICABLE) AND (2) THE ENCLOSED INTERNAL REVENUE SERVICE FORM W-9 (OR OTHER APPLICABLE FORM), ALL IN THE ENVELOPE PROVIDED. NO POSTAGE IS REQUIRED IF MAILED IN THE U.S. (ALTERNATIVELY, YOU MAY FAX TO 212-929-0308)**

If you own participation interests in more than one group in the subject LLC, your consent applies to all such interests.

This consent form signature page also constitutes the signature page for the Lockup Agreement, the form of which is the exhibit to the Contribution Agreement. This consent form signature page also constitutes the signature page for the Limited Partnership Agreement and Registration Rights Agreement, the forms of which are attached as Appendixes D and E, respectively, to the Supplement. By executing this consent form, you agree to be bound by each such applicable agreement in the form attached to the Contribution Agreement or the Supplement, as applicable, all with the same effect as if you signed that agreement. Execution of this page constitutes execution of each such agreement, and the undersigned authorizes this page to be attached as a counterpart signature page for each such agreement.

This consent form must be completed and returned before the expiration date determined by the supervisor.

**ENTER  
DATE**

Date: Month/Day, 2013

Name of Participant: \_\_\_\_\_

Investor ID#: \_\_\_\_\_

Original investment: \$ \_\_\_\_\_

Exchange Value\*: \$ \_\_\_\_\_

Voluntary Reimbursement Share: \$ \_\_\_\_\_

**SIGNATURE**

John Doe

\_\_\_\_\_  
Signature(s) of Participant or Authorized Signatory

\_\_\_\_\_  
Signature(s) of Participant or Authorized Signatory

\_\_\_\_\_  
Title (if Trust or entity)

\_\_\_\_\_  
Title (if Trust or entity)

Please sign your name exactly as shown in print above. If there are two or more joint holders, all such holders must sign. If signing as attorney-in-fact, executor, administrator, trustee or guardian, please give your full title. If signing for an entity (corporation, partnership, or limited liability company), please give your full title (officer, partner, or authorized person). If more than one signature is required, this consent form may be executed in separate counterparts.

\* Exchange value has been derived from the appraisal by the Independent Valuer and does not represent the value of the consideration you will receive in the consolidation, which will be based on the enterprise value determined in connection with the pricing of the IPO. The enterprise value (which is based on the IPO price) will be determined by, among other things, market conditions at the time of pricing of the IPO, the historical and future performance of the company and its portfolio of properties and the market's view of the company's net asset value and other valuation metrics. Today, some REITs' common stock trades at a premium to perceived net asset value and others trade at a discount to perceived net asset value. The market's view of the company's net asset value determined in connection with the IPO could be less than the exchange values determined based on the Appraisal. The Appraisal was undertaken in connection with establishing relative value for the purpose of allocation of interests in the company among contributors of interests in the properties and not to establish the value of shares of common stock in the company upon completion of the IPO. In contrast, the pricing of REIT initial public offerings generally takes into account different factors not considered in the Appraisal, including current conditions in the securities markets, investor preferences and the market's view of the company's management team. Additionally, the Appraisal did not take into account transaction costs for the consolidation and the IPO.

The supervisor believes that initial public offering pricing for REIT common stock generally is at a discount to the market price for common stock of well-established, publicly-traded REITs, and that the company's IPO pricing will be no different. For this and other reasons, the supervisor expects that the enterprise value at the pricing of the IPO will be lower than the aggregate exchange value at the pricing of the IPO, and such discount at the pricing of the IPO could be material and substantial. This discount cannot be determined until the pricing of the IPO. As the company continues to develop a track record as a public company, the supervisor believes that the company's trading price following the IPO will be based on, among other things, the company's historical and future performance, its performance relative to its peers, market conditions generally and its continued seasoning in the public markets. The company currently intends to pay regular quarterly dividends based on the performance of the company and its portfolio of properties, rather than just one property, and those distributions are required to be at least 90% of annual REIT taxable income (determined without regard to the deduction for dividends paid, and excluding net capital gains) to maintain its qualification as a REIT. REIT taxable income will be determined by the performance of the portfolio of the company's properties and unaffected by its stock price.

**CERTIFICATION OF NON-FOREIGN STATUS (INDIVIDUAL PARTICIPANT)**

Reference is made to the Prospectus/Consent Solicitation Statement and the related Supplement and Notice of Consent Solicitation to Participants, each dated \_\_\_\_\_, 2013 (the "Consent Solicitations").

To inform Empire State Realty OP, L.P. that withholding of tax is not required upon the consummation of the transactions contemplated in the Consent Solicitations, the undersigned hereby certifies the following:

**SIGNATURE**

1. My name is John Doe

2. I am not a nonresident alien for purposes of U.S. federal income taxation;

3. My U.S. taxpayer identifying number (Social Security number) is; and

4. My home address is 123 Circle Lane, City, State, Zip

**ENTER  
ADDRESS**

I understand that this certificate may be disclosed to the Internal Revenue Service by Empire State Realty OP, L.P. and that any false statement I have made here could be punished by fine, imprisonment or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete.

**ENTER  
DATE**

Date: Month/Day, 2013

**SIGNATURE**

John Doe

Signature(s) of Participant

Signature(s) of Participant

**THIS IRS FORM W-9 MUST BE COMPLETED BY ALL U.S. PERSONS PARTICIPATING IN THE CONSOLIDATION. NON-U.S. PERSONS SHALL COMPLETE THE APPLICABLE IRS FORM W-8. FAILURE TO COMPLETE AND RETURN THIS FORM (OR FOR NON-U.S. PERSONS, THE APPLICABLE IRS FORM W-8) MAY RESULT IN BACKUP WITHHOLDING ON ANY PAYMENTS MADE TO YOU PURSUANT TO THE CONSOLIDATION. ADDITIONAL INSTRUCTIONS ARE AVAILABLE ONLINE AT <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.**

TAXPAYER'S NAME: \_\_\_\_\_

**ENTER  
SOCIAL**

SUBSTITUTE FORM W-9	Part I Taxpayer Identification No.—For All Accounts		
<p>Department of the Treasury Internal Revenue Service Payer's Request for Taxpayer Identification No.</p>	<p>Enter your taxpayer identification number in the appropriate box. For most individuals and sole proprietors, this is your social security number. For other entities, it is your employer identification number. If you do not have a number, see "How to Get a TIN" in the online instructions, available at: <a href="http://www.irs.gov/pub/irs-pdf/fw9.pdf">http://www.irs.gov/pub/irs-pdf/fw9.pdf</a>. Note: If the account is in more than one name, see the chart in the online instructions to determine what number to enter.</p>	<p><b>123-45-6789</b> <i>Social Security Number</i> <b>OR</b> <i>Employer Identification Number</i></p>	<p>Part II—For Payees Exempt From Backup Withholding, see the additional instructions available online at <a href="http://www.irs.gov/pub/irs-pdf/fw9.pdf">http://www.irs.gov/pub/irs-pdf/fw9.pdf</a>.</p>

**CHECK**

Check appropriate box:

Individual/Sole proprietor    C Corporation    S Corporation    Partnership    Trust/Estate    Limited liability company.

Enter tax classification (D = disregarded entity, C = corporation, P = partnership) V \_\_\_\_\_    Other (specify) \_\_\_\_\_

**CHECK**

Exempt from Backup Withholding

**Part III Certification**—Under penalties of perjury, I certify that:

- (1) The number shown on this form is my correct taxpayer identification number or I am waiting for a number to be issued to me:

- (2) I am not subject to backup withholding either because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service ("IRS") that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- (3) I am a U.S. person (including a U.S. resident alien).

Certification Instructions—You must cross out item (2) above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

---

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The IRS does not require your consent to any provision of the documents accompanying this form other than the certifications required to avoid backup withholding.

**SIGNATURE**

SIGNATURE

*John Doe*

**ENTER  
DATE**

DATE *Month/Day* 2013

---

---

January 17, 2013

[NAME OF PARTICIPANT]

[ADDRESS]

[ADDRESS]

**Account ID:** [INSERT]

**DOCUMENT RETURN GUIDE - - EMPIRE STATE REALTY TRUST, INC.**

This is a summary of the documents which are to be signed and returned by you to permit your limited liability company's contribution of its property interest to Empire State Realty Trust, Inc. (the "REIT") as part of a consolidation of office and retail properties in Manhattan and the greater New York metropolitan area into the REIT. We suggest you first read the letter from Peter and Anthony Malkin which provides a summary overview of the proposed transactions, review the contents of the enclosed DVD and visit our website ([www.empirestaterealtytrust.com](http://www.empirestaterealtytrust.com)), and then review all the other enclosures, so you can promptly complete, sign and return these forms.

For convenience, any form which you are requested to return is printed on colored paper. A postage-prepaid envelope is enclosed for returning your completed documentation.

ONE CONSENT FORM FOR EACH ENTITY IN WHICH YOU ARE INVESTED:

[Empire State Building Associates L.L.C. - green form]

[60 East 42<sup>nd</sup> St. Associates L.L.C. - blue form]

[250 West 57<sup>th</sup> St. Associates L.L.C. - pink form]

ONE CERTIFICATION OF NON-FOREIGN STATUS WITH FORM W-9 -- cream form

We have engaged MacKenzie Partners, Inc. to assist in answering investor inquiries. If you have any question or need assistance in completing the forms, please call (888) 410-7850.

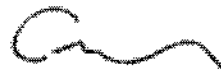
Thank you in advance for your timely attention to these documents.

Cordially,

MALKIN HOLDINGS LLC



Peter L. Malkin



Anthony E. Malkin



Each of the three public entities, Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C., and 250 West 57th St. Associates L.L.C. (the "Companies") and their agents and Malkin Holdings LLC (the "Supervisor"), Empire State Realty Trust, Inc. (the "REIT"), Empire State Realty OP, L.P., and each officer and director of the Companies, the Supervisor or of the REIT may be deemed to be a participant in the solicitation of consents in connection with the proposed consolidation. The names of such persons and a description of their interests in the Companies and the REIT are set forth, respectively, in each Company's Annual Report on Form 10-K for the year ended December 31, 2011 the REIT's Registration Statement on Form S-4 and prospectus/consent solicitation statement, which have been filed with the SEC.

Investors in the Companies are urged to review the Registration Statement on Form S-4, the prospectus/consent solicitation statement and other related documents now filed or to be filed with the SEC, because they contain important information. You can obtain them without charge on the SEC's website at [www.sec.gov](http://www.sec.gov). You can also obtain without charge a copy of the prospectus/consent solicitation and the supplements relating to the individual entities by contacting Ned H. Cohen at Malkin Holdings LLC.

January 17, 2013

To Participants in Empire State Building Associates L.L.C., 60 East 42<sup>nd</sup> St. Associates L.L.C. and 250 West 57<sup>th</sup> St. Associates L.L.C.:

As we explained in our recent letter, the SEC has declared our S-4 effective, thus allowing us to request your consent for our recommended consolidation of properties owned by the above limited liability companies into a real estate investment trust under the name Empire State Realty Trust, Inc. to be traded on the New York Stock Exchange. After more than half a century working on behalf of investors, we have spent more than two years developing what we believe is an opportunity unique in the history of your investment for you to enhance your investment with us with liquidity, diversification, modern corporate governance, better access to capital markets, more efficient management, and better prospects for increased distributions than the status quo.

We shall appreciate your immediate review and response to the various consents set forth in the attached material which includes:

- For each entity in which you are invested with us:
  - A consent form;
  - A summary letter with an overview of the proposals; and
  - A property supplement.
- A DVD featuring:
  - Discussions with Peter and Anthony Malkin about the proposals;
  - Property videos; and
  - Instructions on how to fill out your consent form;
- The prospectus/consent solicitation included in the Form S-4 declared effective by the Securities and Exchange Commission; and
- Various options for you to have your questions answered including:
  - Conference call registration;
  - Toll free phone number;
  - E-mail address; and
  - Our website: [www.xxx.com](http://www.xxx.com)

Please do not hesitate to raise any question.

We ask that you respond as soon as convenient. We feel confident that when you have the benefit of the materials enclosed and the opportunity to have your questions answered by those who have created and supervised these investments since inception, you will share our conclusion that our new proposal is a unique opportunity to increase the value of your investment.

Cordially,

MALKIN HOLDINGS LLC



Peter L. Malkin



Anthony E. Malkin

Each of the three public entities, Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C., and 250 West 57th St. Associates L.L.C. (the "Companies") and their agents and Malkin Holdings LLC (the "Supervisor"), Empire State Realty Trust, Inc. (the "REIT"), Empire State Realty OP, L.P., and each officer and director of the Companies, the Supervisor or of the REIT may be deemed to be a participant in the solicitation of consents in connection with the proposed consolidation. The names of such persons and a description of their interests in the Companies and the REIT are set forth, respectively, in each Company's Annual Report on Form 10-K for the year ended December 31, 2011 the REIT's Registration Statement on Form S-4 and prospectus/consent solicitation statement, which have been filed with the SEC.

Investors in the Companies are urged to review the Registration Statement on Form S-4, the prospectus/consent solicitation statement and other related documents now filed or to be filed with the SEC, because they contain important information. You can obtain them without charge on the SEC's website at [www.sec.gov](http://www.sec.gov). You can also obtain without charge a copy of the prospectus/consent solicitation and the supplements relating to the individual entities by contacting Ned H. Cohen at Malkin Holdings LLC.

**From:** Kluck, Thomas  
**Sent:** Wednesday, January 30, 2013 8:58 AM  
**To:** (b)(6); Orlic, David L.  
**Cc:** McHale, Angela R.  
**Subject:** FW: A New Filing  
**Attachments:** Kovacs Affidavit\_ExhA\_52\_130129.pdf; Kovacs Affidavit\_ExhB\_53\_130129.pdf; Kovacs Objection to Settlement\_50\_130129.pdf; Kovacs Affidavit\_51\_130129.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

-----Original Message-----

**From:** (b)(6) On Behalf Of (b)(6)  
**Sent:** Tuesday, January 29, 2013 10:47 PM  
**To:** McHale, Angela R.  
**Cc:** Kluck, Thomas  
**Subject:** A New Filing

Angela,

More filings.

(b)(6)

**EXHIBIT 1**

**To**

**Objection of  
Alan L. Kovacs, Trustee**



- (c) permitting the ESBA Sub-Class to conduct discovery into its claims and the settlement proposed by the Plaintiffs (the "Proposed Settlement") in their motion herein;
- (d) amending this Court's June 25, 2012 order of consolidation (the "Consolidation Order") to require that a separate complaint be filed on behalf of the ESBA Sub-Class and that a separate Consolidated Amended Complaint be filed on behalf of putative class members other than the ESBA Sub-Class by existing counsel; and
- (e) granting the Proposed Intervenors all such other and further relief as this Court deems just and proper.

3. I have been practicing law since 1972. Since 1979 have been involved as class counsel, and/or as counsel for named plaintiffs, in a significant number of class actions filed in Massachusetts State Courts and a variety of Federal District Courts, involving antitrust claims, unfair and deceptive acts and practices claims and securities claims.

4. I have reviewed and am familiar with:

- a. The Complaints heretofore filed herein;
- b. The Memorandum of Law submitted by Plaintiffs in support of their Motion seeking preliminary approval of a settlement of this action and, in connection therewith, preliminary certification of a class consisting of all investors in all of the entities to be rolled-up into the REIT;
- c. The Stipulation of Settlement attached as an exhibit to Affirmation of Lawrence P. Kolker in support of Plaintiffs' motion;
- d. The Prospectus issued by the REIT dated January 21, 2013, as well as prior versions of same that had been submitted to the SEC;
- e. The Memorandum of Law submitted by the Proposed Intervenors, in which they object to the proposed Settlement and seek leave to intervene and to file a complaint on behalf of a class consisting only of investors in Empire State Building Associates, LLC;
- f. The Affirmation of Stephen B. Meister, Esq., submitted in support of the Motion and Objection of the Proposed Intervenors; and
- g. The exhibits attached to the Affirmation of Stephen B. Meister, Esq., including but not limited to the organizational documents related to ESBA.

5. Attached hereto as Exhibit A are true and correct copies of certain pages from the Empire State Realty Trust Prospectus, dated January 21, 2013.

6. Attached hereto as Exhibit B is a true and correct copy of Exhibit 99.48 to “Pre-Effective Amendment No. 3 to Form S-4 Registration Statement” filed on August 13, 2012.

7. The Empire State Building is iconic and, because of its storied history and unique characteristics, is wholly dissimilar to any of the other properties involved in the proposed REIT. Accordingly, the interests of the owners of the Empire State Building, namely, the holders of equitable interests in Empire State Building Associates, LLC, in terms of valuing the proposed consolidation, are very different from the interests of holders of equitable interests in each and every one of the other entities that are part of the proposed consolidation.

8. I am unable to make a reasoned decision as to whether to vote in favor of or against the Consolidation, since the Prospectus does not include certain key financial information.

9. Today, January 29, 2013, Anthony Malkin, the President of Defendant Malkin Holdings LLC., was interviewed on Bloomberg Television. During the interview he said, among other things:

- “Our job is to protect thousands of investors to make sure they have best information to make best decision in their own interests”;
- We “expect distributions to be up much more than if status quo continues”;
- “Malkin Holdings supervises (the Empire State Building) exclusively, but the Helmsley Estate and Malkin Family control Empire State Building Company which is the operating lease (sic) and which makes all decisions which determines in fact the performance based on its decisions”.

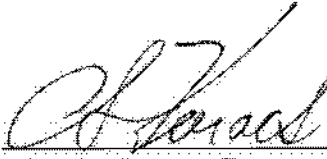


82. Yet one must even question the paucity of those most recent distributions. As also admitted during an by the President of defendant Malkin Holdings, his family has "veto power" over all decisions made by the operating lessee, Empire State Building Company "which makes all decision which determines in fact the performance (of the Empire State Building) based on its decision." Kovacs Aff. ¶ 9.

II. The Settlement Class proposed by Plaintiffs should not be certified, and the Intervenor should be allowed to file a Complaint on behalf of ESBA participants only, for the reasons set forth in the proposed Intervenor's Memorandum of Law and incorporate same herein by reference as if fully set forth herein.

Though I also am the holder, as Trustee or individually, of interests in other entities to be rolled-up into the REIT, I nevertheless believe that my interests as the holder of a participation in ESBA can only be adequately protected with the certification of a separate and distinct class of only ESBA participants represented only by persons who only hold an interest in ESBA. Furthermore, such class needs to be represented by counsel separate and apart from existing counsel, who entered into the proposed settlement with defendants, and specifically by Stephen Meister of Meister Seelig & Fein LLP, as the proposed Intervenor have requested. Kovacs Aff. ¶¶ 10, 11.

Dated: Newton, Massachusetts  
January 29, 2013

  
\_\_\_\_\_  
Alan L. Kovacs, Esq.  
LAW OFFICE OF ALAN L. KOVACS  
257 Dedham St.  
Newton, MA 02461  
(617)964-1177  
alankovacs@yahoo.com

Of Counsel:

Albert M. Rosenblatt, Esq.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

Index No. 650607/12  
(Sherwood, J.)

IN RE EMPIRE STATE REALTY TRUST, INC.  
INVESTOR LITIGATION

-----X

**SUBMISSION OF PUTATIVE PLAINTIFF ALAN L. KOVACS, TRUSTEE,**

**(A) OBJECTING TO SETTLEMENT AND PRELIMINARY  
CERTIFICATION OF SETTLEMENT CLASS**

**AND**

**(B) IN SUPPORT OF CROSS MOTION OF PROPOSED INTERVENORS SEEKING  
ORDER (1) ALLOWING FILING OF A CLASS ACTION COMPLAINT ON BEHALF  
OF CLASS CONSISTING ONLY OF INVESTORS IN EMPIRE STATE BUILDING  
ASSOCIATES, LLC AND (2) DESIGNATING MEISTER SEELIG & FEIN AS  
COUNSEL FOR SUCH CLASS**

Alan L. Kovacs, Esq.  
**LAW OFFICE OF ALAN L. KOVACS**  
257 Dedham St.  
Newton, MA 02461  
(617) 964-1177  
alankovacs@yahoo.com

Of Counsel:

Albert M. Rosenblatt, Esq.

## INTRODUCTION

On January 18, 2013, Plaintiffs herein noticed their intent to move for an order preliminarily certifying this action as a class action pursuant to CPLR Article 9 for purposes of settlement and preliminarily approving the settlement of this action on the terms set forth in a Stipulation of Settlement dated September 28, 2012 (the "Settlement Stipulation"). The Settlement Stipulation (Kolker Affidavit, Exh. A) defines the proposed settlement class as "all Participants in any of the Public LLCs and Private Entities other than ... Defendants" and certain Defendant related individual and business entities. Per the first WHEREAS clause of the Settlement Stipulation, the Public LLCs and the Private Entities consist of all of the real estate entities that are to be consolidated into the Empire State Realty Trust ("ESRT" or the "REIT"), as proposed in the Prospectus dated January 21, 2013. Thus, the proposed Settlement Class consist of all investors who have an interest in any of the entities that are part of the proposed consolidation into the REIT.

As Trustee of the Hilda Kovacs Family Trust of 2000, I am the owner of one participation unit in Empire State Building Associates, LLC ("ESBA"), and am also the owner of an interest in another property, 1400 Broadway, that may be consolidated into the REIT. Additionally, I am the owner, individually, of small interests in First Stamford Place L.L.C. and 500 Mamaroneck Avenue, L.P. which are two of the "Private" entities also to be rolled-up into the REIT. Kovacs Affidavit, ¶ 1 (Exhibit 1 hereto)(hereinafter "Kovacs Aff. ¶\_\_"). As stated in my Affidavit, I am familiar with the Complaints heretofore filed herein, the Settlement Stipulation, the Memorandum of Law submitted by Plaintiffs in support of their Motion, the Prospectus for the REIT, prior iterations of the Prospectus, and the Motion and supporting documents of the proposed Intervenors. Kovacs Aff. ¶ 4.

Thus, I am a putative member of the class which Plaintiffs seeks to certify (holders of interests in any and all of the entities to be consolidated in the REIT), and I will be a putative member of the class that the Proposed Intervenors seek to represent (holders of an interest in only ESBA, the fee owner of the Empire State Building).

### **OBJECTIONS**

I. The proposed settlement is grossly unfair to Participants in ESBA such as myself. Kovacs Aff. ¶ 10. I therefore object to preliminary approval of the Settlement Stipulation for the reasons set forth in the proposed Intervenors' Memorandum of Law and incorporate same herein by reference as if fully set forth herein.

In this regard, I further strenuously object to the Settlement in light of its failure to require that the Prospectus include key financial information without which I, and other ESBA Participants, cannot reasonably determine whether to vote in favor of or against the Consolidation. Kovacs Aff. ¶ 8. Specifically, the Prospectus fails to include projections as to the cash flow that would be available for distribution to me as an ESBA Participant in future years. Such projections could then be compared to the Cash Flow projections for the REIT that have been provided (see Prospectus Excerpts, Appendix C, pp. 20 - 21, Exh. A to Kovacs Affidavit), and enable me to attempt to quantify distributions I could expect to receive from ESBA on a stand-alone basis should the Consolidation not be approved. Instead, the Prospectus asks me to decide on the Consolidation based on what I, and other ESBA participants have received on average over the years 2007 to 2011 (i.e. past distributions) in comparison with the projected distribution to me from the REIT in 2013. See Prospectus Excerpts, p. 82, Exh. A to Kovacs Affidavit.

Notwithstanding that the President of defendant Malkin Holdings claims that it is their job to make sure ESBA Participants have the “best information” to enable them to make the “best decision in their own interests” (see Kovacs Aff. ¶ 9, it is obvious that that such an analysis is being withheld from ESBA participants by the defendants intentionally. One was done, but the defendants do not think it material or worthy of consideration by ESBA Participants:

While the supervisor did not perform a detailed financial analysis of all these alternatives, other than continued operations of the subject LLCs and liquidation of the subject LLCs, the supervisor believes that these alternatives would not be as beneficial to participants as the consolidation.

Prospectus Excerpts, p. 178, Exh. A to Kovacs Affidavit<sup>1</sup>.

Moreover, such an analysis was included as Exhibit 99.48 to an earlier iteration of the Prospectus, specifically Amendment No. 3 of the S4 (the proposed Prospectus), submitted to the SEC on or about August 13, 2012. Kovacs Aff. ¶ 6, and Exhibit B thereto. Of course, one does not know why such an Exhibit was not ultimately used, or if the calculations contained thereon were accurate, or if not, why not. Whether or not the numbers on Exhibit 99.48 are accurate, that Exhibit reflects the fact that such projections were possible, with appropriate disclaimers, just as the Prospectus provided projections for the REIT on a consolidated basis.

Indeed, the projections contained in Exhibit 99.48 themselves likely give a clue as to why such an analysis was not ultimately included. According to the Exhibit, five years out, in 2016, there would be \$73,221,973 available for distribution to ESBA participants, and in 2021, ten years out, \$93,850,920. Those amounts work out to distributions on each 1/3300 interest in ESBA of approximately \$22,100 in 2016, and \$28,500 in 2021 (see Kovacs Aff. Exh B, p. “12 of 16”), , significantly greater than the average distribution over the years 2007 through 2011 of

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<sup>1</sup> Interestingly, the language used is clearly designed to confuse readers as to what was and was not done, by starting with the phrase “While the supervisor did not perform . . .” (emphasis supplied).

§3,110. See Kovacs Aff., Exh. A, Prospectus Excerpts, p. 82. Yet one must even question the paucity of those most recent distributions. As also admitted during an by the President of defendant Malkin Holdings, his family has “veto power” over all decisions made by the operating lessee, Empire State Building Company “which makes all decision which determines in fact the performance (of the Empire State Building) based on its decision.” Kovacs Aff. ¶ 9.

II. The Settlement Class proposed by Plaintiffs should not be certified, and the Intervenor should be allowed to file a Complaint on behalf of ESBA participants only, for the reasons set forth in the proposed Intervenor’s Memorandum of Law and incorporate same herein by reference as if fully set forth herein.

Though I also am the holder, as Trustee or individually, of interests in other entities to be rolled-up into the REIT, I nevertheless believe that my interests as the holder of a participation in ESBA can only be adequately protected with the certification of a separate and distinct class of only ESBA participants represented only by persons who only hold an interest in ESBA. Furthermore, such class needs to be represented by counsel separate and apart from existing counsel, who entered into the proposed settlement with defendants, and specifically by Stephen Meister of Meister Seelig & Fein LLP, as the proposed Intervenor has requested. Kovacs Aff. ¶¶ 10,11.

Dated: Newton, Massachusetts  
January , 2013

---

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Of Counsel:

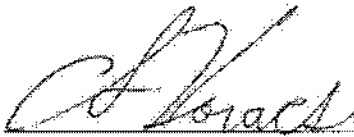
Albert M. Rosenblatt, Esq.

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Dated: Newton, Massachusetts  
January 29, 2013

  
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Newton, MA 02461  
(617)964-1177  
alankovacs@yahoo.com

Of Counsel:

Albert M. Rosenblatt, Esq.

**EXHIBIT B**

To

Affidavit of  
Alan L. Kovacs, Trustee



**Calculation of Illustrative Exchange Values Using the Discounted Cash Flow Method to Allocate Residual Value**

The following is a calculation of illustrative exchange values using the discounted cash flow method to allocate residual value based on the projections that were used to calculate the preliminary exchange values shown in this prospectus/consent solicitation (except that the projections used for purposes of this calculation are for a longer time period).

The valuations based on the discounted cash flow method, as set forth below, were calculated by the independent valuer based on information provided by the management of the supervisor. The supervisor requested the independent valuer in June 2012 to calculate the exchange values using the discounted cash flow methodology on this basis solely for illustrative purposes to show participants the effect of the different methods.

The tables that follow also include a summary of projections that were utilized by the independent valuer in calculating the exchange values using the discounted cash flow method described above. The projections were prepared solely for the purpose of determining the relative values among the subject LLCs, the private entities and the management companies and to establish exchange values to facilitate the consolidation and should not be relied upon for any other purpose, including without limitation, as an indicator of future performance of the company, the properties, the subject LLCs or the private entities. The projections should not be relied upon in determining the market value or the estimated value of the company after giving effect to the consolidation and the IPO. The actual performance of the properties may be materially different from these projections because of changes in market conditions and many other factors.

Neither the subject LLCs nor the supervisor as a matter of course make public projections as to future performance, earnings or other results beyond the current fiscal year, and the supervisor is especially reluctant to disclose projections for extended periods due to the unpredictability of the underlying assumptions and estimates. The projections with respect to the properties were presented by the independent valuer based on the information provided by management of the supervisor and analysis performed by the independent valuer and reviewed and approved by management of the supervisor.

These projections were not prepared in accordance with published guidelines of the SEC or the guidelines established by the American Institute of Certified Public Accountants for preparation and presentation of financial projections. This information is not fact and should not be relied upon as being necessarily indicative of future results, and readers of this prospectus/consent solicitation are cautioned not to place undue reliance on the prospective financial information. Neither the company's independent registered public accounting firm nor any other independent accountants have examined, compiled or otherwise applied procedures to the projections presented herein or express an opinion or any other form of assurance on them. The summary of the projection is being included in this prospectus/consent solicitation solely because the projections were used by the independent valuer in calculating the illustrative exchange values using the discounted cash flow method to allocate residual value.

The projections were based on numerous assumptions that may prove to be wrong. Important factors that may affect actual results and cause the projections to not be achieved include, but are not limited to, risks and uncertainties relating to the company and other factors described under "Risk Factors" and "Forward-Looking Statements." The projections also reflect assumptions as to certain business decisions that are subject to change. As a result, actual results may differ materially from those contained in the projections. Accordingly, there can be no assurance that the projections will be realized.

Certain of the prospective financial information set forth herein may be considered non-U.S. GAAP financial measures. The independent valuer believed this information could be useful in valuing the properties. Non-U.S. GAAP financial measures should not be considered in isolation from, or as a substitute for, financial information presented in compliance with U.S. GAAP, and non-U.S. GAAP financial measures may not be comparable to similarly stated amounts used by other companies.

The inclusion of the summary of the projections in this prospectus/consent solicitation should not be regarded as an indication that any of the company, the subject LLCs or the supervisor or their respective affiliates, advisors or representatives considered the projections to be predictive of actual future events, and the projections should not be relied upon as such. None of the company, the subject LLCs or the supervisor or their respective affiliates, advisors, officers, directors, partners or representatives can give any assurance that actual results will not differ from the projections, and none of them undertakes any obligation to update or otherwise revise or reconcile the projections to reflect circumstances existing after the date the projections were generated or to reflect the occurrence of future events even in the event that any or all of the assumptions underlying the projections are shown to be in error. None of the company, the supervisor and the subject LLCs intend to make publicly available any update or other revision to the projections. None of the company, the supervisor and the subject LLCs or their respective affiliates, advisors, officers, directors, partners, or representatives has made or makes any representation to any participant or other person regarding the company's or the subject LLC's ultimate performance compared to the information contained in the projections or that forecasted results will be achieved. None of the subject LLCs, the private entities, the management companies or any of their affiliates has made any representation to the company concerning the projections.

The projections were prepared solely to determine the relative value among the subject LLCs, the private entities and the management companies and to establish exchange values to facilitate the consolidation and should not be relied upon for any other purpose, including without limitation, as an indicator of future performance of the company, the properties, the subject LLCs, the private entities or the management companies. The projections should not be relied upon in determining the market value or the estimated value of the company after giving effect to the consolidation and the IPO. The actual performance of the properties and management companies may be materially different from these projections because of changes in market conditions and many other factors.

**One Grand Central Place  
Long-Term DCF Method Estimate**

For the Years Ending	Year 1 Jun-2013	Year 2 Jun-2014	Year 3 Jun-2014	Year 4 Jun-2014	Year 5 Jun-2015	Year 6 Jun-2017	Year 7 Jun-2018	Year 8 Jun-2019	Year 9 Jun-2020	Year 10 Jun-2021	Year 11 Jun-2022	Year 12 Jun-2023	Year 13 Jun-2024	Year 14 Jun-2025	Year 15 Jun-2026
Total Potential Gross Rent	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
General Vacancy	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)
Common Area	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)
Operating Expenses	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)
Capital Expenditures	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)
Net Operating Income	550,000	550,000	550,000	550,000	550,000	550,000	550,000	550,000	550,000	550,000	550,000	550,000	550,000	550,000	550,000
Property Taxes	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)
Net Income	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000
Discount Factor	0.90	0.82	0.74	0.68	0.62	0.56	0.51	0.46	0.42	0.38	0.34	0.31	0.28	0.25	0.22
Present Value	405,000	369,000	333,000	306,000	279,000	257,000	239,000	224,000	211,000	199,000	188,000	178,000	169,000	161,000	153,000
Total Present Value	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000





The projections were prepared solely to determine the relative value among the subject LLCs, the private entities and the management companies and to establish exchange values to facilitate the consolidation and should not be relied upon for any other purpose, including without limitation, as an indicator of future performance of the company, the properties, the subject LLCs, the private entities or the management companies. The projections should not be relied upon in determining the market value of the consolidated value of the company after giving effect to the consolidation and the IPO. The actual performance of the properties and management companies may be materially different from these projections because of changes in market conditions and many other factors.

**One Grand Central Place  
Long-term DCF Method Estimate**

For the Years Ending	Jun-2017	Jun-2018	Jun-2019	Jun-2020	Jun-2021	Jun-2022	Jun-2023	Jun-2024	Jun-2025	Jun-2026	Jun-2027	Jun-2028	Jun-2029	Jun-2030	Jun-2031
<b>Final Operating Costs</b>															
General Variable															
Collection Fees															
Assumed Growth Rate	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Revenue From Residuals	297,393,999	373,977,843	479,522,659	610,229,288	780,584,259	1,000,000,000	1,280,000,000	1,640,000,000	2,100,000,000	2,700,000,000	3,480,000,000	4,480,000,000	5,780,000,000	7,450,000,000	9,550,000,000
Operating Expenses															
Payroll															
Cleaning															
Utilities															
Repairs & Maintenance															
Management Fee															
Professional Fees/Leasing															
Real Estate Taxes															
Real Estate															
Insurance															
Total Operating Expenses	197,696,716	246,624,918	313,662,785	397,966,216	510,897,205	660,511,822	840,000,000	1,070,000,000	1,380,000,000	1,780,000,000	2,280,000,000	2,920,000,000	3,720,000,000	4,750,000,000	6,050,000,000
Net Operating Income	100,000,000	127,352,925	165,859,874	212,263,072	269,687,054	339,488,178	440,000,000	570,000,000	720,000,000	920,000,000	1,200,000,000	1,560,000,000	2,060,000,000	2,700,000,000	3,500,000,000
Leasing & Capital Costs															
Leasing Improvements															
Leasing Comm/Lease															
Capital Improvements															
Asset Building															
Assumed Growth Rate	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Total Operating Costs	197,696,716	246,624,918	313,662,785	397,966,216	510,897,205	660,511,822	840,000,000	1,070,000,000	1,380,000,000	1,780,000,000	2,280,000,000	2,920,000,000	3,720,000,000	4,750,000,000	6,050,000,000
Net Operating Income	100,000,000	127,352,925	165,859,874	212,263,072	269,687,054	339,488,178	440,000,000	570,000,000	720,000,000	920,000,000	1,200,000,000	1,560,000,000	2,060,000,000	2,700,000,000	3,500,000,000
Capital Expenditures															
Leasing Comm/Lease															
Capital Improvements															
Asset Building															
Assumed Growth Rate	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Total Operating Costs	197,696,716	246,624,918	313,662,785	397,966,216	510,897,205	660,511,822	840,000,000	1,070,000,000	1,380,000,000	1,780,000,000	2,280,000,000	2,920,000,000	3,720,000,000	4,750,000,000	6,050,000,000
Net Operating Income	100,000,000	127,352,925	165,859,874	212,263,072	269,687,054	339,488,178	440,000,000	570,000,000	720,000,000	920,000,000	1,200,000,000	1,560,000,000	2,060,000,000	2,700,000,000	3,500,000,000
Capital Expenditures															
Leasing Comm/Lease															
Capital Improvements															
Asset Building															
Assumed Growth Rate	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Total Operating Costs	197,696,716	246,624,918	313,662,785	397,966,216	510,897,205	660,511,822	840,000,000	1,070,000,000	1,380,000,000	1,780,000,000	2,280,000,000	2,920,000,000	3,720,000,000	4,750,000,000	6,050,000,000
Net Operating Income	100,000,000	127,352,925	165,859,874	212,263,072	269,687,054	339,488,178	440,000,000	570,000,000	720,000,000	920,000,000	1,200,000,000	1,560,000,000	2,060,000,000	2,700,000,000	3,500,000,000
Capital Expenditures															
Leasing Comm/Lease															
Capital Improvements															
Asset Building															
Assumed Growth Rate	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Total Operating Costs	197,696,716	246,624,918	313,662,785	397,966,216	510,897,205	660,511,822	840,000,000	1,070,000,000	1,380,000,000	1,780,000,000	2,280,000,000	2,920,000,000	3,720,000,000	4,750,000,000	6,050,000,000
Net Operating Income	100,000,000	127,352,925	165,859,874	212,263,072	269,687,054	339,488,178	440,000,000	570,000,000	720,000,000	920,000,000	1,200,000,000	1,560,000,000	2,060,000,000	2,700,000,000	3,500,000,000
Capital Expenditures															
Leasing Comm/Lease															
Capital Improvements															
Asset Building															
Assumed Growth Rate	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Total Operating Costs	197,696,716	246,624,918	313,662,785	397,966,216	510,897,205	660,511,822	840,000,000	1,070,000,000	1,380,000,000	1,780,000,000	2,280,000,000	2,920,000,000	3,720,000,000	4,750,000,000	6,050,000,000
Net Operating Income	100,000,000	127,352,925	165,859,874	212,263,072	269,687,054	339,488,178	440,000,000	570,000,000	720,000,000	920,000,000	1,200,000,000	1,560,000,000	2,060,000,000	2,700,000,000	3,500,000,000
Capital Expenditures															
Leasing Comm/Lease															
Capital Improvements															
Asset Building															
Assumed Growth Rate	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Total Operating Costs	197,696,716	246,624,918	313,662,785	397,966,216	510,897,205	660,511,822	840,000,000	1,070,000,000	1,380,000,000	1,780,000,000	2,280,000,000	2,920,000,000	3,720,000,000	4,750,000,000	6,050,000,000
Net Operating Income	100,000,000	127,352,925	165,859,874	212,263,072	269,687,054	339,488,178	440,000,000	570,000,000	720,000,000	920,000,000	1,200,000,000	1,560,000,000	2,060,000,000	2,700,000,000	3,500,000,000
Capital Expenditures															
Leasing Comm/Lease															
Capital Improvements															
Asset Building															
Assumed Growth Rate	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Total Operating Costs	197,696,716	246,624,918	313,662,785	397,966,216	510,897,205	660,511,822	840,000,000	1,070,000,000	1,380,000,000	1,780,000,000	2,280,000,000	2,920,000,000	3,720,000,000	4,750,000,000	6,050,000,000
Net Operating Income	100,000,000	127,352,925	165,859,874	212,263,072	269,687,054	339,488,178	440,000,000	570,000,000	720,000,000	920,000,000	1,200,000,000	1,560,000,000	2,060,000,000	2,700,000,000	3,500,000,000
Capital Expenditures															
Leasing Comm/Lease															
Capital Improvements															
Asset Building															
Assumed Growth Rate	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Total Operating Costs	197,696,716	246,624,918	313,662,785	397,966,216	510,897,205	660,511,822	840,000,000	1,070,000,000	1,380,000,000	1,780,000,000	2,280,000,000	2,920,000,000	3,720,000,000	4,750,000,000	6,050,000,000
Net Operating Income	100,000,000	127,352,925	165,859,874	212,263,072	269,687,054	339,488,178	440,000,000	570,000,000	720,000,000	920,000,000	1,200,000,000	1,560,000,000	2,060,000,000	2,700,000,000	3,500,000,000
Capital Expenditures															
Leasing Comm/Lease															
Capital Improvements															
Asset Building															
Assumed Growth Rate	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Total Operating Costs	197,696,716	246,624,918	313,662,785	397,966,216	510,897,205	660,511,822	840,000,000	1,070,000,000	1,380,000,000	1,780,000,000	2,280,000,000	2,920,000,000	3,720,000,000		

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
<b>Security</b>															
Professional Fees	761,353,146	171,556,249	177,576,537	122,852,144	185,338,327	181,988,417	180,898,171	208,038,175	211,937,175	218,857,512	224,858,512	231,878,147	238,907,512	245,936,877	252,966,242
Real Estate Taxes	2,868,141,412	2,976,894,619	3,085,647,826	3,194,401,033	3,303,154,240	3,411,907,447	3,520,660,654	3,629,413,861	3,738,167,068	3,846,920,275	3,955,673,482	4,064,426,689	4,173,179,896	4,281,933,103	4,390,686,310
Insurance															
Operating Expenses															
Leasing & Capital Costs															
Interest															
Capital Improvements															
Assumed Growth Rate	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Cash Flow Before Debt Service & Taxes	18,775,795	18,775,795	17,276,698	17,276,698	16,306,864	16,306,864	15,337,030	15,337,030	14,367,196	14,367,196	13,397,362	13,397,362	12,427,528	12,427,528	11,457,694
Cash Flow Before Debt Service & Taxes	23,431,714	23,431,714	24,932,611	24,932,611	25,962,745	25,962,745	26,992,879	26,992,879	28,023,013	28,023,013	29,053,147	29,053,147	30,083,281	30,083,281	31,113,415
Base Rent	21,800	21,800	21,800	21,800	21,800	21,800	21,800	21,800	21,800	21,800	21,800	21,800	21,800	21,800	21,800
Property Management Fees	1,865,860	1,865,860	1,865,860	1,865,860	1,865,860	1,865,860	1,865,860	1,865,860	1,865,860	1,865,860	1,865,860	1,865,860	1,865,860	1,865,860	1,865,860
Tenat Credit Rent	1,077,800	1,077,800	1,077,800	1,077,800	1,077,800	1,077,800	1,077,800	1,077,800	1,077,800	1,077,800	1,077,800	1,077,800	1,077,800	1,077,800	1,077,800
Operating Costs															
Total Income	418,079,641	428,502,011	441,418,891	454,335,771	468,252,651	482,169,531	496,086,411	510,003,291	523,920,171	537,837,051	551,753,931	565,670,811	579,587,691	593,504,571	607,421,451
Operating Expenses	710,230,306	717,950,449	725,670,592	733,390,735	741,110,878	748,831,021	756,551,164	764,271,307	771,991,450	779,711,593	787,431,736	795,151,879	802,872,022	810,592,165	818,312,308
Net Operating Income	248,249,335	256,551,562	265,748,299	270,945,036	277,141,774	283,338,512	289,535,250	295,731,988	301,928,726	308,125,464	314,322,202	320,518,940	326,715,678	332,912,416	339,109,154
Cash Flow Before Debt Service	248,249,335	256,551,562	265,748,299	270,945,036	277,141,774	283,338,512	289,535,250	295,731,988	301,928,726	308,125,464	314,322,202	320,518,940	326,715,678	332,912,416	339,109,154
Loan: Total Fixed Rate	11,077,800	11,077,800	11,077,800	11,077,800	11,077,800	11,077,800	11,077,800	11,077,800	11,077,800	11,077,800	11,077,800	11,077,800	11,077,800	11,077,800	11,077,800
Operating Costs	229,171,535	228,473,762	227,675,989	226,878,216	226,080,443	225,282,670	224,484,897	223,687,124	222,889,351	222,091,578	221,293,805	220,496,032	219,698,259	218,900,486	218,102,713
Operating Costs	229,171,535	228,473,762	227,675,989	226,878,216	226,080,443	225,282,670	224,484,897	223,687,124	222,889,351	222,091,578	221,293,805	220,496,032	219,698,259	218,900,486	218,102,713
Operating Cost @ 50%	114,585,767	114,236,881	113,837,994	113,439,108	113,040,222	112,641,336	112,242,450	111,843,564	111,444,678	111,045,792	110,646,906	110,248,020	109,849,134	109,450,248	109,051,362
<b>PV to Eyr</b>															
Base Rent	36,989	36,989	36,989	36,989	36,989	36,989	36,989	36,989	36,989	36,989	36,989	36,989	36,989	36,989	36,989
Property Management Fees	1,865,860	1,865,860	1,865,860	1,865,860	1,865,860	1,865,860	1,865,860	1,865,860	1,865,860	1,865,860	1,865,860	1,865,860	1,865,860	1,865,860	1,865,860
Operating Costs	23,431,714	23,431,714	23,431,714	23,431,714	23,431,714	23,431,714	23,431,714	23,431,714	23,431,714	23,431,714	23,431,714	23,431,714	23,431,714	23,431,714	23,431,714
Discount Rate	7.75%														
<b>PV to Eyr</b>	<b>2,970,000,000</b>														
<b>PV to Operator</b>															
Operating Costs	229,171,535	228,473,762	227,675,989	226,878,216	226,080,443	225,282,670	224,484,897	223,687,124	222,889,351	222,091,578	221,293,805	220,496,032	219,698,259	218,900,486	218,102,713
Operating Costs	229,171,535	228,473,762	227,675,989	226,878,216	226,080,443	225,282,670	224,484,897	223,687,124	222,889,351	222,091,578	221,293,805	220,496,032	219,698,259	218,900,486	218,102,713
Discount Rate	6.25%														
<b>PV to Operator</b>	<b>385,000,000</b>														
<b>Combined Value</b>	<b>2,970,000,000</b>														
<b>Discount Rate</b>	<b>7.25%</b>														
<b>Feature For Simple Value</b>	<b>187,000,000</b>														
<b>Feature For Simple Value</b>	<b>4,165,237,273</b>	<b>4,294,327,991</b>	<b>4,423,422,709</b>	<b>4,552,517,427</b>	<b>4,681,612,145</b>	<b>4,810,706,863</b>	<b>4,939,801,581</b>	<b>5,068,896,299</b>	<b>5,197,991,017</b>	<b>5,327,085,735</b>	<b>5,456,180,453</b>	<b>5,585,275,171</b>	<b>5,714,369,889</b>	<b>5,843,464,607</b>	<b>5,972,559,325</b>

The projections were prepared solely to determine the return value using the subject LLCs, the private entities and the management company and to facilitate exchange offers to facilitate the consolidation and should not be relied upon for any other purpose, including without limitation, as an indicator of future performance of the company, the properties, the subject LLCs, the private entities or the management companies. The projections should not be relied upon for determining the market value of the unaffiliated value of the company after giving effect to the consolidation and the IP2. The actual performance of the properties and management companies may be materially different from these projections because of changes in market conditions and many other factors.

**250 W57th Street  
Long-term DCF Method Estimate**

For the Years Ending	Year 1 Jan-2012	Year 2 Jan-2013	Year 3 Jan-2014	Year 4 Jan-2015	Year 5 Jan-2016	Year 6 Jan-2017	Year 7 Jan-2018	Year 8 Jan-2019	Year 9 Jan-2020	Year 10 Jan-2021	Year 11 Jan-2022	Year 12 Jan-2023	Year 13 Jan-2024	Year 14 Jan-2025	Year 15 Jan-2026
Book Value	3,819,273	3,819,273	3,819,273	3,819,273	3,819,273	3,819,273	3,819,273	3,819,273	3,819,273	3,819,273	3,819,273	3,819,273	3,819,273	3,819,273	3,819,273
Goodwill	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Operating Revenue	24,982,249	25,982,249	26,982,249	27,982,249	28,982,249	29,982,249	30,982,249	31,982,249	32,982,249	33,982,249	34,982,249	35,982,249	36,982,249	37,982,249	38,982,249
Operating Expenses	2,800,000	2,800,000	2,800,000	2,800,000	2,800,000	2,800,000	2,800,000	2,800,000	2,800,000	2,800,000	2,800,000	2,800,000	2,800,000	2,800,000	2,800,000
Net Operating Income	22,182,249	23,182,249	24,182,249	25,182,249	26,182,249	27,182,249	28,182,249	29,182,249	30,182,249	31,182,249	32,182,249	33,182,249	34,182,249	35,182,249	36,182,249
Capital Expenditures	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
Free Cash Flow	21,182,249	22,182,249	23,182,249	24,182,249	25,182,249	26,182,249	27,182,249	28,182,249	29,182,249	30,182,249	31,182,249	32,182,249	33,182,249	34,182,249	35,182,249
Discount Rate	7.25%														
<b>Feature For Simple Value</b>	<b>187,000,000</b>														



Calculation of Changes in Value

		2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Future Free Single Value (see below)		13,044,726	10,457,867	12,399,524	11,322,091	15,441,891	16,049,131	19,773,723	22,432,908	26,067,447	31,297,359	37,831,269	45,456,079	54,394,151	64,781,376
Discount Rate	8.0%														
PV of Free		17,408,000													
<b>PV to Operator</b>															
Cash Flow Before Debt Service		28,503,741	35,256,414	38,955,268	31,822,862	4,133,015	26,076,822	22,502,250	25,438,208	21,433,677	19,235,120	15,988,724	12,518,916	10,015,207	8,218,512
Fixed Fee		1,801,000	1,841,000	2,000,000	2,000,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000
Operating Costs		(1,286,724)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)
Total Cash Flow to Operator		14,641,741	15,225,741	14,599,524	15,544,931	13,681,891	17,108,131	15,796,623	18,287,208	16,228,177	14,679,356	12,602,724	10,015,207	7,429,116	6,567,076
Discount Rate	8.0%														
PV to Operator		142,000,000													
<b>Combined Value</b>		<b>174,080,000</b>													
<b>Change in Single Value</b>															
Cash Flow Before Debt Service															
Residuals															
Operating Income															
Acquire NOI															
Cap Ex															
Value															
Selling Expense															
Net Sale Proceeds															
Free Single Value Today															
Discount Rate	7.0%														
<b>Free Single Value Today</b>		<b>116,000,000</b>													
<b>Change in Value Today</b>		<b>58,080,000</b>													
Year 2014	1.00%	3.00%	5.00%	7.00%	9.00%	11.00%	13.00%	15.00%	17.00%	19.00%	21.00%	23.00%	25.00%	27.00%	29.00%
Future Free Single Value		597,247,231	521,269,251	537,898,347	554,107,913	570,711,150	587,825,023	605,448,677	623,652,331	642,401,914	661,633,326	681,287,541	701,297,326	721,661,141	742,381,261

The projections were prepared solely to determine the relative value among the subject LLCs, the private entities and the management companies and to establish exchange values to facilitate the consolidation and should not be relied upon for any other purpose, including without limitation, as an indicator of future performance of the company, the properties, the subject LLCs, the private entities or the management companies. The projections should not be relied upon in determining the market value of the company after giving effect to the consolidation and the IPO. The actual performance of the properties and management companies may be materially different from these projections because of changes in market conditions and other effect factors.

250 W 7th Street  
Long-term DCF Method Estimate

For the Years Ending	Year 51 Jun-2042	Year 52 Jun-2043	Year 53 Jun-2044	Year 54 Jun-2045	Year 55 Jun-2046	Year 56 Jun-2047	Year 57 Jun-2048	Year 58 Jun-2049	Year 59 Jun-2050	Year 60 Jun-2051	Year 61 Jun-2052	Year 62 Jun-2053	Year 63 Jun-2054	Year 64 Jun-2055	Year 65 Jun-2056
Fixed Fee Before Debt Service	1,801,000	1,841,000	2,000,000	2,000,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000
Operating Costs	(1,286,724)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)
Operating Income	514,276	182,456	341,456	341,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456
Cap Ex	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Net Operating Income	514,276	182,456	341,456	341,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456
Fixed Fee Before Debt Service & Tax	1,801,000	1,841,000	2,000,000	2,000,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000
Operating Costs	(1,286,724)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)
Operating Income	514,276	182,456	341,456	341,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456
Cap Ex	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Net Operating Income	514,276	182,456	341,456	341,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456
Fixed Fee Before Debt Service & Tax	1,801,000	1,841,000	2,000,000	2,000,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000
Operating Costs	(1,286,724)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)
Operating Income	514,276	182,456	341,456	341,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456
Cap Ex	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Net Operating Income	514,276	182,456	341,456	341,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456
Fixed Fee Before Debt Service & Tax	1,801,000	1,841,000	2,000,000	2,000,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000
Operating Costs	(1,286,724)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)
Operating Income	514,276	182,456	341,456	341,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456
Cap Ex	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Net Operating Income	514,276	182,456	341,456	341,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456
Fixed Fee Before Debt Service & Tax	1,801,000	1,841,000	2,000,000	2,000,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000
Operating Costs	(1,286,724)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)
Operating Income	514,276	182,456	341,456	341,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456
Cap Ex	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Net Operating Income	514,276	182,456	341,456	341,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456
Fixed Fee Before Debt Service & Tax	1,801,000	1,841,000	2,000,000	2,000,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000
Operating Costs	(1,286,724)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)
Operating Income	514,276	182,456	341,456	341,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456
Cap Ex	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Net Operating Income	514,276	182,456	341,456	341,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456
Fixed Fee Before Debt Service & Tax	1,801,000	1,841,000	2,000,000	2,000,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000
Operating Costs	(1,286,724)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)
Operating Income	514,276	182,456	341,456	341,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456
Cap Ex	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Net Operating Income	514,276	182,456	341,456	341,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456
Fixed Fee Before Debt Service & Tax	1,801,000	1,841,000	2,000,000	2,000,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000	1,793,000
Operating Costs	(1,286,724)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)	(1,658,544)
Operating Income	514,276	182,456	341,456	341,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456	134,456
Cap Ex	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Net Operating Income	514,276	182,456	341,456	341,456											





Calculation of Changes in Value

The projections were prepared solely to determine the relative value among the subject LLCs, the private entities and the management companies and to establish exchange values to facilitate the consolidation and should not be relied upon for any other purpose, including without limitation, as an indicator of future performance of the company, the properties, the subject LLCs, the private entities or the management companies. The projections should not be relied upon for determining the market value or the estimated value of the company after giving effect to the consolidation and the IPO. The actual performance of the properties and management companies may be materially different from these projections because of changes in market conditions and many other factors.

250 W57th Street  
Long-term DCF Method Estimate

For the Year Ending	Year 61 Jun-2072	Year 62 Jun-2073	Year 63 Jun-2074	Year 64 Jun-2075	Year 65 Jun-2076	Year 66 Jun-2077	Year 67 Jun-2078	Year 68 Jun-2079	Year 69 Jun-2080	Year 70 Jun-2081	Year 71 Jun-2082	Year 72 Jun-2083	Year 73 Jun-2084	Year 74 Jun-2085	Year 75 Jun-2086
Total Potential Gross Rent	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
Operating Expenses	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)
Net Operating Income	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000
Capital Expenditures	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)
Free Cash Flow	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000
Discount Rate	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%
Present Value	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000
Terminal Value	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000
Discount Rate	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%
Present Value	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000
Combined Value	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000

The projections were prepared solely to determine the relative value among the subject LLCs, the private entities and the management companies and to establish exchange values to facilitate the consolidation and should not be relied upon for any other purpose, including without limitation, as an indicator of future performance of the company, the properties, the subject LLCs, the private entities or the management companies. The projections should not be relied upon for determining the market value or the estimated value of the company after giving effect to the consolidation and the IPO. The actual performance of the properties and management companies may be materially different from these projections because of changes in market conditions and many other factors.

250 W57th Street  
Long-term DCF Method Estimate

For the Year Ending	Year 76 Jan-2087	Year 77 Jan-2088	Year 78 Jan-2089	Year 79 Jan-2090	Year 80 Jan-2091	Year 81 Jan-2092	Year 82 Jan-2093	Year 83 Jan-2094	Year 84 Jan-2095	Year 85 Jan-2096	Year 86 Jan-2097	Year 87 Jan-2098	Year 88 Jan-2099	Year 89 Jan-2100	Year 90 Jan-2101	Year 91 Jan-2102	Year 92 Jan-2103	Year 92 reference month September-82
Total Potential Gross Rent	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	
Operating Expenses	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	
Net Operating Income	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	
Capital Expenditures	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	
Free Cash Flow	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	
Discount Rate	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	
Present Value	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	
Terminal Value	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
Discount Rate	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	
Present Value	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	
Combined Value	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	



Calculation of Changes in Value

	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
<b>Real Estate Taxes</b>	22,438,000	22,966,000	23,494,000	24,022,000	24,550,000	25,078,000	25,606,000	26,134,000	26,662,000	27,190,000	27,718,000	28,246,000	28,774,000	29,302,000	29,830,000
Cleaning	1,560,909	1,797,101	2,033,293	2,269,485	2,505,677	2,741,869	2,978,061	3,214,253	3,450,445	3,686,637	3,922,829	4,159,021	4,395,213	4,631,405	4,867,597
Professional Fees	8,115,000	8,643,000	9,171,000	9,699,000	10,227,000	10,755,000	11,283,000	11,811,000	12,339,000	12,867,000	13,395,000	13,923,000	14,451,000	14,979,000	15,507,000
Insurance	9,345,000	9,525,000	9,705,000	9,885,000	10,065,000	10,245,000	10,425,000	10,605,000	10,785,000	10,965,000	11,145,000	11,325,000	11,505,000	11,685,000	11,865,000
Repairs & Maintenance	9,050,000	9,230,000	9,410,000	9,590,000	9,770,000	9,950,000	10,130,000	10,310,000	10,490,000	10,670,000	10,850,000	11,030,000	11,210,000	11,390,000	11,570,000
Furniture	9,000,000	9,000,000	9,000,000	9,000,000	9,000,000	9,000,000	9,000,000	9,000,000	9,000,000	9,000,000	9,000,000	9,000,000	9,000,000	9,000,000	9,000,000
Utilities	15,618,125	16,086,563	16,555,000	17,023,438	17,491,875	17,960,313	18,428,750	18,897,188	19,365,625	19,834,063	20,302,500	20,770,938	21,239,375	21,707,813	22,176,250
Management Fees	6,669,000	6,849,000	7,029,000	7,209,000	7,389,000	7,569,000	7,749,000	7,929,000	8,109,000	8,289,000	8,469,000	8,649,000	8,829,000	9,009,000	9,189,000
<b>Total Operating Expenses</b>	69,203,125	70,969,000	72,734,900	74,500,800	76,266,700	78,032,600	79,798,500	81,564,400	83,330,300	85,096,200	86,862,100	88,628,000	90,393,900	92,159,800	93,925,700
<b>Net Operating Income</b>	76,575,797	106,597,523	136,619,106	166,640,715	196,662,324	226,683,933	256,705,542	286,727,151	316,748,760	346,770,369	376,791,978	406,813,587	436,835,196	466,856,805	496,878,414
<b>Adding or Subtracting:</b>															
<b>Trans. Improvements</b>	28,567,500	11,964,348	6,999,766	1,151,697	529,400	2,094,364	1,267,909	3,239,360	2,113,919	1,693,943	5,908,219	6,675,384	8,085,822	2,966,159	6,376,070
<b>Leasing Commitments</b>	18,700,000	18,700,000	18,700,000	18,700,000	18,700,000	18,700,000	18,700,000	18,700,000	18,700,000	18,700,000	18,700,000	18,700,000	18,700,000	18,700,000	18,700,000
<b>Capital Expenditures</b>	91,293,000	77,257,143	60,000,000	13,800,000	9,145,000	5,145,000	5,278,000	5,278,000	5,278,000	5,278,000	5,278,000	5,278,000	5,278,000	5,278,000	5,278,000
<b>Other Real Estate</b>	31,134,000	2,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000
<b>La &amp; Peng. L.C. 2017/11</b>	18,960,000	9,055,896	5,442,151	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total Leasing &amp; Capital Exp.</b>	143,410,181	117,540,943	63,440,766	14,647,526	10,270,850	11,397,223	9,260,272	12,889,408	17,617,928	12,686,412	11,693,941	10,876,850	10,127,275	9,223,425	14,473,546
<b>Final Value (Real Estate) (See Note 1)</b>	1,952,500,000	2,000,000,000	2,047,500,000	2,095,000,000	2,142,500,000	2,190,000,000	2,237,500,000	2,285,000,000	2,332,500,000	2,380,000,000	2,427,500,000	2,475,000,000	2,522,500,000	2,570,000,000	2,617,500,000
<b>Final Debt</b>	400,000,000	3,900,000,000	3,800,000,000	3,700,000,000	3,600,000,000	3,500,000,000	3,400,000,000	3,300,000,000	3,200,000,000	3,100,000,000	3,000,000,000	2,900,000,000	2,800,000,000	2,700,000,000	2,600,000,000
<b>Final Fixed Res.</b>	600,000,000	5,900,000,000	5,800,000,000	5,700,000,000	5,600,000,000	5,500,000,000	5,400,000,000	5,300,000,000	5,200,000,000	5,100,000,000	5,000,000,000	4,900,000,000	4,800,000,000	4,700,000,000	4,600,000,000
<b>Final Debt</b>	400,000,000	3,900,000,000	3,800,000,000	3,700,000,000	3,600,000,000	3,500,000,000	3,400,000,000	3,300,000,000	3,200,000,000	3,100,000,000	3,000,000,000	2,900,000,000	2,800,000,000	2,700,000,000	2,600,000,000
<b>Final Equity</b>	1,552,500,000	2,100,000,000	2,247,500,000	2,395,000,000	2,542,500,000	2,690,000,000	2,837,500,000	2,985,000,000	3,132,500,000	3,280,000,000	3,427,500,000	3,575,000,000	3,722,500,000	3,870,000,000	4,017,500,000
<b>Final Debt</b>	400,000,000	3,900,000,000	3,800,000,000	3,700,000,000	3,600,000,000	3,500,000,000	3,400,000,000	3,300,000,000	3,200,000,000	3,100,000,000	3,000,000,000	2,900,000,000	2,800,000,000	2,700,000,000	2,600,000,000
<b>Final Equity</b>	1,552,500,000	2,100,000,000	2,247,500,000	2,395,000,000	2,542,500,000	2,690,000,000	2,837,500,000	2,985,000,000	3,132,500,000	3,280,000,000	3,427,500,000	3,575,000,000	3,722,500,000	3,870,000,000	4,017,500,000
<b>Final Value</b>	1,952,500,000	2,000,000,000	2,047,500,000	2,095,000,000	2,142,500,000	2,190,000,000	2,237,500,000	2,285,000,000	2,332,500,000	2,380,000,000	2,427,500,000	2,475,000,000	2,522,500,000	2,570,000,000	2,617,500,000
<b>Final Debt</b>	400,000,000	3,900,000,000	3,800,000,000	3,700,000,000	3,600,000,000	3,500,000,000	3,400,000,000	3,300,000,000	3,200,000,000	3,100,000,000	3,000,000,000	2,900,000,000	2,800,000,000	2,700,000,000	2,600,000,000
<b>Final Equity</b>	1,552,500,000	2,100,000,000	2,247,500,000	2,395,000,000	2,542,500,000	2,690,000,000	2,837,500,000	2,985,000,000	3,132,500,000	3,280,000,000	3,427,500,000	3,575,000,000	3,722,500,000	3,870,000,000	4,017,500,000
<b>Final Value</b>	1,952,500,000	2,000,000,000	2,047,500,000	2,095,000,000	2,142,500,000	2,190,000,000	2,237,500,000	2,285,000,000	2,332,500,000	2,380,000,000	2,427,500,000	2,475,000,000	2,522,500,000	2,570,000,000	2,617,500,000
<b>Final Debt</b>	400,000,000	3,900,000,000	3,800,000,000	3,700,000,000	3,600,000,000	3,500,000,000	3,400,000,000	3,300,000,000	3,200,000,000	3,100,000,000	3,000,000,000	2,900,000,000	2,800,000,000	2,700,000,000	2,600,000,000
<b>Final Equity</b>	1,552,500,000	2,100,000,000	2,247,500,000	2,395,000,000	2,542,500,000	2,690,000,000	2,837,500,000	2,985,000,000	3,132,500,000	3,280,000,000	3,427,500,000	3,575,000,000	3,722,500,000	3,870,000,000	4,017,500,000
<b>Final Value</b>	1,952,500,000	2,000,000,000	2,047,500,000	2,095,000,000	2,142,500,000	2,190,000,000	2,237,500,000	2,285,000,000	2,332,500,000	2,380,000,000	2,427,500,000	2,475,000,000	2,522,500,000	2,570,000,000	2,617,500,000
<b>Final Debt</b>	400,000,000	3,900,000,000	3,800,000,000	3,700,000,000	3,600,000,000	3,500,000,000	3,400,000,000	3,300,000,000	3,200,000,000	3,100,000,000	3,000,000,000	2,900,000,000	2,800,000,000	2,700,000,000	2,600,000,000
<b>Final Equity</b>	1,552,500,000	2,100,000,000	2,247,500,000	2,395,000,000	2,542,500,000	2,690,000,000	2,837,500,000	2,985,000,000	3,132,500,000	3,280,000,000	3,427,500,000	3,575,000,000	3,722,500,000	3,870,000,000	4,017,500,000
<b>Final Value</b>	1,952,500,000	2,000,000,000	2,047,500,000	2,095,000,000	2,142,500,000	2,190,000,000	2,237,500,000	2,285,000,000	2,332,500,000	2,380,000,000	2,427,500,000	2,475,000,000	2,522,500,000	2,570,000,000	2,617,500,000
<b>Final Debt</b>	400,000,000	3,900,000,000	3,800,000,000	3,700,000,000	3,600,000,000	3,500,000,000	3,400,000,000	3,300,000,000	3,200,000,000	3,100,000,000	3,000,000,000	2,900,000,000	2,800,000,000	2,700,000,000	2,600,000,000
<b>Final Equity</b>	1,552,500,000	2,100,000,000	2,247,500,000	2,395,000,000	2,542,500,000	2,690,000,000	2,837,500,000	2,985,000,000	3,132,500,000	3,280,000,000	3,427,500,000	3,575,000,000	3,722,500,000	3,870,000,000	4,017,500,000
<b>Final Value</b>	1,952,500,000	2,000,000,000	2,047,500,000	2,095,000,000	2,142,500,000	2,190,000,000	2,237,500,000	2,285,000,000	2,332,500,000	2,380,000,000	2,427,500,000	2,475,000,000	2,522,500,000	2,570,000,000	2,617,500,000
<b>Final Debt</b>	400,000,000	3,900,000,000	3,800,000,000	3,700,000,000	3,600,000,000	3,500,000,000	3,400,000,000	3,300,000,000	3,200,000,000	3,100,000,000	3,000,000,000	2,900,000,000	2,800,000,000	2,700,000,000	2,600,000,000
<b>Final Equity</b>	1,552,500,000	2,100,000,000	2,247,500,000	2,395,000,000	2,542,500,000	2,690,000,000	2,837,500,000	2,985,000,000	3,132,500,000	3,280,000,000	3,427,500,000	3,575,000,000	3,722,500,000	3,870,000,000	4,017,500,000
<b>Final Value</b>	1,952,500,000	2,000,000,000	2,047,500,000	2,095,000,000	2,142,500,000	2,190,000,000	2,237,500,000	2,285,000,000	2,332,500,000	2,380,000,000	2,427,500,000	2,475,000,000	2,522,500,000	2,570,000,000	2,617,500,000
<b>Final Debt</b>	400,000,000	3,900,000,000	3,800,000,000	3,700,000,000	3,600,000,000	3,500,000,000	3,400,000,000	3,300,000,000	3,200,000,000	3,100,000,000	3,000,000,000	2,900,000,000	2,800,000,000	2,700,000,000	2,600,000,000
<b>Final Equity</b>	1,552,500,000	2,100,000,000	2,247,500,000	2,395,000,000	2,542,500,000	2,690,000,000	2,837,500,000	2,985,000,000	3,132,500,000	3,280,000,000	3,427,500,000	3,575,000,000	3,722,500,000	3,870,000,000	4,017,500,000
<b>Final Value</b>	1,952,500,000	2,000,000,000	2,047,500,000	2,095,000,000	2,142,500,000	2,190,000,000	2,237,500,000	2,285,000,000	2,332,500,000	2,380,000,000	2,427,500,000	2,475,000,000	2,522,500,000	2,570,000,000	2,617,500,000
<b>Final Debt</b>	400,000,000	3,900,000,000	3,800,000,000	3,700,000,000	3,600,000,000	3,500,000,000	3,400,000,000	3,300,000,00							

Calculation of Changes in Value

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
<b>Fixed Costs</b>															
Total Fixed Rent	5,895,625	5,895,625	5,895,625	5,895,625	5,895,625	5,895,625	5,895,625	5,895,625	5,895,625	5,895,625	5,895,625	5,895,625	5,895,625	5,895,625	5,895,625
<b>Variable Costs</b>															
Total Variable Costs	4,145,242,222	4,145,242,222	4,145,242,222	4,145,242,222	4,145,242,222	4,145,242,222	4,145,242,222	4,145,242,222	4,145,242,222	4,145,242,222	4,145,242,222	4,145,242,222	4,145,242,222	4,145,242,222	4,145,242,222
<b>Operating Income</b>															
Total Operating Income	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778
<b>Income Before Tax</b>															
Total Income Before Tax	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778
<b>Income Tax</b>															
Total Income Tax	(344,814,835)	(344,814,835)	(344,814,835)	(344,814,835)	(344,814,835)	(344,814,835)	(344,814,835)	(344,814,835)	(344,814,835)	(344,814,835)	(344,814,835)	(344,814,835)	(344,814,835)	(344,814,835)	(344,814,835)
<b>Net Income</b>															
Total Net Income	804,567,943	804,567,943	804,567,943	804,567,943	804,567,943	804,567,943	804,567,943	804,567,943	804,567,943	804,567,943	804,567,943	804,567,943	804,567,943	804,567,943	804,567,943
<b>Discount Rate</b>	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%
<b>Present Value</b>															
Total Present Value	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778

The projections were prepared solely to determine the relative value among the subject LLCs, the parties existing and the management companies and in financial exchange where to facilitate the consolidation and should not be relied upon for any other purpose, including without limitation, as an indicator of future performance of the company, the projection, the subject LLC, the parties existing or the management companies. The projections should not be relied upon determining the market value of the analyzed value of the company after giving effect to the consolidation and the IPO. The actual performance of the proprietary and management companies may in materiality differ from these projections because of changes in market conditions and many other factors.

Empire State Building  
Long-Term DCF Method Estimate

	Year 31 Jun-2042	Year 32 Jun-2043	Year 33 Jun-2044	Year 34 Jun-2045	Year 35 Jun-2046	Year 36 Jun-2047	Year 37 Jun-2048	Year 38 Jun-2049	Year 39 Jun-2050	Year 40 Jun-2051	Year 41 Jun-2052	Year 42 Jun-2053	Year 43 Jun-2054	Year 44 Jun-2055	Year 45 Jun-2056
<b>Total Potential Gross Revenue</b>	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778
<b>General Yields</b>	6,245,114	6,245,114	6,245,114	6,245,114	6,245,114	6,245,114	6,245,114	6,245,114	6,245,114	6,245,114	6,245,114	6,245,114	6,245,114	6,245,114	6,245,114
<b>Associated Growth Rate</b>	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
<b>Operating Expenses</b>															
Total Operating Expenses	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778
<b>Net Income</b>															
Total Net Income	804,567,943	804,567,943	804,567,943	804,567,943	804,567,943	804,567,943	804,567,943	804,567,943	804,567,943	804,567,943	804,567,943	804,567,943	804,567,943	804,567,943	804,567,943
<b>Discount Rate</b>	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%
<b>Present Value</b>															
Total Present Value	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778	1,149,382,778



Selling Expense	7.25%														
Net Sale Proceeds															
Fee Simple Value Today															
Cash Flow Before Debt Service															
Net Sale Proceeds															
Total															
Discount Rate															
Fee Simple Value Today															
Future Fee Simple Value															
Per Sample Value Today															
Assumptions															
Future Fee Simple Value	9,813,510.162	10,109,975.472	10,411,274.759	10,723,872.978	11,047,449.397	11,383,968.462	11,733,273.456	12,095,939.439	12,473,294.913	12,867,014.451	13,278,224.854	13,708,991.633	14,159,570.450	14,634,407.591	15,136,579.822

The projections were prepared solely to determine the relative value among the subject LLCs, the private entities and the management companies and to establish exchange ratios to facilitate the consolidation and should not be relied upon for any other purpose, including without limitation, as an indicator of future performance of the companies, the properties, the subject LLCs, the private entities, or the management companies. The projections should not be relied upon in determining the market value or the estimated value of the company after giving effect to the consolidation and the IPO. The actual performance of the properties and management companies may be materially different from these projections because of changes in market conditions and many other factors.

**Empire State Building  
Long-term DCF Method Estimate**

	Year 61 June 2017	Year 62 June 2018	Year 63 June 2019	Year 64 June 2020	Year 64 (6x) months Dec 2020
Market Potential Gross Revenue					
General Vacancy					
Effective Gross					
Assumed Growth Rate	3.00%	3.00%	3.00%	3.00%	3.00%
Effective Gross Revenue	1,013,069,238	1,053,789,139	1,097,279,938	1,143,888,243	1,193,875,913
Operating Expenses					
Real Estate Taxes					
Cleaning					
Security					
Professional Fees					
Insurance					
Repairs & Maintenance					
Utilities					
Liabilities					
Management Fee					
Accumulated Growth Rate	3.00%	3.00%	3.00%	3.00%	3.00%
Year 64 Operating Expenses	683,224,686	706,933,619	731,996,969	758,577,824	786,714,566
Net Operating Income	329,789,103	346,855,520	365,282,969	385,310,419	407,161,347
Leasing & Capital Costs					
Leasing Improvements Coverage					
Leasing Commission					
Capital Expenditures					
Real Estate Costs					
Le & Eng. Li. (Btiff)					
Assumed Growth Rate	3.00%	3.00%	3.00%	3.00%	3.00%
Year 64 Leasing & Capital Costs	59,103,729	61,016,263	63,037,743	65,180,679	67,458,319
Cash Flow Before Debt Service & Taxes	270,685,374	285,839,257	302,245,226	319,129,740	340,703,028
Local Debt					
Initial Debt	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000
Debt Service	1,914,423	1,914,423	1,914,423	1,914,423	1,914,423
State Bond Rent					
Operating Debt					
Total Income	1,611,064,278	1,659,295,170	1,714,177,043	1,766,452,384	1,815,264,913
Total Operating Expenses	238,372,067	250,970,211	264,758,460	279,873,333	296,416,350
Net Operating Income	1,372,692,103	1,408,324,959	1,449,418,583	1,486,579,051	1,518,848,563
Local Debt Payoff	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000
Local Debt Interest	13,025,023	13,025,023	13,025,023	13,025,023	13,025,023
Interest Waiver to Operating Debt	391,000,000	1,200,000,000	1,800,000,000	2,400,000,000	3,000,000,000
Debt Service	11,000,000	11,000,000	11,000,000	11,000,000	11,000,000
Real Estate Tax Coverage	392,700,000	1,127,000,000	1,633,000,000	2,140,000,000	2,700,000,000
Coverage Ratio %	50.00%	50.00%	50.00%	50.00%	50.00%
Operating Ratio %	49.00%	51.00%	52.00%	53.00%	54.00%
PV to Fee					
Discount Rate	8.00%	8.00%	8.00%	8.00%	8.00%
NPV of Cash Flow	1,040,606,412	1,018,966,263	998,487,588	979,178,687	960,971,479
Future Fee Simple Value (see below)					
Total Cash Flow to Fee	962,791,241	919,666,422	875,888,144	834,144,285	793,243,764
Discount Rate					
PV to Fee					
PV to Operator					
Discount Rate	8.75%	8.75%	8.75%	8.75%	8.75%
PV to Operator	1,071,001,000	1,071,001,000	1,071,001,000	1,071,001,000	1,071,001,000
Equity Value					
Future Fee Simple Value					
Cash Flow Before Debt Service					
Revenue					
Net Operating Income					
Average NOI					
Cap Rate					
Value					
Selling Expense					
Net Sale Proceeds					
Fee Simple Value Today					
Cash Flow Before Debt Service					
Net Sale Proceeds					
Total					
Discount Rate					
Fee Simple Value Today					
Future Fee Simple Value					
Per Sample Value Today					
Assumptions					
Future Fee Simple Value	15,242,235,017	15,381,012,567	15,524,542,734	15,673,349,602	15,830,656,324

**EXHIBIT A**

**To**

**Affidavit of  
Alan L. Kovacs, Trustee**

# EMPIRE STATE REALTY TRUST

## PROSPECTUS/CONSENT SOLICITATION STATEMENT

Empire State Building  
Associates L.L.C.

60 East 42nd St. Associates L.L.C.

250 West 57th St.  
Associates L.L.C.

One Grand Central Place  
60 East 42nd Street  
New York, New York 10165

## NOTICE OF CONSENT SOLICITATION TO PARTICIPANTS January 21, 2013

Malkin Holdings LLC, the supervisor of each limited liability company listed above, requests that you consent to the following:

*Proposed consolidation of your subject LLC into Empire State Realty Trust, Inc.* As described in the attached Prospectus/Consent Solicitation Statement, Malkin Holdings LLC, as supervisor, proposes a consolidation of certain office and retail properties in Manhattan and the greater New York metropolitan area owned by Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C. and 250 West 57th St. Associates L.L.C., or the subject LLCs, and certain private entities supervised by the supervisor, and certain related management businesses into Empire State Realty Trust, Inc., or the company. The consolidation is conditioned, among other things, upon the closing of the initial public offering, or the IPO, of the company's Class A common stock. The company will issue to each of the participants in the subject LLCs a specified number of operating partnership units, or at each participant's election, Class A common stock or, to a limited extent, Class B common stock. Each participant may elect to receive one share of Class B common stock instead of one operating partnership unit for every 50 operating partnership units such participant would otherwise receive in the consolidation. Each share of Class B common stock has 50 votes on all matters on which stockholders are entitled to vote and the same economic interest as a share of Class A common stock, and one share of Class B common stock and 49 operating partnership units together represent a similar economic value as 50 shares of Class A common stock. The company expects the Class A common stock and the operating partnership units offered herein to be listed on the New York Stock Exchange. After the series of transactions in which the subject LLCs will be consolidated into the company, the company will own, through direct and indirect subsidiaries, the assets of the subject LLCs and the assets of the private entities, along with certain related management businesses. There are 22 private entities involved in the consolidation, including the operating lessees of each of the subject LLCs, from which all required consents to the consolidation have previously been obtained. Attached to the supplement for each subject LLC as Appendix B is the contribution agreement for each subject LLC, which describes the terms of the consolidation in detail. Only the participants holding participation interests in a subject LLC during the consent solicitation period are entitled to notice of, and to vote "FOR" or "AGAINST," the proposed consolidation. For the reasons the supervisor believes this proposal is fair and reasonable, see "Background of and Reasons for the Consolidation."

*Proposal to authorize the supervisor to sell or contribute the property interests in a third-party portfolio transaction.* As a potential alternative to the consolidation, the supervisor requests that the participants consent to the sale or contribution of the subject LLCs' property interests as part of a sale or contribution of the properties owned by the subject LLCs, the private entities and the management companies as a portfolio to an unaffiliated third party. The third-party portfolio transaction would be undertaken only if the aggregate consideration is at least 115% of the aggregate exchange value for the subject LLCs, the private entities and the management companies included in the third-party portfolio transaction and certain other conditions are met. The proposal must provide for all cash, payable in full at closing, but such proposal may provide for an option for all participants to elect to receive securities as an alternative to cash. If the proposal provides for a securities option, the Malkin Family will have the right to elect to receive securities only on the same proportional basis as other participants. No member of the Malkin Family will be an affiliate, consultant, employee, officer or director of the acquirer after the closing or receive any compensation from the acquirer (other than their pro rata share of the consideration that they will receive in the third-party portfolio transaction). For the reasons the supervisor believes this proposal is fair and reasonable, see "Third-Party Portfolio Proposal."



## Comparison of Distributions

The following table sets forth a comparison of the distributions by the subject LLCs and by the company:

Subject LLC	Average Annual Distribution for the years ending December 31, 2007-2011 Per \$10,000 Original Investment <sup>(1)</sup>	Estimated Initial Distribution of the Company to Former Participants for the year ending September 30, 2013 Per \$10,000 Original Investment <sup>(2)</sup>
<b>Empire State Building Associates L.L.C.</b>		
Distributions out of basic rent	\$ 1,179	
Distributions out of overage rent		
Overage rent distributions attributable to borrowing <sup>(1)</sup>	\$ 140	
Overage rent distributions attributable to operations	\$ 1,791	
<b>Total distributions</b>	<b>\$ 3,110</b>	<b>\$ 5,866<sup>(4)</sup></b>
<b>60 East 42nd St. Associates L.L.C.</b>		
Distributions out of basic rent	\$ 1,495	
Distributions out of overage rent		
Overage rent distributions attributable to borrowing <sup>(1)</sup>	\$ 1,498	
Overage rent distributions attributable to operations	\$ 3,317	
<b>Total distributions</b>	<b>\$ 6,310</b>	<b>\$ 7,294</b>
<b>250 West 57th St. Associates L.L.C.</b>		
Distributions out of basic rent	\$ 2,000	
Distributions out of overage rent		
Overage rent distributions attributable to borrowing <sup>(1)</sup>	\$ 3,308	
Overage rent distributions attributable to extraordinary lease cancellation payment <sup>(3)</sup>	\$ 652	
Overage rent distributions attributable to operations	\$ 5,016	
<b>Total distributions</b>	<b>\$ 10,976</b>	<b>\$ 7,421<sup>(4)</sup></b>

- (1) Distributions each year consist of small regular monthly distributions out of basic rent and larger, but variable, distributions out of overage rent. The amount of distributions out of overage rent varies from year to year depending on factors such as:
- capital expenditures funded out of operating cash flow which reduced distributions;
  - borrowings to fund capital expenditures which must be agreed to by the operating lessees of each subject LLC and which would otherwise have been paid out of operating cash flow, which increases overage rent and the amount available for distribution; and
  - non-recurring events that generate additional cash, such as early lease cancellations, which may increase distributions and non-recurring events that require expenditure of funds, which may decrease distributions.

Accordingly, participants should not treat the amount distributed in any year as indicative of the amount that they would have received in future years if the subject LLC continued its operations. After the consolidation, a diverse collection of properties will be combined with more efficient access to capital and, as a result, the supervisor expects that overall distributions should be more consistent with less fluctuation due to these factors.

- (2) The calculation of the estimated annual distributions to stockholders of the company is shown in the table under "Background of and Reasons for the Consolidation---Comparison of Distributions by the Subject LLCs and the Company---Distributions by the Company."
- (3) In 2010, the operating lessee received an extraordinary lease cancellation payment from a space tenant in the amount of \$7.9 million, which contributed to \$3,259 per \$10,000 original investment of overage rent distributions in that year (or \$652 per \$10,000 original investment of average annual overage rent distributions over the period).
- (4) Assumes that a participant is subject to the voluntary override.

the necessary financial statements and tax returns required to complete and deliver Schedules K-1 to participants in time to file their federal income tax returns by April 15, causing participants to have to file their tax returns on extension. After the consolidation, tax returns will be required only for the company and the operating partnership. Participants who receive operating partnership units will receive only one Schedule K-1. Participants who receive only common stock in the consolidation will receive one Form 1099 for all their interests. The supervisor believes that the simplified financial reporting and tax filings will allow for faster completion and distribution of Forms 1099 and Schedules K-1 for participants and allow participants to file their taxes by April 15 of each year and

- Loss of benefits from the consolidation described under “—The Supervisor’s Reasons for Proposing the Consolidation.”

*Conversion of the subject LLCs into individual REITs.* The supervisor considered the possibility of converting each subject LLC into a separate REIT that would list its shares on a national securities exchange. The supervisor believes that a REIT with a relatively small capitalization that is advised by an outside advisor and owns an interest in the ground lessor of a single property with most of its cash flow dependent on overage rent under the operating lease would not be well-received by traditional open-market purchasers of REIT common stock. The supervisor, therefore, believes that this alternative would not fulfill the objectives of participants in the subject LLCs.

*Listing of the participation interests on a national securities exchange.* The supervisor believes there would be limited trading interest in the presently outstanding participation interests due to, among other things, (i) the fact that the subject LLCs have a relatively small capitalization, own an interest in a property which is operated by an operating lessee that has significant decision-making authority with respect to the property; and (ii) the two-tier subject LLC structure, including the relative lack of certain corporate governance attributes, such as the ability to elect directors.

*Other means of producing liquidity.* The supervisor also considered other means of producing liquidity for the participants, such as cash tender offers to acquire participation interests from participants or borrowing by the subject LLCs secured by their interests in properties to provide funds for distribution to participants. The supervisor believes that cash tender offers are costly and would not yield a good value for participants and that borrowing to fund added distributions is not a feasible alternative given that most of its cash flow is dependent on overage rent under the operating lease.

The supervisor believes that cash tender offers would not be desirable because the price that could be offered to participants would be adversely affected by the current two-tier owner-lessee structure through which the subject LLCs own their interests in the properties and the limited resale market for participation interests.

The supervisor believes that it would be difficult for a subject LLC to borrow to fund added distributions because, among other things, such financing would require the operating lessee’s consent and agreement to join in the financing. Additionally, increasing the leverage on the properties would result in increased risks to the participants in the subject LLCs.

While the supervisor did not perform a detailed financial analysis of all these alternatives, other than continued operations of the subject LLCs and liquidation of the subject LLCs, the supervisor believes that these alternatives would not be as beneficial to participants as the consolidation.

*Certain potential alternatives as to Empire State Building Associates L.L.C. not considered viable by the supervisor.*

*Empire State Building stand-alone REIT.* The supervisor does not believe a REIT which includes only the Empire State Building is a feasible alternative. Any Empire State Building-only REIT would require the consent of Empire State Building Company L.L.C. which is controlled by the Malkin Family and the Helmsley estate. The Malkin Family and the Helmsley estate have consented only to the proposed consolidation and believe that a single-asset REIT would not be desirable.

The projections were prepared solely to determine the relative value among the subject LLCs, the private entities and the management companies and to establish exchange values to facilitate the consolidation and should not be relied upon for any other purpose, including without limitation, as an indicator of future performance of the company, the properties, the subject LLCs, the private entities or the management companies. The projections should not be relied upon determining the market value or the estimated value of the company after giving effect to the consolidation and the IPO. The actual performance of the properties and management companies may be materially different from these projections because of changes in market conditions and many other factors.

Projected Financial Statements													Empire State Building Cash Flows	
For the Years Ending	Year 1 Jun-2013	Year 2 Jun-2014	Year 3 Jun-2015	Year 4 Jun-2016	Year 5 Jun-2017	Year 6 Jun-2018	Year 7 Jun-2019	Year 8 Jun-2020	Year 9 Jun-2021	Year 10 Jun-2022	Year 11 Jun-2023	Year 12 Jun-2024	Year 13 Jun-2025	
<b>Potential Gross Revenue</b>														
Base Rental Revenue	106,458.98	124,000.84	131,583.95	139,590.33	142,789.94	151,060.14	160,824.64	168,533.74	179,660.79	185,777.70	189,425.77	196,923.78	202,218.52	
Antenna Revenue	\$ 17,353,196	\$ 18,098,447	\$ 18,526,017	\$ 18,961,616	\$ 19,664,138	\$ 21,004,972	\$ 22,252,180	\$ 22,988,285	\$ 23,647,711	\$ 23,744,477	\$ 23,536,339	\$ 24,046,935	\$ 24,758,539	
Absorption & Turnover Vacancy	(23,692.88)	(16,931.36)												
Base Rent Abatements														
Scheduled Base Rental Revenue	86,114.453	112,108.25	138,442.11	155,264.09	160,844.95	166,118.48	177,733.57	183,478.30	196,594.33	206,002.13	209,062.50	213,610.12	221,157.24	
Base Rental Step	72,360	72,360	73,446	84,606	87,712	13,802	6,210	6,210	3,105	0	0	0	0	
CPI & Other Adjustment Revenue	6,005,085	6,219,495	6,723,298	7,019,254	6,485,287	4,781,908	2,387,551	2,129,718	1,593,468	1,207,676	588,805	46,404	0	
<b>Expense</b>														
Real Estate Taxes	3,123,279	3,333,271	3,818,411	4,199,920	4,692,009	5,461,688	6,019,889	6,622,679	6,915,936	7,631,017	8,489,741	8,946,324	9,481,215	
Operating expenses	945,019	657,632	732,172	1,666,361	3,276,703	4,897,414	6,296,056	7,550,127	8,605,605	10,055,060	11,758,172	12,904,682	14,166,786	
Electric Inclusion	2,056,321	1,446,103	1,120,461	698,780	268,792	226,609	159,840	121,452	57,587	616	636	654	222	
Electric Submetering	3,493,841	4,443,486	5,384,900	5,717,229	6,007,125	6,221,184	6,341,839	6,505,052	6,766,047	7,028,698	7,217,774	7,264,790	7,330,163	
Escalation	102,839	104,381	107,513	64,114	19,419	20,002	20,601	21,220	3,589	0	0	0	0	
RF Monitoring Reimb.	150,696	150,913	153,358	157,972	149,083	117,443	52,006	38,696	23,294	14,213	870	0	0	
Broadcasting Base Rental Revenue	3,582,307	3,710,393	3,783,380	3,819,268	3,955,987	4,312,123	6,177,879	6,949,857	6,946,574	7,109,861	7,409,184	7,739,067	8,025,958	
Total Reimbursement Revenue	13,454,302	13,848,179	13,050,195	16,323,644	18,369,118	21,256,463	25,068,110	27,809,083	29,318,632	31,839,465	34,876,337	36,855,317	39,204,344	
Percentage Rent	284,090	292,520	301,296	310,334	319,644	329,233	339,111	349,285	359,762	370,556	381,672	393,122	404,916	
Observatory Income	64,999,999	66,950,000	66,950,000	66,950,000	66,950,000	68,958,500	71,027,256	73,158,072	75,353,815	77,613,399	79,941,302	82,340,034	84,810,257	

ESRT Prospectus, January 21, 2013  
Appendix C-1

Operating Exp														
Esc.	678,999	658,631	638,871	619,705	601,114	583,080	565,587	548,621	532,162	516,196	500,712	485,688	471,120	
Submetering														
Broadcasters	4,735,000	4,877,051	5,023,360	5,174,064	5,329,283	5,489,162	5,653,837	5,823,454	5,998,156	6,178,102	6,363,444	6,554,348	6,750,977	
Electric Retro	839,000	864,169	890,097	916,798	944,302	972,631	1,001,808	1,031,866	1,062,819	1,094,704	1,127,545	1,161,373	1,196,213	
Legal Fees	128,000	131,841	135,794	139,870	144,064	148,388	152,839	157,423	162,146	167,012	172,020	177,182	182,498	
Carpet Care &														
Shampoo	302,000	311,060	320,391	330,004	339,904	350,101	360,603	371,423	382,564	394,042	405,863	418,039	430,579	
Cleaning Service	892,000	919,789	947,585	975,804	1,005,080	1,035,231	1,066,289	1,098,277	1,131,227	1,165,163	1,200,117	1,236,120	1,273,205	
Porter/Matron														
Service	235,000	242,051	249,311	256,790	264,495	272,429	280,604	289,019	297,692	306,621	315,820	325,296	335,052	
Robbush														
Removal	208,000	214,240	220,668	227,287	234,106	241,128	248,364	255,813	263,488	271,392	279,536	287,920	296,558	
Waxing/Floor														
Maintenance	265,000	272,951	281,137	289,573	298,260	307,208	316,424	325,917	335,694	345,764	356,136	366,823	377,827	
Water	140,000	144,201	148,524	152,982	157,573	162,299	167,167	172,183	177,347	182,668	188,148	193,793	199,608	
Skyride Security														
Reimb	402,000	414,060	426,481	439,277	452,455	466,028	480,009	494,409	509,241	524,519	540,254	556,463	573,155	
Exterminating	8,999	9,270	9,549	9,834	10,128	10,434	10,748	11,068	11,401	11,744	12,095	12,458	12,831	
Elevator Service	105,000	108,150	111,395	114,735	118,178	121,724	125,376	129,136	133,011	137,002	141,110	145,345	149,705	
Labor	110,000	113,301	116,699	120,199	123,805	127,522	131,344	135,288	139,345	143,525	147,831	152,266	156,833	
Keys	11,000	11,329	11,670	12,021	12,381	12,752	13,134	13,528	13,935	14,352	14,784	15,227	15,683	
Lamp Sales	33,999	35,020	36,071	37,132	38,268	39,415	40,597	41,817	43,070	44,363	45,693	47,064	48,476	

C-1-20

The projections were prepared solely to determine the relative value among the subject LLCs, the private entities and the management companies and to establish exchange values to facilitate the consolidation and should not be relied upon for any other purpose, including without limitation, as an indicator of future performance of the company, the properties, the subject LLCs, the private entities or the management companies. The projections should not be relied upon determining the market value or the estimated value of the company after giving effect to the consolidation and the IPO. The actual performance of the properties and management companies may be materially different from these projections because of changes in market conditions and many other factors.

For the Years Ending	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13
	Jun-2013	Jun-2014	Jun-2015	Jun-2016	Jun-2017	Jun-2018	Jun-2019	Jun-2020	Jun-2021	Jun-2022	Jun-2023	Jun-2024	Jun-2025
Captive	25,999	26,781	27,583	28,411	29,263	30,141	31,044	31,978	32,936	33,923	34,942	35,990	37,069
Window Cleaning	49,000	50,470	51,984	53,544	55,150	56,805	58,508	60,263	62,072	63,934	65,852	67,827	69,864
Trademark													
Licensing	76,000	78,280	80,628	83,048	85,538	88,103	90,747	93,471	96,275	99,163	102,136	105,203	108,358
Location													
Agreements	20,000	20,600	21,217	21,854	22,511	23,184	23,881	24,598	25,334	26,096	26,879	27,684	28,515
Event Income	265,000	272,951	281,137	289,573	298,260	307,208	316,424	325,917	335,694	345,764	356,136	366,823	377,827
Extended													
Lighting	13,000	13,391	13,790	14,207	14,631	15,072	15,523	15,988	16,468	16,962	17,471	17,995	18,535
Interest	65,000	65,000	65,000	65,000	65,000	65,000	65,000	65,000	65,000	65,000	65,000	65,000	65,000
Late Payment													
Charges	256,000	263,680	271,591	279,738	288,130	296,773	305,677	314,848	324,293	334,022	344,043	354,363	364,995
Miscellaneous													
Income	288,001	296,640	305,540	314,704	324,147	333,872	343,886	354,204	364,829	375,776	387,047	398,660	410,618
One-time ICIP													
Refund	3,158,371	0	0	0	0	0	0	0	0	0	0	0	0
Total Potential Gross													
Revenue	184,141,567	209,905,714	238,226,221	256,918,108	264,312,741	273,014,087	288,427,231	299,116,186	315,738,316	329,891,038	338,061,779	346,820,170	359,527,861

ESRT Prospectus, January 21, 2013

Appendix C-1

General Vacancy	(628,065)	(615,897)	(1,677,118)	(3,225,217)	(4,037,547)	(2,827,582)	(2,506,598)	(2,018,388)	(3,550,066)	(4,622,520)	(4,192,486)	(3,076,196)	(3,841,477)
Collection Loss	(1,799,880)	(2,659,972)	(2,339,309)	(2,528,001)	(2,598,598)	(2,678,181)	(2,826,904)	(2,931,153)	(3,097,525)	(3,233,513)	(3,309,137)	(3,598,032)	(3,524,067)
Effective Gross Revenue	181,813,622	207,229,842	234,209,794	251,164,890	257,676,596	267,508,324	283,093,729	294,166,645	309,110,725	322,035,005	330,560,156	340,345,942	352,162,317
Operating Expenses													
Real Estate Taxes	30,883,340	31,689,114	32,502,197	33,322,641	34,150,496	35,320,740	36,532,116	37,786,073	39,084,107	40,427,766	41,614,870	42,837,585	44,096,983
Cleaning	7,797,100	8,031,015	8,271,945	8,520,103	8,725,705	9,058,976	9,310,148	9,589,351	9,877,135	10,173,447	10,478,652	10,793,012	11,116,800
Security	6,904,235	7,111,362	7,324,703	7,544,443	7,770,778	8,003,901	8,244,016	8,491,340	8,746,078	9,008,460	9,278,715	9,557,076	9,843,789
Professional Fees	6,983,099	6,667,179	6,074,544	6,256,777	6,444,481	6,637,817	6,836,951	7,042,058	7,254,321	7,470,922	7,695,047	7,928,900	8,163,676
Insurance	8,262,100	8,509,964	8,765,260	9,028,221	9,299,066	9,578,039	9,865,379	10,161,340	10,466,182	10,780,166	11,103,572	11,436,679	11,779,778
Repairs & Maintenance	9,794,999	8,148,775	6,667,178	6,867,196	7,073,211	7,285,407	7,503,971	7,729,089	7,960,960	8,199,792	8,445,783	8,699,158	8,960,133
Payroll	10,371,169	10,682,305	11,002,774	11,332,857	11,672,842	12,023,027	12,383,719	12,755,229	13,137,887	13,532,023	13,937,984	14,356,124	14,786,807
Utilities	15,556,752	16,023,456	16,504,159	16,999,284	17,509,262	18,034,540	18,575,578	19,132,843	19,706,830	20,298,035	20,906,975	21,534,184	22,180,240
Management Fee	909,068	1,036,149	1,171,049	1,255,824	1,288,383	1,337,542	1,415,469	1,470,833	1,545,554	1,610,175	1,652,801	1,701,730	1,760,812
Total Operating Expenses	97,462,762	97,899,319	98,283,809	101,127,346	103,984,224	107,259,989	110,667,347	114,158,256	117,778,054	121,500,786	123,114,399	128,841,448	132,688,988
Net Operating Income	84,350,860	109,330,523	135,925,985	150,037,544	153,692,372	160,248,335	172,426,382	180,008,389	191,332,671	200,534,219	205,445,757	211,504,494	219,473,329
Leasing & Capital Costs													
Tenant Improvements	19,812,540	13,751,587	8,369,066	2,320,384	1,098,829	1,221,484	3,311,156	5,989,828	3,732,665	2,496,115	2,391,103	4,917,140	3,379,021
Leasing Commissions	11,231,059	12,918,065	9,393,090	2,463,621	1,113,588	7,294,599	6,177,918	9,166,961	5,821,906	4,001,446	2,437,267	5,271,154	3,223,497
Capital Expenditures	87,990,460	55,555,355	24,176,013	15,407,824	11,429,417	7,923,416	6,344,798	2,231,149	2,031,723	2,278,180	0	0	0
Base Building Costs	1,749,999	1,163,901	1,103,336	1,562,600	787,857	2,109,877	1,552,269	3,308,360	2,242,181	1,317,820	0	0	0
LI & Fung LC/BB/TT	21,420,876	11,144,684	4,828,698	0	0	0	0	0	0	0	0	0	0
Total Leasing & Capital Costs	142,204,934	94,833,590	47,870,201	21,754,429	14,429,691	18,549,376	17,386,141	20,696,298	13,828,477	10,093,561	4,828,870	10,188,294	6,602,518
Cash Flow Before Debt Service & Taxes	(\$ 57,854,074)\$	14,796,933	\$ 88,055,784	\$ 128,283,115	\$ 139,262,681	\$ 141,698,959	\$ 155,040,241	\$ 159,312,091	\$ 177,504,194	\$ 190,440,658	\$ 200,616,887	\$ 201,316,200	\$ 212,870,811

**From:** Orlic, David L.  
**Sent:** Tuesday, January 22, 2013 8:34 AM  
**To:** Kluck, Thomas; McHale, Angela R.  
**Subject:** FW: ACCEPTED 424B3 FOR 0001541401 (0001193125-13-018290)

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

3 weeks short of a year.

-----Original Message-----

**From:** [edgar-postmaster@sec.gov](mailto:edgar-postmaster@sec.gov) [mailto:[edgar-postmaster@sec.gov](mailto:edgar-postmaster@sec.gov)]  
**Sent:** Tuesday, January 22, 2013 8:00 AM  
**To:** Orlic, David L.  
**Subject:** ACCEPTED 424B3 FOR 0001541401 (0001193125-13-018290)

THE FOLLOWING SUBMISSION HAS BEEN ACCEPTED BY EDGAR.

COMPANY: Empire State Realty Trust, Inc.  
CIK: 0001541401  
FORM TYPE: 424B3ITEMS:

ACCESSION NUMBER: 0001193125-13-018290  
FILE NUMBER: 333-179486  
CO-REGISTRANTS: Yes  
RECEIVED DATE: 2013-01-22 07:59:16.0  
FILING DATE: 2013-01-22 07:59:16.0  
E/P: E  
CONFIRMING COPY: No

You received this message because user ORLICD has set up a notification request in your EDGAR inbox that matches the characteristics of this filing.

**From:** Orlic, David L.  
**Sent:** Monday, February 25, 2013 9:58 AM  
**To:** (b)(6); Kluck, Thomas; McHale, Angela R.; (b)(6)  
**Cc:** (b)(6)  
**Subject:** FW: ACCEPTED 425 FOR 0001541401 (0001193125-13-071583)

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

(b)(6)  
-David

-----Original Message-----  
**From:** [edgar-postmaster@sec.gov](mailto:edgar-postmaster@sec.gov) [mailto:[edgar-postmaster@sec.gov](mailto:edgar-postmaster@sec.gov)]  
**Sent:** Friday, February 22, 2013 4:35 PM  
**To:** Orlic, David L.  
**Subject:** ACCEPTED 425 FOR 0001541401 (0001193125-13-071583)

THE FOLLOWING SUBMISSION HAS BEEN ACCEPTED BY EDGAR.

COMPANY: Empire State Realty Trust, Inc.  
CIK: 0001541401  
FORM TYPE: 425ITEMS:

ACCESSION NUMBER: 0001193125-13-071583  
FILE NUMBER: 333-179485  
CO-REGISTRANTS: No  
RECEIVED DATE: 2013-02-22 16:34:12.0  
FILING DATE: 2013-02-22 16:34:12.0  
E/P: E  
CONFIRMING COPY: No

You received this message because user ORLICD has set up a notification request in your EDGAR inbox that matches the characteristics of this filing.

**From:** Kluck, Thomas  
**Sent:** Tuesday, January 29, 2013 12:50 PM  
**To:** McHale, Angela R.; Orlic, David L.  
**Subject:** FW: allegation of personal threats

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Fyi – since the meeting is tomorrow, I thought that David and I could attend. I'll get the information to her.

---

**From:** (b)(6)  
**Sent:** Tuesday, January 29, 2013 12:19 PM  
**To:** Kluck, Thomas  
**Subject:** FW: allegation of personal threats

(b)(5);(b)(6)

---

**From:** (b)(6)  
**Sent:** Monday, January 28, 2013 1:29 PM  
**To:** (b)(6)  
**Subject:** RE: allegation of personal threats

Yes, tomorrow is wide open for me.

(b)(6)

---

**From:** (b)(6)  
**Sent:** Monday, January 28, 2013 12:34 PM  
**To:** (b)(6)  
**Subject:** RE: allegation of personal threats

I just started on a conference call now, as soon as I am off I will call you. If we miss each other, how about tomorrow? I am in all day



---

**From:** (b)(6)  
**Sent:** Monday, January 28, 2013 12:30 PM  
**To:** (b)(6)  
**Subject:** RE: allegation of personal threats

Can we make it earlier? I'm available until 1

(b)(6)

---

**From:** (b)(6)  
**Sent:** Monday, January 28, 2013 10:29 AM  
**To:** (b)(6)  
**Subject:** RE: allegation of personal threats

Can I call you at 1:30 today?

---

**From:** (b)(6)  
**Sent:** Friday, January 25, 2013 2:28 PM  
**To:** (b)(6)  
**Subject:** RE: allegation of personal threats

(b)(5);(b)(6)

I'm free Monday until about 10:30-11:45 and then free until about 2-5.

(b)(6)

---

(b)(6)

---

**From:** (b)(6)  
**Sent:** Thursday, January 24, 2013 5:53 PM  
**To:** (b)(6)  
**Subject:** allegation of personal threats

(b)(5);(b)(6) as it was given to Corp Fin staff in a phone conversation we had with an investor today. Mr. Edelman is a shareholder who opposes a transaction proposed by Peter and Anthony Malkin and affiliates to roll up interests investors (including Mr. Edelman) own in several separate buildings into one public REIT. Mr. Edelman has been contacting fellow shareholders to talk to them about his opposition to the Malkin's proposal.

(b)(5)

The public filing on this is an S-4 filed by Empire State Realty Trust Inc.

(b)(6)

Special Counsel  
Office of Enforcement Liaison  
Division of Corporation Finance

---

**From:** McHale, Angela R.  
**Sent:** Thursday, January 24, 2013 12:23 PM  
**To:** (b)(6); (b)(6)  
**Cc:** Kluck, Thomas; Orlic, David L.  
**Subject:** Phone call with Richie Edelman

Hi,

David, Tom and I just got off the phone with Richie Edelman, and we wanted to alert you as to part of our conversation. (b)(6) Richie claimed that he has received threats from the Malkins, as well as from people "close to the Malkins." The alleged threats ranged from threats of "severe economic ruin" to threats of physical harm. In one instance, he said, his college-aged daughter was named personally. He has taken certain steps to modify his life as a result, including sending his daughter overseas for a study-abroad experience a year earlier than planned. He claims that the Malkins have made similar threats to other investors in the private deals, as well as to certain reporters.

(b)(5)

Thanks,

Angela

**From:** Orlic, David L.  
**Sent:** Tuesday, January 29, 2013 1:38 PM  
**To:** (b)(6);  
**Subject:** FW: allegation of personal threats

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

(b)(5);(b)(6)

it. -David

---

**From:** Kluck, Thomas  
**Sent:** Tuesday, January 29, 2013 12:50 PM  
**To:** McHale, Angela R.; Orlic, David L.  
**Subject:** FW: allegation of personal threats

Fyi – since the meeting is tomorrow, I thought that David and I could attend. I'll get the information to her.

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**From:** (b)(6);  
**Sent:** Tuesday, January 29, 2013 12:19 PM  
**To:** Kluck, Thomas  
**Subject:** FW: allegation of personal threats

(b)(5);(b)(6)

---

**From:** (b)(6);  
**Sent:** Monday, January 28, 2013 1:29 PM  
**To:** (b)(6);  
**Subject:** RE: allegation of personal threats

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(b)(6)

---

**From:** (b)(6)  
**Sent:** Monday, January 28, 2013 12:34 PM  
**To:** (b)(6)  
**Subject:** RE: allegation of personal threats

I just started on a conference call now, as soon as I am off I will call you. If we miss each other, how about tomorrow? I am in all day

---

**From:** (b)(6)  
**Sent:** Monday, January 28, 2013 12:30 PM  
**To:** (b)(6)  
**Subject:** RE: allegation of personal threats

Can we make it earlier? I'm available until 1

---

(b)(6)



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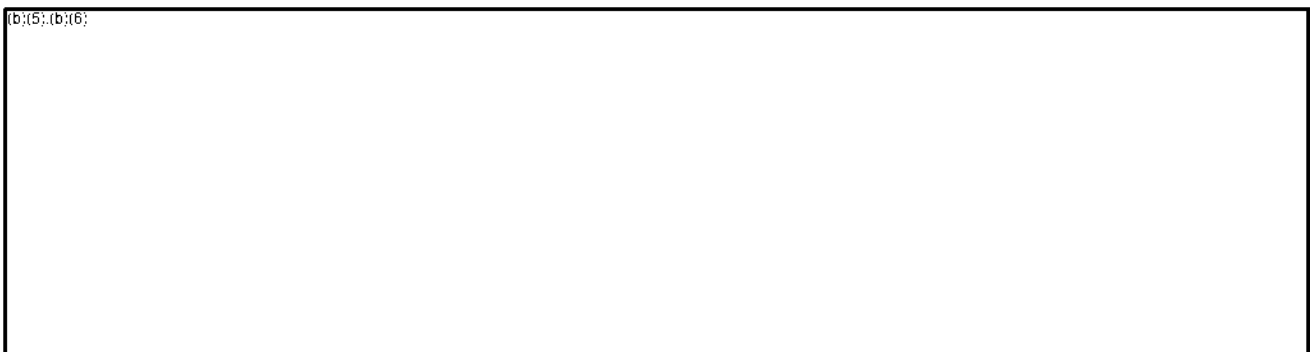
**From:** (b)(6)  
**Sent:** Monday, January 28, 2013 10:29 AM  
**To:** (b)(6)  
**Subject:** RE: allegation of personal threats

Can I call you at 1:30 today?

---

**From:** (b)(6)  
**Sent:** Friday, January 25, 2013 2:28 PM  
**To:** (b)(6)  
**Subject:** RE: allegation of personal threats

(b)(6); (b)(6)



I'm free Monday until about 10:30-11:45 and then free until about 2-5.

(b)(6)

(b)(6)

---

**From:** (b)(6)

**Sent:** Thursday, January 24, 2013 5:53 PM

**To:** (b)(6)

**Subject:** allegation of personal threats

(b)(5);(b)(6)

as it was given to Corp Fin staff in a phone conversation we had with an investor today. Mr. Edelman is a shareholder who opposes a transaction proposed by Peter and Anthony Malkin and affiliates to roll up interests investors (including Mr. Edelman) own in several separate buildings into one public REIT. Mr. Edelman has been contacting fellow shareholders to talk to them about his opposition to the Malkin's proposal.

(b)(5)

The public filing on this is an S-4 filed by Empire State Realty Trust Inc.

(b)(6)

---

**From:** McHale, Angela R.

**Sent:** Thursday, January 24, 2013 12:23 PM

**To:** (b)(6)

(b)(6)

**Cc:** Kluck, Thomas; Orlic, David L.

**Subject:** Phone call with Richie Edelman

Hi,

David, Tom and I just got off the phone with Richie Edelman, and we wanted to alert you as to part of our conversation. (b)(6) Richie claimed that he has received threats from the Malkins, as well as from people "close to the Malkins." The alleged threats ranged from threats of "severe economic ruin" to threats of physical harm. In one instance, he said, his college-aged daughter was named personally. He has taken certain steps to modify his life as a result, including sending his daughter overseas for a study-abroad experience a year earlier than planned. He claims that

the Malkins have made similar threats to other investors in the private deals, as well as to certain reporters.

(b)(5)

Thanks,

Angela

**From:** Orlic, David L.  
**Sent:** Monday, April 29, 2013 9:33 AM  
**To:** [b:(6)]  
**Subject:** FW: Empire - article

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi [b:(6)] welcome back. I hope you had a good vacation. This article is on the front page of today's NYT. It's easier to read online:

<http://www.nytimes.com/2013/04/29/business/empire-state-building-feud-nears-crucial-ruling.html?ref=todayspaper>

-David

---

**From:** Kluck, Thomas  
**Sent:** Monday, April 29, 2013 9:18 AM  
**To:** McHale, Angela R.; Orlic, David L.  
**Cc:** [b:(6)]  
**Subject:** Empire - article

---

# The New York Times

Business/Financial Desk: SECTA

## A Nasty, Epic Real Estate Battle With Stakes 102 Stories High

By CHARLES V. BAGLI and JULIE CRESWELL

1596 words

29 April 2013

The New York Times

NYTF

Late Edition - Final

1

English

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On the day it opened in 1931, the Empire State Building carved out a special place on the New York skyline, but it has also been at the center of a succession of battles for control by equally larger-than-life figures, including Donald J. Trump and Leona Helmsley.

Now, the 102-story tower is the prize in yet another epic battle, which will play out in court starting on Monday.

On one side are the New York real estate barons Peter L. Malkin and his son Anthony E. Malkin, who control the landmark tower but are minority owners. They are within a whisker of landing the deal of a lifetime, valued at \$5.2 billion, that would offer to the public shares in 19 properties in the New York area that they oversee, including the crown jewel, the Empire State Building.

The offering would catapult the Malkin family into the elite of Manhattan real estate, valuing their stake at an estimated \$730 million and installing Anthony Malkin as chairman of a major new company, **Empire State Realty Trust**.

But standing in their way is an eclectic group of dissenters led by the California businessman Richard Edelman and Andrew S. Pearson, a speculative investor who owns Grand Central Terminal. They argue that the deal may harm the value of the investors' shares and expose them to tax liabilities and the vagaries of the stock market, all while enriching the Malkins.

This week, the conflict will reach a critical juncture when the court will either upend the Malkins' plans altogether or disallow a legal challenge and remove a major roadblock.

For more than a year, the Malkins have painstakingly persuaded 75 percent of the building's roughly 3,000 stakeholders to vote in favor of going public, just shy of the required 80 percent.

As they have campaigned, the vote has turned into a public blood feud. Unlike the typical battle involving a dozen institutions that own the bulk of the stock, this one requires an investor-by-investor appeal. The hostility has shocked even longtime observers used to occasional bouts of mudslinging in the world of New York real estate.

"I'm amazed at the level of enmity," said Barry Vinocur, the editor at a trade publisher, REIT Zone Publications. "I can't recall ever seeing anything like it."

The Malkins argue that the new company would provide a modern corporate structure, allowing investors to more easily buy and sell their stakes and enhance value over time.

Anthony Malkin described those opposed to the deal as "a small group of big holders" who offered investors "only a dead end, with all of the many downsides of the current archaic structure."

In the heat of the battle, the Malkins have accused Mr. Edelman and his followers of lying and spreading misinformation, and their legal forces have fired off numerous cease-and-desist letters. The opposing investors have tried to rally opponents through a Web site and by holding periodic conference calls.

All of this back-and-forth has left some of the current Empire State Building stakeholders flummoxed.

Meyer Shlafmitz, 83, a retired steel salesman who lives in Queens, owns a single share in the building. He has changed his vote twice, most recently voting in favor of the offering.

"It's a he-said, she-said kind of thing," Mr. Shlafmitz said.

The foundation for the current dispute was laid in 1961 when Harry B. Helmsley, a storied figure in New York real estate, and his partner, Lawrence A. Wien, bought control of the Empire State Building from the billionaire industrialist Henry Crown. **Peter Malkin**, who was also involved in the deal, is the son-in-law of Mr. Wien; Anthony Malkin is Mr. Wien's grandson.

To help finance the deal, the group sold 3,300 units in the building priced at \$10,000 a unit.

For many of the original investors, some of whom bought more than one share, the Empire State Building embodies romance, a treasured investment and an echo of an era when New York's rising middle class nervously put all their meager savings into a tower that touched the sky.

Mr. Shlafmitz says he still remembers the day in 1961 that his father, a watch repairman, purchased a half-share in the Empire State Building for \$5,000, nearly all the money he had.

"His hands shook when he wrote out the check," he said. "He was very fearful that something would go wrong."

Mr. Edelman's grandfather Max Edelman was an escalator salesman for the Peelle Company in Brooklyn who routinely saved half of what he made every year. He ultimately bought 10 shares in the Empire State Building.

"There was a mystique to the Empire State Building in 1961," said Thelma Shafran, 82, who together with her mother bought two and a half shares. "We felt very daring to have invested in this."



The deal itself was complicated, bringing together parties who would later wage repeated battles over control of the property.

Soon after the Malkins gained control of the building in 2002, they embarked on an extensive renovation. Hundreds of millions of dollars were spent restoring the Art Deco lobby, upgrading office space and improving energy efficiency. Those efforts have attracted new tenants who are paying higher rents.

In 2011, the Helmsley estate made known its desire to sell its stake, which is valued at around \$1 billion. The Malkins, worried about the potential problems an outside buyer could bring, quickly put together plans to combine the building with others they owned or controlled in Manhattan and Connecticut.

Early last year, the Malkins proposed creating a real estate investment trust. They say they hope to raise about \$1 billion, much of which will go to buy the Helmsley stake and repay investors for the cost of the offering.

"The status quo is a fiction," Anthony Malkin said, "because regardless of the outcome of the vote, the Helmsley estate must sell its interests to a third party, with the risk of massive disruption if there is no I.P.O."

The Malkins' plan quickly rankled some of the building's stakeholders.

Some critics argued that the Empire State Building was far more valuable than the other buildings the Malkins had tossed into the mix. The Malkins' own projections show that the Empire State Building's net operating income is expected to more than double by 2015.

"We know that it's going to be fabulously profitable in the coming years according to their own documents," Mr. Edelman said. "Why should we sell it now?"

Others say the only clear winners they can see from the offer are the Malkins themselves.

"It's obviously a good deal for the Malkins and the Helmsley estate, but that doesn't mean it's a good deal for the investor," said Ken Woolfe, who inherited his single share from his father.

Anthony Malkin would become chairman of the company, with a \$500,000 salary. But the big money for the family would come from its stake in the deal, a source of particular ire for opponents. The value of that stake was calculated, in part, by converting the Malkins' future profits and fees into a bigger stake, worth nearly \$730 million.

"Tony Malkin gets the chance to go from being a millionaire to potentially being a billionaire," said Andrew Shact, a tax lawyer who holds two shares with his sister and opposes the deal. "For the Malkins, this is a chance of a lifetime."

Soon after the plan was proposed, handful of Empire State Building stakeholders led by Mr. Person filed a lawsuit in State Supreme Court in Manhattan claiming that the vote should be halted because a clause in the agreement violates state law. Their suit is the subject of this week's court hearing.

Under the agreement, once the Malkins achieve the 80 percent approval, anyone who voted against it has 10 days to switch, or they could receive only \$100 for their share. The offering values the shares at about \$323,000 each.

Opponents argue that state law requires that the Malkins pay "fair value" for all shares.

"I think the whole consolidation is at stake," said Stephen B. Meister, the lawyer representing the dissenting stakeholders.

The Malkins, who dismissed the lawsuit as a "publicity stunt," contend that the provision prevents the "tyranny of the minority."

As the delays have mounted, many who favor of the deal have become increasingly annoyed.

One investor, Nancy Felton, along with her siblings, inherited about a half-dozen units from her father, who was a partner in Mr. Wien's law firm. She says she understands the attachment to the building.

"My dad was a poor kid from the East Side who made good," she said. "I care about that story. I've told it to my kids. It's part of the lore in my household. But I'm not sure why you lose that story because of this deal. You can still point to a brick and say, 'I own that brick.'"

(A1):

**From:** emailednews@email.global.factiva.com on behalf of Factiva  
<emailednews@email.global.factiva.com>  
**Sent:** Tuesday, April 30, 2013 12:33 PM  
**To:** Kluck, Thomas  
**Subject:** Empire State Realty Trust : Greenwich mogul makes play for Empire State Building

Factiva Alerts

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Continuous Alert

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Empire State Realty Trust

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Greenwich mogul makes play for Empire State Building The Advocate, Bill Cummings, Tuesday, 30 April 2013, 03:15 GMT, 725 Words, © 2013 (Document WC40393020130430e94u0000o)

Greenwich real estate baron Peter Malkin wants to add the Empire State Building -- one of world's best known and most storied skyscrapers -- to his portfolio of office towers in Connecticut and New York.

<http://global.factiva.com/redirect/default.aspx?p=sta&ep=AE&an=WC40393020130430e94u0000o&fid=301099182&cat=w&aid=95EC001000&ns=A0&fn=Empire%20State%20Realty%20Trust&ft=g&OD=V2AUbjNagd6b6yKMegonfnoUAZrTDW4K5jnAwC70GVmxODGqNnev%2f1A%3d%3d%7c2>

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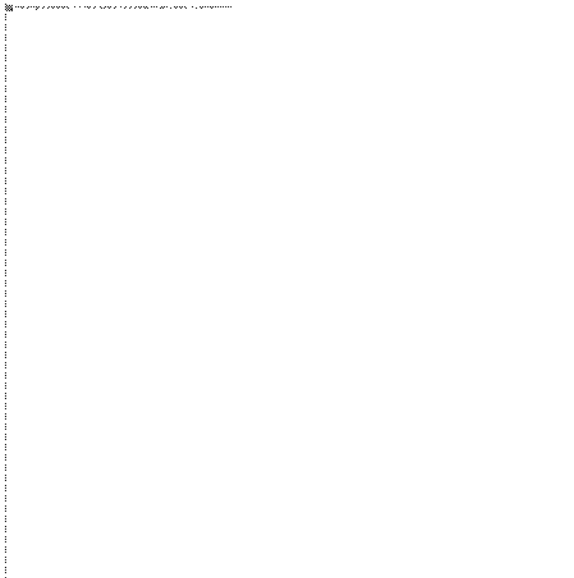
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**From:** emailednews@email.global.factiva.com on behalf of Factiva  
<emailednews@email.global.factiva.com>  
**Sent:** Tuesday, April 30, 2013 2:54 PM  
**To:** Kluck, Thomas  
**Subject:** ESRT : Empire State Building IPO Opponents Lose Buyout Challenge



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## Continuous Alert

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### ESRT

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#### Empire State Building IPO Opponents Lose Buyout Challenge

Bloomberg, Chris Dolmetsch, Tuesday, 30 April 2013, 22:37 GMT, 718 Words, © 2013  
(Document WC93177020130430e94u004v5)

Investors opposed to a deal to take New York's iconic Empire State Building (ESB) public failed to persuade a state court judge to declare illegal a plan to buy them out for \$100 a share.

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**From:** emailednews@email.global.factiva.com on behalf of Factiva  
<emailednews@email.global.factiva.com>  
**Sent:** Tuesday, April 30, 2013 2:54 PM  
**To:** Kluck, Thomas  
**Subject:** Empire State Realty Trust : Empire State Building IPO Opponents Lose Buyout Challenge

Factiva Alerts

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Continuous Alert

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Empire State Realty Trust

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Empire State Building IPO Opponents Lose Buyout Challenge Bloomberg, Chris Dolmetsch, Tuesday, 30 April 2013, 22:37 GMT, 718 Words, © 2013 (Document WC93177020130430e94u004v5)

Investors opposed to a deal to take New York's iconic Empire State Building (ESB) public failed to persuade a state court judge to declare illegal a plan to buy them out for \$100 a share.

<http://global.factiva.com/redirect/default.aspx?p=sta&ep=AE&an=WC93177020130430e94u004v5&fid=301099182&cat=w&aid=95EC001000&ns=A0&fn=Empire%20State%20Realty%20Trust&ft=g&OD=V2AUbjNagq6b6yKMegonfnoUAZrTDW4K5jnAwC70GVmxODGqNnev%2f1A%3d%3d%7c2>

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**From:** emailednews@email.global.factiva.com on behalf of Factiva  
<emailednews@email.global.factiva.com>  
**Sent:** Tuesday, April 30, 2013 3:54 PM  
**To:** Kluck, Thomas  
**Subject:** Empire State Realty Trust : WSJ Blog: Empire State Building IPO Clears Another Hurdle

Factiva Alerts

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Continuous Alert

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Empire State Realty Trust

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WSJ Blog: Empire State Building IPO Clears Another Hurdle Dow Jones News Service, Tuesday, 30 April 2013, 19:52 GMT, 557 Words, (c) 2013 Dow Jones & Company, Inc.  
(Document DJ00000020130430e94u000zh)

(This story has been posted on The Wall Street Journal Online's Money Beat blog at <http://blogs.wsj.com/moneybeat>.)

By Craig Karmin

A New York judge on Tuesday removed another potential obstacle to a plan for selling the Empire State Building ...

<http://global.factiva.com/redirect/default.aspx?p=sta&ep=AE&an=DJ00000020130430e94u000zh&fid=301099182&cat=a&aid=95EC001000&ns=A0&fn=Empire%20State%20Realty%20Trust&ft=g&OD=V2AUbjNaqd6b6yKMegonfnoUAZrTDW4K5jnAwC70GVmxODGqNnev%2f1A%3d%3d%7c2>

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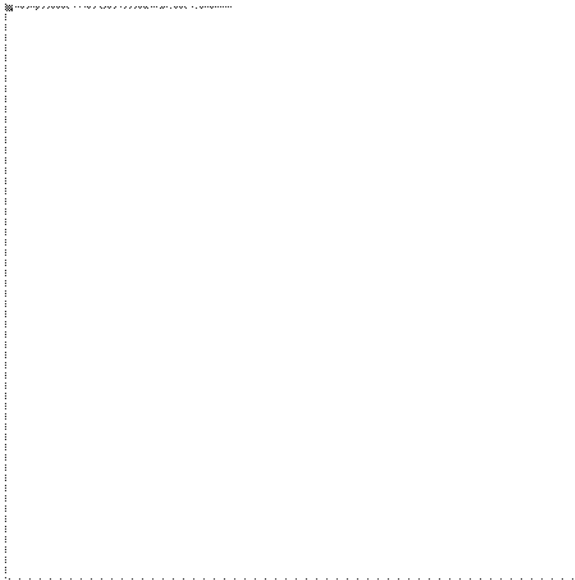
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**From:** emailednews@email.global.factiva.com on behalf of Factiva  
<emailednews@email.global.factiva.com>  
**Sent:** Tuesday, April 30, 2013 3:54 PM  
**To:** Kluck, Thomas  
**Subject:** ESRT : WSJ Blog: Empire State Building IPO Clears Another Hurdle



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### ESRT

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#### WSJ Blog: Empire State Building IPO Clears Another Hurdle

Dow Jones News Service, Tuesday, 30 April 2013, 19:52 GMT, 557 Words, (c) 2013 Dow Jones & Company, Inc.  
(Document DJ00000020130430e94u000zh)

(This story has been posted on The Wall Street Journal Online's Money Beat blog at <http://blogs.wsj.com/moneybeat/>.)

By Craig Karmin

A New York judge on Tuesday removed another potential obstacle to a plan for selling the Empire State Building ...



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<emailednews@email.global.factiva.com>  
**Sent:** Tuesday, April 30, 2013 3:57 PM  
**To:** Kluck, Thomas  
**Subject:** Empire State Realty Trust : Empire State Building IPO Clears Another Hurdle

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Empire State Realty Trust

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Empire State Building IPO Clears Another Hurdle WSJ Blogs, By Craig Karmin, Tuesday, 30 April 2013, 19:52 GMT, 515 Words, Copyright 2013 Dow Jones & Company, Inc. All Rights Reserved.  
(Document WCWSJB0020130430e94u006mx)

A New York judge on Tuesday removed another potential obstacle to a plan for selling the Empire State Building as part of a giant public offering, ruling that a share-buyout provision in the plan did not violate the law.

<http://global.factiva.com/redirect/default.aspx?p=sta&ep=AE&an=WCWSJB0020130430e94u006mx&fid=301099182&cat=w&aid=9SEC001000&ns=A0&fn=Empire%20State%20Realty%20Trust&ft=g&OD=V2AUbjNagq6b6yKMegonfnoUAZrTDW4K5jnAwC70GVmxODGqNnev%2f1A%3d%3d%7c2>

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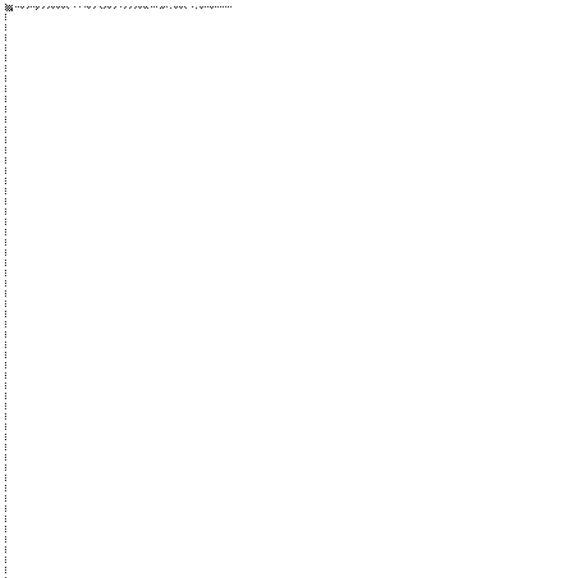
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**Sent:** Tuesday, April 30, 2013 3:57 PM  
**To:** Kluck, Thomas  
**Subject:** ESRT : Empire State Building IPO Clears Another Hurdle



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### ESRT

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#### Empire State Building IPO Clears Another Hurdle

WSJ Blogs. By Craig Karmin, Tuesday, 30 April 2013, 19:52 GMT . 515 Words, Copyright 2013  
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(Document WCWSJB0020130430e94u006mx)

A New York judge on Tuesday removed another potential obstacle to a plan for selling the Empire State Building as part of a giant public offering, ruling that a share-buyout provision in the plan did not violate the law.

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<emailednews@email.global.factiva.com>  
**Sent:** Tuesday, April 30, 2013 6:26 PM  
**To:** Kluck, Thomas  
**Subject:** Empire State Realty Trust : Empire State Clears a Hurdle to IPO

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Empire State Realty Trust

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Empire State Clears a Hurdle to IPO

The Wall Street Journal Online, By Craig Karmin, Tuesday, 30 April 2013, 22:23 GMT, 525 Words,  
Copyright 2013 Dow Jones & Company, Inc. All Rights Reserved.  
(Document WSJO000020130430e94u00912)

A New York judge on Tuesday removed a potential obstacle to a plan for selling the Empire State Building as part of a giant public offering, ruling that a share-buyout provision in the plan doesn't violate the law.

<http://global.factiva.com/redirect/default.aspx?p=sta&ep=AE&an=WSJO000020130430e94u00912&fid=301099182&cat=a&aid=9SEC001000&ns=A0&fn=Empire%20State%20Realty%20Trust&ft=g&OD=V2AUbjNagd6b6yKMegonfnoUAZrTDW4K5jnAwC70GVmxODGqNnev%2f1A%3d%3d%7c2>

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**Sent:** Tuesday, April 30, 2013 8:44 PM  
**To:** Kluck, Thomas  
**Subject:** Empire State Realty Trust : IPO Watch: Empire State Building To Go Public?

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Empire State Realty Trust

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IPO Watch: Empire State Building To Go Public?  
Yuma Sun (Ariz.), Tuesday, 30 April 2013, 15:52 GMT, 217 Words, © 2013 (Document  
WC92935020130501e94u00004)

Father son duo and New York real estate tycoons, Peter and Anthony Malkin boast the Empire State Building as the cornerstone of their portfolio. In 2011 plans were disclosed by the Malkins to take their properties public, which would allow ...

<http://global.factiva.com/redir/default.aspx?p=sta&ep=AE&an=WC92935020130501e94u00004&fid=301099182&cat=w&aid=95EC001000&ns=A0&fn=Empire%20State%20Realty%20Trust&ft=g&OD=V2AUbjNagq6b6yKMegonfnoUAZrTDW4K5jnAwC70GVmxODGqNnev%2f1A%3d%3d%7c2>

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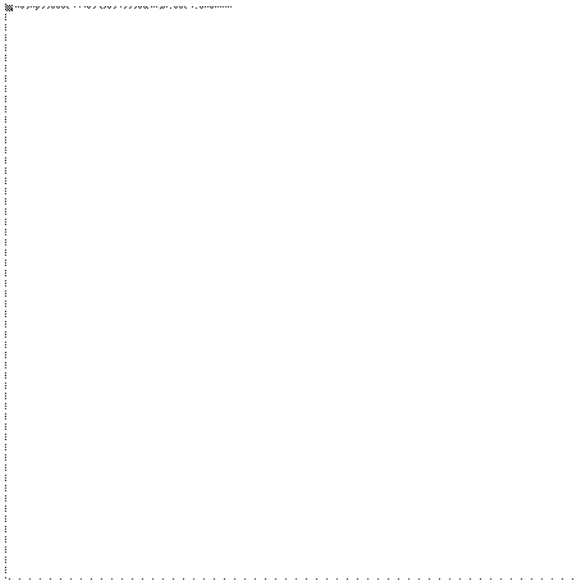
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<emailednews@email.global.factiva.com>  
**Sent:** Wednesday, May 01, 2013 2:08 AM  
**To:** Kluck, Thomas  
**Subject:** ESRT : Global Finance: Empire State Clears a Hurdle to IPO



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### ESRT

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#### Global Finance: Empire State Clears a Hurdle to IPO

The Wall Street Journal, By Craig Karmin, Wednesday, 01 May 2013, 632 Words. (Copyright (c) 2013, Dow Jones & Company, Inc.)  
(Document J000000020130501e9510000r)

A New York judge on Tuesday removed a potential obstacle to a plan for selling the Empire State Building as part of a giant public offering, ruling that a share-buyout provision in the plan doesn't violate the law.

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**From:** emailednews@email.global.factiva.com on behalf of Factiva  
<emailednews@email.global.factiva.com>  
**Sent:** Wednesday, May 01, 2013 2:07 AM  
**To:** Kluck, Thomas  
**Subject:** Empire State Realty Trust : Global Finance: Empire State Clears a Hurdle to IPO

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Empire State Realty Trust

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Global Finance: Empire State Clears a Hurdle to IPO The Wall Street Journal, By Craig Karmin, Wednesday, 01 May 2013, 532 Words, (Copyright (c) 2013, Dow Jones & Company, Inc.) (Document J000000020130501e9510000r)

A New York judge on Tuesday removed a potential obstacle to a plan for selling the Empire State Building as part of a giant public offering, ruling that a share-buyout provision in the plan doesn't violate the law.

<http://global.factiva.com/redirect/default.aspx?p=sta&ep=AE&an=J000000020130501e9510000r&fid=301099182&cat=a&aid=95EC001000&ns=A0&fn=Empire%20State%20Realty%20Trust&ft=g&OD=V2AUbiNaqd6b6yKMegonfnoUAZrTDW4K5jnAwC70GVmxODGqNnev%2f1A%3d%3d%7c2>

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**From:** emailednews@email.global.factiva.com on behalf of Factiva  
<emailednews@email.global.factiva.com>  
**Sent:** Wednesday, May 01, 2013 2:23 AM  
**To:** Kluck, Thomas  
**Subject:** Empire State Realty Trust : A Nasty, Epic Real Estate Battle With Stakes 102 Stories High

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Empire State Realty Trust

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A Nasty, Epic Real Estate Battle With Stakes 102 Stories High The New York Times, By CHARLES V. BAGLI and JULIE CRESWELL, Monday, 29 April 2013, 1703 Words, Copyright 2013 The New York Times Company. All Rights Reserved.

(Document NYTF000020130501e94t0006m)

CORRECTION APPENDED On the day it opened in 1931, the Empire State Building carved out a special place on the New York skyline, but it has also been at the center of a succession of battles for control by equally larger-than-life figures, ...

<http://global.factiva.com/redirect/default.aspx?p=sta&ep=AE&an=NYTF000020130501e94t0006m&fid=301099182&cat=a&aid=9SEC001000&ns=A0&fn=Empire%20State%20Realty%20Trust&ft=g&OD=V2AUbjNaqd6b6yKMegonfnoUAZrTDW4K5jnAwC70GVmxODGqNnev%2fl1A%3d%3d%7c2>

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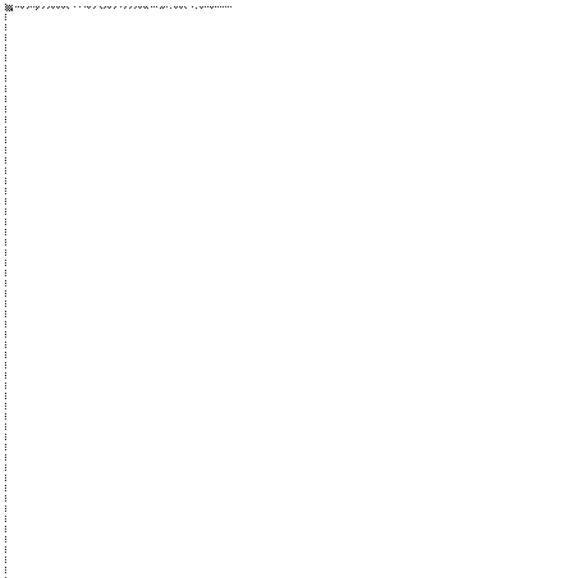
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<emailednews@email.global.factiva.com>  
**Sent:** Wednesday, May 01, 2013 2:23 AM  
**To:** Kluck, Thomas  
**Subject:** ESRT : A Nasty, Epic Real Estate Battle With Stakes 102 Stories High



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### ESRT

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#### A Nasty, Epic Real Estate Battle With Stakes 102 Stories High

The New York Times, By CHARLES V. BAQLI and JULIE CRESWELL, Monday, 29 April 2013,  
1703 Words, Copyright 2013 The New York Times Company. All Rights Reserved.  
(Document NYTF000020130501e9410006m)

**CORRECTION APPENDED**On the day it opened in 1931, the Empire State Building carved out a special place on the New York skyline, but it has also been at the center of a succession of battles for control by equally larger-than-life figures, ...

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<emailednews@email.global.factiva.com>  
**Sent:** Wednesday, May 01, 2013 10:20 AM  
**To:** Kluck, Thomas  
**Subject:** Empire State Realty Trust : Empire State Building Clears a Hurdle to IPO

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Empire State Realty Trust

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Empire State Building Clears a Hurdle to IPO RealEstateJournal, CRAIG KARMIN, Wednesday, 01 May 2013, 00:43 GMT, 666 Words, © 2013 (Document WC86565020130501e95100004)

A New York judge on Tuesday removed a potential obstacle to a plan for selling the Empire State Building as part of a giant public offering, ruling that a share-buyout provision in the plan doesn't violate the law.

<http://global.factiva.com/redirect/default.aspx?p=sta&ep=AE&an=WC86565020130501e95100004&fid=301099182&cat=w&aid=95EC001000&ns=A0&fn=Empire%20State%20Realty%20Trust&ft=g&OD=V2AUbjNagd6b6yKMegonfnoUAZrTDW4K5jnAwC70GVmxODGqNnev%2f1A%3d%3d%7c2>

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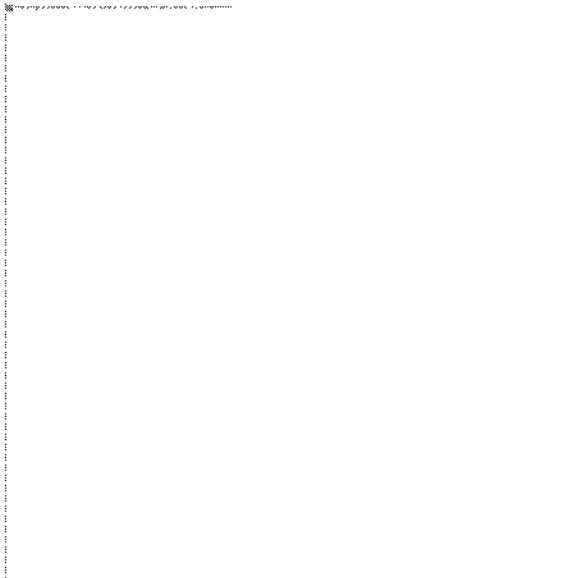
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**From:** emailednews@email.global.factiva.com on behalf of Factiva  
<emailednews@email.global.factiva.com>  
**Sent:** Wednesday, May 01, 2013 3:07 PM  
**To:** Kluck, Thomas  
**Subject:** ESRT : Empire State Clears a Hurdle to IPO



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### ESRT

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#### Empire State Clears a Hurdle to IPO

The Wall Street Journal Online, By Craig Karmin, Wednesday, 01 May 2013, 19:04 GMT , 596 Words, Copyright 2013 Dow Jones & Company, Inc. All Rights Reserved.  
(Document WSJ000020130430a94u00912)

A New York judge on Tuesday removed a potential obstacle to a plan for selling the Empire State Building as part of a giant public offering, ruling that a share-buyout provision in the plan doesn't violate the law.

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<emailednews@email.global.factiva.com>  
**Sent:** Wednesday, May 01, 2013 5:23 PM  
**To:** Kluck, Thomas  
**Subject:** Empire State Realty Trust : NY judge likely to allow Empire State Reit plan

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Empire State Realty Trust

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NY judge likely to allow Empire State Reit plan Business Times Singapore, Thursday, 02 May 2013, 01:17 GMT, 232 Words, © 2013 (Document WCSTBT0020130501e95200236)

Towering high: Malkin Holdings wants to roll the Empire State Building into a Reit with 18 other properties and launch an IPO that could generate US\$1 billion. - PHOTO: AP

<http://global.factiva.com/redirect/default.aspx?p=sta&ep=AE&an=WCSTBT0020130501e95200236&fid=301099182&cat=w&aid=9SEC001000&ns=A0&fn=Empire%20State%20Realty%20Trust&ft=g&OD=V2AUbjNaqd6b6yKMegonfnoUAZrTDW4K5inAwC70GVmxODGqNnev%2f1A%3d%3d%7c2>

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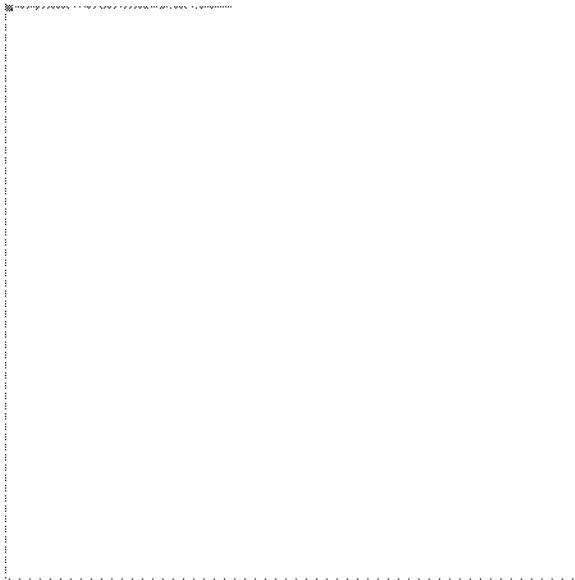
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<emailednews@email.global.factiva.com>  
**Sent:** Wednesday, May 01, 2013 5:23 PM  
**To:** Kluck, Thomas  
**Subject:** ESRT : NY judge likely to allow Empire State Reit plan



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### ESRT

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#### NY judge likely to allow Empire State Reit plan

Business Times Singapore, Thursday, 02 May 2013, 01:17 GMT , 232 Words, © 2013  
(Document WCSTBT0020130501e95200236)

Towering high: Malkin Holdings wants to roll the Empire State Building into a Reit with 18 other properties and launch an IPO that could generate US\$1 billion. - PHOTO: AP

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**From:** Kluck, Thomas  
**Sent:** Thursday, May 02, 2013 6:06 PM  
**To:** Orlic, David L.  
**Subject:** FW: Empire - articles  
**Attachments:** ESRT : NY judge likely to allow Empire State Reit plan; Empire State Realty Trust : NY judge likely to allow Empire State Reit plan; ESRT : Empire State Clears a Hurdle to IPO; Empire State Realty Trust : Empire State Building Clears a Hurdle to IPO; Empire State Realty Trust : A NASTY, EPIC REAL ESTATE BATTLE WITH STAKES 102 STORIES HIGH; ESRT : A Nasty, Epic Real Estate Battle With Stakes 102 Stories High; Empire State Realty Trust : A Nasty, Epic Real Estate Battle With Stakes 102 Stories High; Empire State Realty Trust : Global Finance: Empire State Clears a Hurdle to IPO; ESRT : Global Finance: Empire State Clears a Hurdle to IPO; Empire State Realty Trust : Empire State Building IPO opponents lose buyout challenge; Empire State Realty Trust : IPO Watch: Empire State Building To Go Public?; Empire State Realty Trust : Empire State Clears a Hurdle to IPO; Empire State Realty Trust : Empire State Building IPO Clears Another Hurdle; ESRT : Empire State Building IPO Clears Another Hurdle; Empire State Realty Trust : Empire State Building IPO Clears Another Hurdle; ESRT : WSJ Blog: Empire State Building IPO Clears Another Hurdle; Empire State Realty Trust : WSJ Blog: Empire State Building IPO Clears Another Hurdle; Empire State Realty Trust : Empire State Building IPO Opponents Lose Buyout Challenge; ESRT : Empire State Building IPO Opponents Lose Buyout Challenge; Empire State Realty Trust : Greenwich mogul makes play for Empire State Building

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Fyi

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**From:** Kluck, Thomas  
**Sent:** Thursday, May 02, 2013 9:10 AM  
**To:** McHale, Angela R.  
**Subject:** Empire - articles

Hi Angela,

There was a lot of press regarding Empire over the last couple of days. Do you mind going through some of these articles just to see if there is anything new that we should be aware of?

Thanks,

Tom

**From:** Kluck, Thomas  
**Sent:** Friday, March 22, 2013 9:06 PM  
**To:** (b)(6); Orlic, David L.; McHale, Angela R.; (b)(6)  
**Subject:** Fw: Empire - WSJ article  
**Follow Up Flag:** Follow up  
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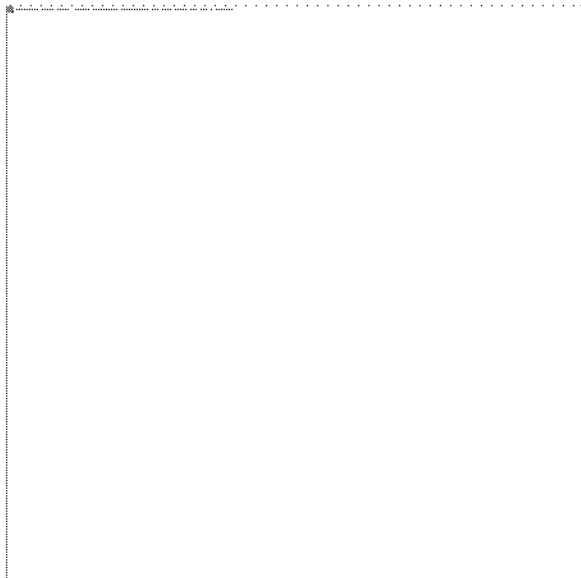
**From:** Tom Kluck [mailto:tkluck2@yahoo.com]  
**Sent:** Friday, March 22, 2013 09:02 PM  
**To:** Kluck, Thomas  
**Subject:** Empire - WSJ article

## Empire State Building Owners Spar Over IPO Plan

By CRAIG KARMIN

Marshall Kramer, a 76-year-old retiree in Katy, Texas, picked up his phone recently and was surprised to hear the voice of Peter Malkin, whose family controls the Empire State Building.

Mr. Kramer and his two siblings own just one of the 3,300 shares in a private company that owns the famed skyscraper. Mr. Malkin was calling to persuade him to support the Malkin family's plan to take the company public. "I basically got a speech," recalls Mr. Kramer. "He sounded like a pushy salesman."



Getty Images

The Empire State Building, opened in 1931, shown in modern times.

Mr. Malkin, 79, and his 50-year-old son, Anthony, have been trying for months to sell Mr. Kramer and about 2,800 other stakeholders on a sweeping deal to make the 102-story tower the centerpiece of a new public company traded on the New York Stock Exchange. It would be the second-largest IPO ever for a U.S. real-estate investment trust, or REIT, according to data provider Dealogic.

The Malkins need 80% support to proceed with the \$1 billion offering. On Friday, they told owners they were extending the voting period, which could have closed on Monday. The Malkins said they may end voting when a New York State Court issues a ruling on one aspect of the plan, which is expected by May 2.

If the Malkins succeed, it will mark the end of a long and colorful era in the building's history that featured some of New York's best-known real-estate tycoons, a convoluted ownership structure and enough strife to keep lots of lawyers busy for years. The proposed deal was triggered by the 2007 death of Leona Helmsley, whose late husband, Harry, teamed up with Peter Malkin's father-in-law after the latter bought the building in 1961.

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**A Storied Skyscraper**



REUTERS

A full moon rises behind the Empire State Building in New York as a man watches in a park along the Hudson River in Hoboken, New Jersey, February 25, 2013.

But first Anthony Malkin, who now runs the family company, must overcome resistance from some skeptical stakeholders—many of whom inherited shares purchased a half-century ago from his grandfather, Lawrence Wien.

Mr. Kramer, for example, says he and his siblings got their ownership unit from their father, who told them he used to play gin rummy with Mr. Wien and was a friend of Harry Helmsley. Mr. Kramer says he recently voted "no" on the plan because he thinks it gives too big a share of the new company, which also will own 18 other Malkin properties, to the Malkin family and not enough to other stakeholders.

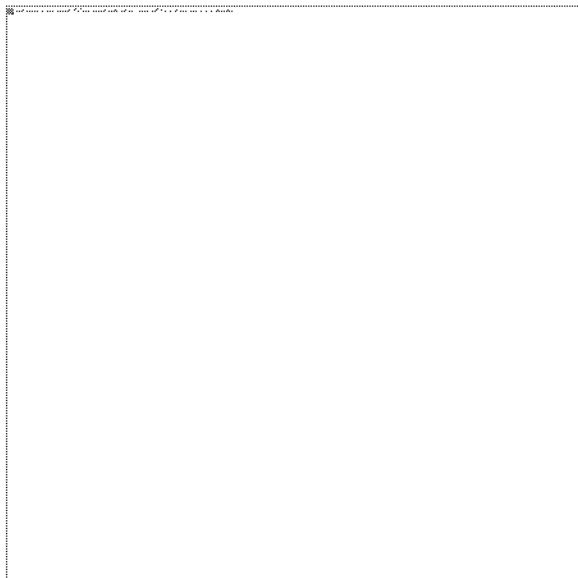
Anthony Malkin recently informed stakeholders that about 60% of the ownership units already had approved the plan. One supporter, Eli Mattioli, a lawyer who used to work with Mr. Wien, says the deal will bring the ownership structure "into the 21st century." Another, retiree Edward Bermas, says he thinks he'll make more money from the REIT. "I think the people who oppose it are more concerned with how much money other people are going to make," he says.

The proposed deal values the skyscraper itself at \$2.3 billion, and the other 18 properties at \$1.9 billion. The terms call for the Malkin family to own about 16.5% of the new Empire State Realty Trust, worth about \$700 million. The deal values the Helmsley estate's holdings at \$1 billion; about two-thirds would be distributed as cash. The other Empire State Building stakeholders will own 24%, worth about \$1 billion, and owners of the other properties will also get shares.

The Malkins have told stakeholders in writing that the proposed new ownership structure offers them fair value, and several advantages over the current structure. The new publicly traded shares, they say, will be more able to appreciate than units in the private company, for which there is no established trading market today. Investors who want to cash out can simply sell their shares. They also say the addition of the other buildings will make for a more diversified investment.

Currently, most units of the private company are worth about \$323,000, according to the prospectus. Each year, those units receive a cash distribution based partly on whether the building's profit clears certain thresholds. Last year, the payout per unit was \$5,199. The prospectus says that under the REIT structure, the comparable payout would be \$5,866 in the first year.

The deal would do away with the final remnants of a Byzantine ownership and management structure that gave rise to years of feuding. After Mr. Wien bought the building in 1961, he set up a company to hold a lease on the entire building, selling stakes in that company—the units now at issue—for \$10,000 apiece. Messrs. Wien and Helmsley set up another company to operate the building—and share the profits. Then they resold the building itself to a big institutional investor.



Everett Collection

Leona Helmsley died in 2007. Her will stipulated that her interests in the Empire State Building should be liquidated.

In the 1990s, Japanese billionaire Hideki Yokoi bought the building, and his family recruited Donald Trump to lead an effort to break the long-term lease and seize control. At one point, Mr. Trump referred to the building as a "high-rise slum." Anthony Malkin and his father thwarted that effort.

Mr. Trump now is now complimentary of the Malkins, but characterizes the IPO plan as "a very complicated deal. Sounds to me like this is something that will end up in court, no matter what you do."

Separately, the Malkins were involved in litigation with Leona Helmsley—nicknamed the "Queen of Mean" in New York—and Helmsley-Spear Inc. over the contract to manage the building, a battle the Malkins won in 2006. The Malkins also arranged for the company holding the long-term lease to buy back the building from the Japanese ownership group.

Ms. Helmsley died in 2007. Her will stipulated that her interests in the Empire State Building should be liquidated.

Around that time, Anthony Malkin began overseeing a more than \$550 million renovation of the building, which was erected in 1931 during the Great Depression, including restoring the Art Deco lobby and replacing all 6,514 windows. He also allowed leases to expire so he could combine spaces and attract higher-paying tenants. He lured [Air China](#) and French fragrance maker Coty, and social-networking company LinkedIn more than doubled its space.

The offering prospectus doesn't disclose past performance but projects the skyscraper's net operating income will increase from \$84.3 million in the fiscal year ending June 2013 to \$135.9 million for the year ending June 2015.

The Malkins have spent much of the last year trying to drum up support for the IPO plan.

Howard Peskoe, a New York lawyer, says he and his wife voted "yes." He cites the ability to trade the new shares and cash out after years of holding an illiquid asset. "The Empire State Building is a magical place, but it was a second-rate property," Mr. Peskoe says. "The Malkins brought it up to modern standards."

If Mr. Malkin doesn't secure the necessary votes, he can push back the voting deadline to as late as the end of 2014 as he negotiates with holdouts.

For months, the plan's detractors have been raising questions about terms of the deal, from whether the Malkins are shortchanging other owners to the tax ramifications to stakeholders. Last year, the Malkins settled a lawsuit brought by stakeholders over terms of the deal. The case now before the New York court is over a challenge to one aspect of the voting procedure.

Some of the criticisms have gotten personal. "Tony [Malkin] treats the Empire State Building like it's his property and we are just another piece of it," complains stakeholder



Andrew Shact, whose grandfather was on social terms with Mr. Wien. Mr. Shact says he voted "no."

Anthony Malkin has said to investors that his critics are misinformed about details in the plan and are confusing other owners with misrepresentations.

Robert Machleder, a stakeholder and former law partner of Mr. Wien, says he called Peter Malkin last month to object to a stipulation in the IPO plan that awards \$300 million to the Malkins as part of profit-sharing arrangement related to the Empire State Building and the other properties.

Mr. Machleder says he told Mr. Malkin he was going to share his thoughts with other owners. He says he was taken aback when the Malkins sent out a letter, labeled "Misinformation Alert," that defended the \$300 million and seemed to cast doubt on Mr. Machleder's motives. "Certain individuals have intentionally waited until the last minute, in some cases for years, to attempt to disrupt your vote," the letter said.

Carol Green is a retiree who owns two units. "As the Empire State Building gets better, it's going to earn more," she says, which would mean that her payouts would go up under the current arrangement. She says uncertainty about what will happen to the value of a public stock caused her to vote "no."

"I don't know if the REIT is going to go up," she says.

**Write to** Craig Karmin at [craig.karmin@wsj.com](mailto:craig.karmin@wsj.com)

**From:** Kluck, Thomas  
**Sent:** Friday, March 15, 2013 1:14 PM  
**To:** Orlic, David L.  
**Subject:** FW: Empire article

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hey David, if you have time, let's discuss later today (after 3:00). We also need to call Richard Edelman back on this topic. Thanks

---

**From:** Kluck, Thomas  
**Sent:** Friday, March 15, 2013 11:10 AM  
**To:** [b:(6)] McHale, Angela R.; Orlic, David L.; [b:(6)]  
**Subject:** Empire article

## Some Empire State Building investors vote in favor of REIT plan

133 words  
15 March 2013  
10:27  
Reuters News  
LBA  
English  
(c) 2013 Reuters Limited

March 15 (Reuters) - The company that controls the **Empire State Building** said a majority of investors who have voted so far have approved its proposal to fold the iconic building into a new real estate investment trust (REIT) that will eventually be publicly traded.

Malkin Holdings LLC said 90 percent of the two-thirds of the investors who have voted to date favor its plan to make the building the centerpiece of more than 18 properties in the proposed REIT, **Empire State Realty Trust Inc.**, according to a filing with the U.S. Securities and Exchange Commission.

(Reporting by Tanya Agrawal in Bangalore; Editing by Saumyadeb Chakrabarty)

**From:** Orlic, David L.  
**Sent:** Wednesday, March 27, 2013 5:51 PM  
**To:** Kluck, Thomas; McHale, Angela R.  
**Subject:** FW: Empire Realty Trust, Inc., SIC 6798; File Number: 333-179485  
**Attachments:** Malkin Holdings Notice to Participants 3-21-13.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Tom and Angela, the nature of the claim was disclosed in the March 12<sup>th</sup> supplement filed under 424B3.

(b)(6)

-David

---

**From:** (b)(6) **On Behalf Of** (b)(6);(b)(7)(C)  
**Sent:** Wednesday, March 27, 2013 5:43 PM  
**To:** Kluck, Thomas  
**Cc:** McHale, Angela R.; Orlic, David L.; (b)(6);(b)(7)(C)  
**Subject:** Empire Realty Trust, Inc., SIC 6798; File Number: 333-179485

The purpose of this email is to comment on a communication, (a copy of which is attached for convenience) from Malkin Holdings LLC to the participants in Empire State Building Associates L.L.C. ("ESBA"), 60 East 42nd Street Associates L.L.C., and 250 West 57th Street Associates L.L.C., dated March 21, 2013, which, as a participant in Empire State Building Associates L.L.C., I have just received. In it, Malkin Holdings announces an indefinite extension of the solicitation period and urges that the participants now consent to the proposed consolidation.

Malkin Holdings also refers to an unnamed court hearing on February 21st. The hearing was in the Supreme Court of New York, County of New York, with respect to the litigation entitled "In Re Empire State Realty Trust, Inc. Investor Litigation", Index No. 650607/2012 before Justice O. Peter Sherwood. Malkin Holdings describes the hearing as one in which an attorney for certain investors "attempted to stop the vote process for ESBA and prevent preliminary approval of a settlement of a class action lawsuit. The communication goes on to state that "[h]is motions were denied except for the right to brief one assertion he made regarding LLC law", (emphasis added) and that "[t]he judge intends to rule on the matter by May 2nd."

The fact is, that the "one assertion" on which the court has reserved ruling is that the \$100 forced buyout of dissenting participant investors is invalid, and instead, the court should order that the dissenting investors must be paid the "fair value" of their interest, as mandated by Section 1002 of the New York Limited Liability Company Law.

Irrespective of what Malkin Holdings would be required to disclose if this communication was otherwise silent, I suggest that having referred to the matter to which Justice Sherwood has reserved decision, they are required to identify that issue. Failure to do so omits information of maximum import to an investor considering granting the consent which is being solicited.

Until now, the investors has been informed that their alternatives are to consent, or not consent and if 80% of the investors consent, a non-consenting investor will be given an opportunity to also consent or will be bought out for \$100. If Justice Sherwood rules in favor of the motion that is now before him, each dissenting non-consenting investor will be entitled to a cash buyout at "fair value" in the event of a successful solicitation. As you are aware, Malkin Holdings has asserted a value for these investments that exceeds \$300,000 per unit. Clearly, any intelligent consideration by an investor of what action to take with respect to the solicitation would require the information, which has not been provided, that a buyout for over \$300,000 may be available. The absence of this fundamental information in the Malkin Holdings communication is a material omission.

I respectfully submit that the March 21st, 2013 communication by Malkin Holdings is misleading and providing a full and fair exposition of the issue before Justice Sherwood in the New York Supreme Court is information to which all investors are entitled and which Malkin Holdings must divulge.

(b)(6)



Please consider the environment before printing this email.

This written advice was not intended or written to be used, and it cannot be used by any taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer. This statement is made pursuant to I.R.S. Circular 230 This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and delete this message from your system. Thank you.



March 21, 2013

To Participants in Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C.,  
and 250 West 57th St. Associates L.L.C.

Dear Fellow Participants:

We thank all those who have voted to date in favor of the proposed transactions for their support.

Last week, the *Financial Times* published an article about our March 14 letter to ESBA participants which reported on the votes then received for the proposed consolidation transaction. We wanted to share the article with you. We also stated in our letter that Malkin Holdings can and will as necessary extend the consent solicitation beyond March 25, the first date by which it could have ended under SEC rules.

As most participants are aware, at a court hearing on February 21, an attorney who represents a small group of dissident investors attempted to stop the vote process for ESBA and prevent preliminary approval of a settlement of a class action lawsuit which we announced by an SEC filing in November 2012. His motions were denied except for the right to brief one assertion he has made regarding LLC law. The judge in the case has stated he intends to rule on the matter by May 2, the date that the final settlement hearing in the class action is scheduled.

At the same time, immediately ahead of us are Passover, Good Friday, and Easter. In order to simplify matters, allow participants and their families, and our own officers and employees, to enjoy restful holidays, and to facilitate the court's review of the one matter remaining before it, Malkin Holdings is extending the solicitation for each of the proposals until we announce its termination, but not to terminate in any case before the earlier of the court's ruling on such LLC matter or May 2, 2013. We may terminate the solicitation period as to any subject LLC, participating group or proposal without terminating as to the others.

During this time, Malkin Holdings will continue to move forward with the vote on the proposals. We remind everyone that the sooner the proposed consolidation is approved, the sooner the expenses may be brought to an end, and the sooner participants can receive the many benefits of the proposed consolidation, including special one time distributions of reimbursement for the costs of the transaction and cash reserves, and the class action settlement proceeds.

We receive additional consent forms every day and remain hard at work assisting those investors who have questions or need assistance. We firmly believe the proposed consolidation offers you better advantages and opportunities than your current investment, and if you haven't done so already, we hope that you will vote in favor of the proposed transactions as soon as possible. **We urge that you vote "FOR" the proposals.**

We hope that you will contact us or our proxy solicitor, Mackenzie Partners, at 1-888-410-7850 if we can assist you in any way.

Sincerely,

MALKIN HOLDINGS LLC



Peter L. Malkin  
Chairman



Anthony E. Malkin  
President

*The voting results are subject to change, and the results shown in the enclosed article should not be viewed as a prediction of the final outcome.*

*For more information, use your password and please visit [www.EmpireStateRealtyTrust.com](http://www.EmpireStateRealtyTrust.com), view the DVD which accompanied your package of disclosure/consent solicitation materials, send an e-mail to [Inquiries@MalkinHoldings.com](mailto:Inquiries@MalkinHoldings.com), or call MacKenzie Partners at 1-888-410-7850.*

*There are material risks and conflicts of interest associated with the consolidation, which are described in the prospectus/consent solicitation statement. This letter contains forward-looking statements and actual results could materially differ from our expectations, as described in more detail in the prospectus/consent solicitation statement.*

*Investors are urged to review the Registration Statement on Form S-4, the prospectus/consent solicitation statement, which you have received, and other related documents now filed or to be filed with the SEC because they contain important information. You can obtain them, without charge, on the SEC's website at [www.sec.gov](http://www.sec.gov). You can also obtain, without charge, a copy of the prospectus/consent solicitation statement and the supplements relating to the individual entities by contacting Ned H. Cohen at 212-687-8700 at Malkin Holdings LLC.*

**From:** Kluck, Thomas  
**Sent:** Saturday, March 09, 2013 5:21 PM  
**To:** McHale, Angela R.  
**Subject:** FW: Empire State Bldg. REIT/IPO

Fyi

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**From:** Kluck, Thomas  
**Sent:** Saturday, March 09, 2013 5:20 PM  
**To:** [REDACTED]  
**Subject:** RE: Empire State Bldg. REIT/IPO

Dear [REDACTED]—Thank you for your email describing your concerns regarding the proposed transaction by Empire State Realty Trust. Please be assured that we are evaluating the information you provided us and will consider it in light of our authority and responsibilities under the U.S. securities laws. However, any review or inquiry that we may conduct based on the information you have provided is non-public unless the Commission takes any formal action. Unfortunately, we cannot inform you personally of any action taken in response to your concerns. We understand this policy can be frustrating, but it protects the integrity of our investigative processes.

Thank for you input regarding this matter.

Sincerely,

Tom Kluck  
Legal Branch Chief  
Division of Corporation Finance

---

**From:** [REDACTED]  
**Sent:** Friday, March 08, 2013 2:54 PM  
**To:** Kluck, Thomas  
**Subject:** Empire State Bldg. REIT/IPO

Dear Mr. Kluck:  
RE: Disagreement with SEC Finding of above REIT/IPO being Effective

1. RE: Letter by [REDACTED] dated Feb., 2013, copy sent to you. I totally agree with [REDACTED] Conclusion (p.8) that the "overrides," which will enrich Malkin Holdings in ESBA alone by the amount of \$108,143,382 in exchange value, as stated in the Prospectus/Consent Solicitation Statement (p.158) are reason enough to declare the "Proposed Consolidation" ineffective, and the SEC finding be reversed.

2. Exchange Value to Helmsley Estate of

\$740,862,007 also stated in Prospectus/ Consent Solicitation Statement (p.158) is totally without merit. This figure was arrived at by Duff and Phelps, and based on information supplied to them by Malkin Holdings. Malkin Holdings claims that the "Entities always functioned economically like a 50/50JV," however in a letter sent out by Empire State Building Investors on 8/27/12 it was clearly stated that on five different levels ESBA contributed wholly to a variety of items, while Sublessee (operating lessee) contributed nothing, and took no risks related to Mortgage risk, or Liability to restore property in the event of a disaster.

Therefore, this second assertion that Helmsley Estate should be entitled to the above amount, based on exchange value, also mitigates against a ruling of "Effective" for the Proposed Consolidation, and that such an initial finding should be reversed.

Sincerely,

(b)(6)

A large rectangular box with a black border, used to redact the signature of the sender. The text "(b)(6)" is written in the top-left corner of the box.



**From:** [b:(6)]  
**Sent:** Monday, April 22, 2013 11:11 AM  
**To:** Orlic, David L.  
**Cc:** [b:(6)]  
**Subject:** FW: Empire State Realty Group - ES144026  
**Attachments:** CF - ES144026.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

David,

I am sending this to you as I see that [b:(6)] is out of the office.

[b:(6)]

---

**From:** [b:(6)]  
**Sent:** Monday, April 22, 2013 10:47 AM  
**To:** [b:(6)]; [b:(6)]  
**Subject:** FW: Empire State Realty Group - ES144026

This being assigned to you both by [b:(6)]

---

**From:** [b:(6)]  
**Sent:** Monday, April 22, 2013 10:18 AM  
**To:** [b:(6)]  
**Subject:** FW: Empire State Realty Group - ES144026

Please send this to AD 8 and OMA.

---

**From:** [b:(6)]  
**Sent:** Friday, April 19, 2013 4:27 PM  
**To:** [b:(6)]  
**Cc:** CHAIRMANCORRES  
**Subject:** Empire State Realty Group - ES144026

**Assigned To:** CF

The attached Chairman's Correspondence is assigned to your division/office for "Action Required".

Thank you in advance for your prompt response.

[b:(6)]

**From:** (b)(6)  
**Sent:** Friday, April 19, 2013 9:32 AM  
**To:** CHAIRMANOFFICE  
**Subject:** FW: Empire State Realty Trust, Inc.

Tom Kluck, Legal Branch Chief  
 Office of Real Estate and Commodities  
 Division of Corporation Finance  
 United States Securities and Exchange Commission  
 100 F Street, NE  
 Washington, DC 20549

Dear Mr. Kluck:

The following inconsistency – when viewed alongside the threatened \$100-per-unit forced buyout by Malkin Holdings LLC that flies in the face of New York’s limited liability company statute – reveals a pattern of fraud in this proposed transaction. If the transaction is approved, however, participants in Empire State Building Associates L.L.C. will have explicitly waived their right to recover from the sponsors any damages arising from the fraud.

1. Peter Malkin’s 7/2/2012 letter highlights that the “new structure [whereby investors can elect to receive Operating Partnership units rather than Class A REIT shares or Class B REIT shares] that would give you the option to defer any tax that could be triggered by the proposed consolidation . . . is unique, was never used before, and was conceived by the Malkin Holdings team and made possible through the work of our third-party legal and investment advisors.”
2. Malkin Holdings LLC’s 4/18/2013 telephone scripts for use by itself and its proxy solicitation agent both recite, “We want to make sure you know that this tax deferral treatment is well established and is not contingent upon obtaining any IRS or SEC ruling.”

To locate the above excerpts, compare the second paragraph of Peter Malkin’s letter to Participants in Empire State Building Associates L.L.C. (reflected in the 7/2/2012 SEC filing of Empire State Realty Trust, Inc.) to the third bullet point of Malkin Holdings LLC’s telephone script and the seventh bullet point of MacKenzie Partners, Inc.’s telephone script (both reflected in the 4/18/2013 SEC filing of Empire State Realty Trust, Inc.):

<http://www.sec.gov/Archives/edgar/data/1541401/000119312512292003/d376103d425.htm>

<http://www.sec.gov/Archives/edgar/data/1541401/000119312513160673/d522474d425.htm>

Although it may be true that no IRS ruling is technically required, it seems highly imprudent that a Private Letter Ruling has not been sought in advance from the IRS. As a matter of precedent, the IRS would certainly not concur with the sponsor’s widely-touted tax deferral that is purportedly available to participants in Empire State Building Associates L.L.C. who voluntarily elect to receive Operating Partnership units (instead of Class A REIT shares or Class B REIT shares) despite their constructive receipt of income through the deemed sale of their participation units in the proposed transaction. Instead, the IRS will likely adjust the tax liability of all taxpayers receiving a Schedule K-1 from Empire State Building Associates L.L.C. for the year in which the transaction is consummated.

Please take any appropriate action to protect the many surviving octogenarians who purchased their units in Empire State Building Associates L.L.C. during its original 1961 syndication and whose estates will forego the long-anticipated

tax-free step-up in cost basis upon their death if those elderly participants succumb to the sponsor's relentless pressure to approve this now-demonstrably-fraudulent transaction.

Respectfully yours,

(b)(6)

Beneficiary of a participant in Empire State Building Associates L.L.C.

tel: (b)(6)

---

**From:** (b)(6)

**Sent:** Wednesday, January 23, 2013 11:18 AM

**To:** 'kluckt@sec.gov'

**Subject:** Empire State Realty Trust, Inc.

Tom Kluck, Legal Branch Chief  
Office of Real Estate and Commodities  
Division of Corporation Finance  
United States Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Dear Mr. Kluck:

A few months ago, I was taken aback to receive an extremely aggressive, high-pressure telephone call (quite threatening in tone) from a proxy solicitation firm asking for my oral commitment at that instant to vote in favor of the conversion of Empire State Building Associates L.L.C. into a real estate investment trust.

(b)(6) so that I received this unexpected telephone call as president of our small family investment partnership that holds his investment in Empire State Building Associates L.L.C., I was skeptical about the call.

I fear, however, that other senior citizens who receive such a call will feel that they made a binding oral commitment through this proxy solicitation firm – on similar telephone calls they presumably received – to vote in favor of the conversion even though it may actually be contrary to the financial interest of themselves or their families.

In the past few years, I have received – and have retained (both in my memory in and in my file cabinet) – 2-3 pieces of written correspondence from an affiliate of Malkin Holdings LLC admonishing me that my failure to vote timely in favor of its proposals – including a much less significant one being proposed at that time – would result in the automatic forfeiture of this investment by our family investment partnership in exchange for the nominal compensation of \$100 per unit.

When valuing this asset in my late father's estate a few years ago, I recall Malkin Securities LLC's dramatically understating the estimated arm's length trading value of this asset in a private transaction. Perhaps the Malkin family, whose financial interests are in conflict with the "public" unitholders of Empire State Building Associates L.L.C. in a multitude of ways, provided these low-ball estimates as a way of conditioning the market for the currently proposed conversion in addition to perhaps inadvertently(?) defrauding the Internal Revenue Service of estate taxes owed at the death of Mr. Lawrence Wien, co-founder of Wien & Malkin Securities and father-in-law of Mr. Peter Malkin, whose son Anthony Malkin leads Malkin Holdings LLC today.

The Malkin family wears so many hats throughout the layers of ownership and management of this iconic property that they are uniquely motivated to secure reflexive "yes" votes from the many financially unsophisticated unitholders

whose grandparents or parents believed they were making a rock-solid investment 60 years ago to provide predictable monthly income to their descendants for the 99-year term of Empire State Building Associates L.L.C.'s sublease to the Wien, Malkin, and Helmsley families (through their ownership of Empire State Building Company L.L.C. that is both directly and indirectly adverse to the "public" investors in Empire State Building Associates L.L.C. in so many ways).

These conflicts of interest by the Malkin family and its affiliates suggest that replacement of management – and entrepreneurial establishment of a secondary trading market that might be made possible thereby – would be a necessary precondition for the proposed conversion of Empire State Building Associates L.L.C. into a real estate investment trust. Otherwise, the Securities and Exchange Commission will have failed to do its job to protect the public investors that own Empire State Building Associates L.L.C. today following the deaths of the original purchasers and the intergenerational transfers of units that have occurred.

(b)(6)

**From:** (b)(6)  
**Sent:** Monday, April 22, 2013 10:59 AM  
**To:** Orlic, David L.  
**Cc:** (b)(6)  
**Subject:** Fw: Empire State Realty Group - ES144026  
**Attachments:** CF - ES144026.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

FYI...

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**From:** (b)(6)  
**Sent:** Monday, April 22, 2013 10:57 AM Eastern Standard Time  
**To:** Kluck, Thomas  
**Cc:** (b)(6)  
**Subject:** FW: Empire State Realty Group - ES144026

(b)(5);(b)(6)

Thanks,

(b)(6)

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**From:** (b)(6)  
**Sent:** Monday, April 22, 2013 10:47 AM  
**To:** (b)(6)  
**Subject:** FW: Empire State Realty Group - ES144026

This being assigned to you both by (b)(6)

---

**From:** (b)(6)  
**Sent:** Monday, April 22, 2013 10:18 AM  
**To:** (b)(6)  
**Subject:** FW: Empire State Realty Group - ES144026

Please send this to AD 8 and OMA.

---

**From:** (b)(6)  
**Sent:** Friday, April 19, 2013 4:27 PM  
**To:** (b)(6)  
**Cc:** CHAIRMANCORRES  
**Subject:** Empire State Realty Group - ES144026

Assigned To: CF

**From:** McHale, Angela R.  
**Sent:** Tuesday, April 23, 2013 2:12 PM  
**To:** (b)(6)  
**Cc:** Kluck, Thomas  
**Subject:** FW: Empire State Realty Group - ES144026  
**Attachments:** CF - ES144026.pdf; ChairmanCorrespESRT.docx

Hi (b)(6)

Please see the attached Chairman's correspondence for your review. The PDF is the original complaint; the Word doc is the response letter. There is no physical address given in the complaint (it came in by email). I called (b)(6) and emailed him this morning to try to get a physical address, but I did not reach him, and he has not returned my call. Please let me know if you would like me to do anything further.

Thanks,

Angela

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**From:** (b)(6)  
**Sent:** Monday, April 22, 2013 10:47 AM  
**To:** (b)(6)  
**Subject:** FW: Empire State Realty Group - ES144026

This being assigned to you both by (b)(6)

---

**From:** (b)(6)  
**Sent:** Monday, April 22, 2013 10:18 AM  
**To:** (b)(6)  
**Subject:** FW: Empire State Realty Group - ES144026

Please send this to AD 8 and OMA.

---

**From:** (b)(6)  
**Sent:** Friday, April 19, 2013 4:27 PM  
**To:** (b)(6)  
**Cc:** CHAIRMANCORRES  
**Subject:** Empire State Realty Group - ES144026

**Assigned To:** CF

The attached Chairman's Correspondence is assigned to your division/office for "Action Required".

Thank you in advance for your prompt response.

(b)(6)

(b)(6)

Beneficiary of a participant in Empire State Building Associates LLC

(b)(6)

Dear (b)(6)

Thank you for your April 19, 2013 email in which you express several concerns regarding Empire State Realty Trust, Inc., including disclosures made in various SEC filings (i.e., letter from Peter Malkin dated 7/2/2012 and telephone script of Malkin Holdings LLC dated 4/18/2013), as well as phone calls received from the proxy solicitation firm and written correspondence from an affiliate of Malkin Holdings LLC.

Please be assured that the staff is carefully evaluating the information you provided and will consider it in light of our authority and responsibilities under the federal securities laws. As you know, any review or investigation that the staff may conduct based on this information is non-public unless the Commission takes any formal action.

Thank you again for your input. Please do not hesitate to contact (b)(6) (b)(6) Assistant Director, Division of Corporation Finance, at (b)(6) should you have further questions or concerns with regard to filings made by Empire State Realty Trust, Inc.

Sincerely,

Mary Jo White  
Chairman

**From:** Kluck, Thomas  
**Sent:** Monday, April 22, 2013 11:53 AM  
**To:** McHale, Angela R.  
**Subject:** FW: Empire State Realty Group - ES144026  
**Attachments:** CF - ES144026.pdf; ChairmanCorrespJPMXF.docx

Hi Angela,

(b)(5)

Tom

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**From:** (b)(6)  
**Sent:** Monday, April 22, 2013 10:57 AM  
**To:** Kluck, Thomas  
**Cc:** (b)(6)  
**Subject:** FW: Empire State Realty Group - ES144026

(b)(5)

Thanks,

Mike

---

**From:** (b)(6)  
**Sent:** Monday, April 22, 2013 10:47 AM  
**To:** (b)(6)  
**Subject:** FW: Empire State Realty Group - ES144026

This being assigned to you both by (b)(6)

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**From:** (b)(6)  
**Sent:** Monday, April 22, 2013 10:18 AM  
**To:** (b)(6)  
**Subject:** FW: Empire State Realty Group - ES144026

Please send this to AD 8 and OMA.

---

**From:** (b)(6)  
**Sent:** Friday, April 19, 2013 4:27 PM  
**To:** (b)(6) Parratt, Shelley  
**Cc:** CHAIRMANCORRES  
**Subject:** Empire State Realty Group - ES144026



**From:** Orlic, David L.  
**Sent:** Monday, April 22, 2013 11:25 AM  
**To:** Kluck, Thomas  
**Cc:** McHale, Angela R.  
**Subject:** FW: Empire State Realty Group - ES144026  
**Attachments:** CF - ES144026.pdf

(b)(5);(b)(6)

---

**From:** (b)(6)  
**Sent:** Monday, April 22, 2013 11:11 AM  
**To:** Orlic, David L.  
**Cc:** (b)(6)  
**Subject:** FW: Empire State Realty Group - ES144026

David,

I am sending this to you as I see that Michele is out of the office.

(b)(6)

---

**From:** (b)(6)  
**Sent:** Monday, April 22, 2013 10:47 AM  
**To:** (b)(6)  
**Subject:** FW: Empire State Realty Group - ES144026

This being assigned to you both by (b)(6)

---

**From:** (b)(6)  
**Sent:** Monday, April 22, 2013 10:18 AM  
**To:** (b)(6)  
**Subject:** FW: Empire State Realty Group - ES144026

Please send this to AD 8 and OMA.

---

**From:** (b)(6)  
**Sent:** Friday, April 19, 2013 4:27 PM  
**To:** (b)(6) Parratt, Shelley  
**Cc:** CHAIRMANCORRES  
**Subject:** Empire State Realty Group - ES144026

**Assigned To:** CF

The attached Chairman's Correspondence is assigned to your division/office for "Action Required".

Thank you in advance for your prompt response.

**From:** Orlic, David L.  
**Sent:** Thursday, April 04, 2013 3:19 PM  
**To:** [REDACTED]  
**Subject:** FW: Empire State Realty Trust, Inc.  
**Attachments:** 4.3.13 TELD letter to [REDACTED].pdf; 4.3.13 TELD letter to [REDACTED].pdf; ATT00001.txt; ATT00002.htm

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Fyi, at the bottom of this string is the e-mail R. Edelman sent out to address our concerns. - David

---

**From:** Larry.Medvinsky@CliffordChance.com [mailto:Larry.Medvinsky@CliffordChance.com]  
**Sent:** Thursday, April 04, 2013 2:50 PM  
**To:** Larry.Medvinsky@CliffordChance.com; Kluck, Thomas; McHale, Angela R.; Orlic, David L.  
**Subject:** RE: Empire State Realty Trust, Inc.

Apologies. These two documents were inadvertently not included with the email below. Best Regards.

Larry

---

**From:** Medvinsky, Larry (Capital Markets-NY)  
**Sent:** Thursday, April 04, 2013 2:44 PM  
**To:** Kluck, Thomas; (McHaleA@SEC.GOV); Orlic, David L.  
**Cc:** Medvinsky, Larry (Capital Markets-NY)  
**Subject:** FW: Empire State Realty Trust, Inc.

Tom, David and Angela,

We are writing to you now with respect to a couple of matters.

First, attached please find the first page of Richard Edelman's website ([www.EmpireStateBuildingInvestors.com](http://www.EmpireStateBuildingInvestors.com)) that states the following: **"4/3/13: REIT not approved. 25% No Vote, 75% Yes. 80% Yes is needed to go ahead with REIT Plan."** As we discussed with David by phone and in our email communications to the Staff yesterday, the vote remains open and a vote yet to be cast is not a "no" vote. It may not be a vote in favor of a proposed transaction; but it is certainly not a vote against. We believe this statement is no less problematic than the communication we brought to the Staff's attention yesterday where Richard Edelman sent an email communication to investors in Empire State Building Associates L.L.C. ("ESBA") titled **"REIT No Vote is 25%. Proposal defeated by ESBA owners."** Both statements are false and misleading and in violation of Rule 14a-9.

Second, Richard Edelman sent an email communication this morning (set forth below) to investors in ESBA (which is attached to this email). Mr. Edelman continues to make references that directly state or imply that the vote was not approved and is done. For example, he states, "Malkin Holdings has yet to call an official end to the Vote ..." He is well aware that the vote is continuing and ongoing. We continue to believe this false and misleading and in violation of Rule 14a-9. The email communication also included a statement relating to the "voting results" for the voluntary reimbursement. The

voluntary reimbursement proposal is only binding on investors who choose to agree to it; it is not a proposal that becomes binding on all investors if a particular vote threshold is met. As a result, Malkin Holdings has not to date publicly disclosed what percentage of investors in ESBA have agreed to the voluntary reimbursement proposal. Mr. Edelman's implications in his email communication imply something sinister and is misleading.

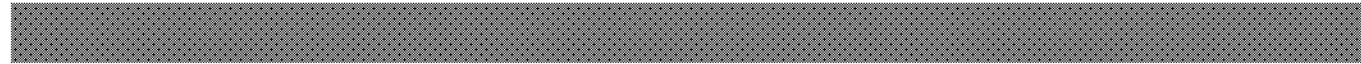
Third, attached please find cease and desist letters that were sent to Richard Edelman, [REDACTED] and [REDACTED] in connection with their participation on a conference call conducted by Richard Edelman during which a number of false and misleading statements were made. Also attached is a mailing that was sent by Richard Edelman to investors in ESBA, which included what purported to be a Wall Street Journal article by [REDACTED] dated March 23, 2013. The article distributed was not the complete article, and this matter is discussed in the cease and desist letter that was sent to Richard Edelman.

We appreciate your assistance to date on this transaction and your consideration of this email.

Larry

\*\*\*\*\*  
\*\*\*\*\*\

**Subject:** Important ESBA Conference Call tonight (thursday) at 7pm, Latest Vote News!



Dear Empire State Building Owner,

The next ESBA investor conference call is tonight, Thursday, April 4th, 7 pm Eastern time.

Phone 1-267-507-0240  
Conference code **132701**

Once again we have some special guest speakers, including, for a second time, fellow investor [REDACTED] whose firm happens to own [REDACTED] [REDACTED]

In Vote News we now know the REIT has not be approved by ESBA Owners.

Malkin Holdings has yet to call an official end to the Vote, even though the Voting period has already been extended weeks beyond the original March 25th deadline.

Also it is interesting to note the Third Party portfolio sale option has not been approved by ESBA investors.

Curiously, the voting results for the Voluntary Reimbursement were missing from the SEC filing by Malkin Holdings. If these results turn out to be highly unfavorable to Malkin Holdings it will be clear why they failed to disclose them at this time.

Hope to see you tonight!

Thank you

Richie Edelman  
858-922-9680  
[www.empirestatebuildinginvestors.com](http://www.empirestatebuildinginvestors.com)

[Have a question or comment for Empire State Building Investors? Send it here.](#)

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[Unsubscribe](#)  
DPOF 818 N Bldg Ave, Galena Beach, California 92035 United States

[CC]80-40476364[/CC]

\*\*\*\*\*

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ADAM M. SMITH  
DANIEL SHTERNFELD  
MAUREEN A. FITZGERALD  
ANGELA L. HARRIS

April 3, 2013

**VIA EMAIL, FEDERAL EXPRESS & CERTIFIED MAIL**



**Empire State Building Associates L.L.C.**

Dear (b)(6):

I write concerning a conference call you conducted on March 7, 2013, concerning ESBA, during which a number of false and misleading statements were made.

The following is a non-exhaustive list of the false and misleading statements made on that conference call:

- You stated that one of the main reasons that there is not liquidity with respect to a participants' investment is that the Malkins have suppressed liquidity, referring to your experience in connection with transfer of participation interests to you in Empire State Liquidity Fund's tender offer.

This is a false and misleading statement. The lack of liquidity is due to other factors, such as ESBA owning a single property subject to a long term operating lease, which is an archaic structure, the limited market for participation interests and the highly unusual nature of the ownership interests of participants (as participants in a joint venture for which an agent holds his membership interests). Furthermore, you are trying to claim that the Malkins suppressed transfers based on your experience with your mini-tender offer.

This generalization is false and misleading and the issues as to transfer of interests in your mini-tender offer related specifically to the nature of your mini-tender offer and do not apply to transfers generally. Malkin did not block transfers. It did not transfer units where participants had questions about your tender offer, some of whom stated they were being pressured by you to conclude a sale to you and some of whom informed Malkin that they were rescinding their acceptance and instructed Malkin not to transfer.

April 3, 2013

Page 2

- You stated that not voting is a no vote, so that the vote is not 90/10 but 60/40.

This characterization of the vote is false and misleading. Until the conclusion of the vote, not voting can mean, simply, that a participant has not voted. It is only equivalent to a no vote after the solicitation closes.

- You stated that the buyout after 10 days notice is “intimidation” and that votes to date are partly due to the existence of the buyout.

This is false and misleading and designed to make it appear that the 10 day buyout was created for this transaction to intimidate participants. As you know, the 10 day buyout has been part of the participation agreements since inception. It was put in place to preserve the requirement of unanimity, which was needed to meet tax laws at the time, while preventing a small minority of participants, who might be acting for their own purposes and not in the interests of other participants, from flouting the will of the supermajority. Further, none of the consents we have received has resulted from notice of the pendency of buyout, which can only occur on the termination of the consent on having reached consents for 80% of the interests, and the existence of the buyout has not affected the vote to date.

- You stated that Peter L. Malkin told you that ESBA could not buy out Helmsley because other partners in ESBC would not go along with it and, when asked who the other partner was, Peter L. Malkin said it was Malkin who would block.

This is a false statement. Peter L. Malkin discussed with you whether ESBA could borrow to buy out Helmsley and Peter L. Malkin advised you that ESBA borrowing would require the subordination by ESBC of its interest. Encumbering ESBC's interest to benefit ESBA cannot be expected to be accepted by ESBC partners. As disclosed in the original offering documents, Malkin Holdings and its predecessor are supervisor to both ESBA and ESBC. The coordinated action of both groups has been orchestrated through easy and difficult times by Malkin Holdings and the efforts of its principals. Just as ESBC may not allow its interest to be subordinated, ESBA has a right to vote yes or no for the transaction and IPO for which ESBC has voted. Additionally, ESBC is controlled by Helmsley Estate and Peter Malkin.

- You stated that the voluntary overrides were not proposed until two years after Lawrence A. Wien's death and suggested would not have proposed an override for an existing deal.

This is a false statement for which you had no basis. During Lawrence A. Wien's lifetime, several overrides were proposed and approved at other properties after the inception of the relevant investment.

- Richard Edelman described you as owning, through a venture, the Grand Central Terminal and having owned, through a venture, the Chrysler Building.

April 3, 2013

Page 3

This is a misleading description of your background, which you did not correct. It fails to disclose the presence of Fortress Investment Group in the partnership that owns the Grand Central Terminal and that it owns the land underlying Grand Central Terminal, which is net leased to the Metropolitan Transit Authority. It also fails to disclose that your entity was a minority investor in the Chrysler Building in the purchase, which was led by [REDACTED].

- In response to a question on whether you could get control and give Malkin management fees instead of profits, you responded that it could be; it would require a vote.

Your statement was false and misleading. It strongly suggests that ESBA could gain control of the property by a vote of the participants. This is false. The operating lease with ESBC cannot be terminated by a vote of the participants and ESBC would continue to have the contractual right to control the operations of the Empire State Building. Further, the overrides, which were granted to Malkin Holdings, cannot be terminated by a vote of the participants.

- Callers made statements concerning how the Malkins had engaged in Madoff-like actions, fleeced investors and absconded with hundreds of millions of funds.

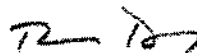
These are false statements for which there is absolutely no basis. As a sponsor and principal speaker on the call, you should have corrected these statements. Instead you provided responses that appeared to be supportive of the callers.

We have not undertaken to correct every misleading or incorrect element of the conference call.

If you have any questions or would like to verify an item of information you wish to convey, we are available to assist you.

We reserve all rights.

Sincerely,



Thomas E. L. Dewey

TD/mb



**DEWEY PEGNO & KRAMARSKY LLP**

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DANIEL SHTERNFELD  
MAUREEN A. FITZGERALD  
ANGELA L. HARRIS

April 3, 2013

**VIA EMAIL, FEDERAL EXPRESS & CERTIFIED MAIL**



**Empire State Building Associates L.L.C.**

Dear 

I write concerning a conference call you conducted on March 7, 2013, concerning ESBA, during which a number of false and misleading statements were made.

The following is a non-exhaustive list of the false and misleading statements made on that conference call:

- You stated that MacKenzie's reference to the March 25 deadline was "breach of agreement I reached." You also stated that the extension was "agreed to" by Malkin and that Malkin had his lawyers send you an email stating the agreement as to the extension.

This is a false statement. There was no agreement and when you asked Malkin's counsel to send you an email concerning the extension they said that they would not send such an email. Malkin's counsel advised you that Malkin would extend after callers in question received the information they did, and then Malkin did extend. At the time MacKenzie advised participants that asked about the deadline that it had not yet been extended, MacKenzie's statement was accurate.

- You stated that the vote is actually 90% of 2/3rds of the participants voting in favor, 6.5% voting no and 33% as not voting and that not voting is a no vote, so that the vote is not 90/10 but 60/40.

This characterization of the vote is false and misleading. Until the conclusion of the vote, not voting can mean, simply, that a participant has not voted. It is only equivalent to a no

April 3, 2013

Page 2

vote after the solicitation closes. You made that point several times and Richard Edelman and Andrew Penson echoed it a few times.

- You stated that you looked at the override document; the overrides are limited to sale or financing.

This is false; the override documents apply to proceeds of a capital transaction, which would include the proposed transaction.

- You claimed that Malkin Holdings does not have the authority to spend money in connection with the proposed transaction and IPO.

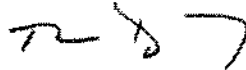
This is a false statement. The agents require the consent of the participants to enter into the proposed transaction. There is no restriction on them spending money to seek the consent of the participants. As you are well aware, entities universally pay the expenses of soliciting the consents for transactions that require investor consent.

We have not undertaken to correct every misleading or incorrect element of the conference call.

As we have previously advised, if you have any questions or would like to verify an item of information you wish to convey, we are available to assist you.

We reserve all rights.

Sincerely,



Thomas E. L. Dewey

TD/mb

**From:** Orlic, David L.  
**Sent:** Thursday, March 07, 2013 4:26 PM  
**To:** Kluck, Thomas  
**Cc:** McHale, Angela R.  
**Subject:** FW: Empire State Realty Trust, Inc.  
**Attachments:** 3.6.13 Attachment-Guide to Voting No.pdf; 3.6.13 Letter to R. Edelman.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Tom, we called both Richie [REDACTED] Edelman to alert them to the restrictions on making claims regarding the results of the solicitation. They both seemed to understand. In the meantime, Richie said that he uses an answering service for the number on his website, and all the phone calls are taped (I suppose that's legal under state law). He said that he reviewed all the tapes and that no statements like the ones described below were ever made.

On another point, [REDACTED]  
[REDACTED]  
[REDACTED] Please call when you have a moment so that we can discuss.

-David

---

**From:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com) [<mailto:Larry.Medvinsky@CliffordChance.com>]  
**Sent:** Thursday, March 07, 2013 12:37 PM  
**To:** Kluck, Thomas; McHale, Angela R.; Orlic, David L.  
**Cc:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com)  
**Subject:** Empire State Realty Trust, Inc.

Tom, Angela and David,

As discussed in conversations yesterday and this afternoon, attached please find a letter that was sent to Richard Edelman. The letter addresses a recent mailing from *empirestateinvestors.com* which does not clearly identify the source of the mailing. The letter also addresses phone calls made to the phone number on the mailing in which the person answering the phone stated, in response to questions, that he or she could convey a message to Mr. Peter Malkin and, in one conversation with an investor, that he or she worked for Malkin Holdings. As previously reported to you we believe (as demonstrated by the participant confusion described in the attached letter) that the communication (attached as well) does not clearly identify the party transmitting such communication in accordance with the requirements of Rule 14a-9. Further we believe their conduct violates the anti-fraud rules

set out in 14a-9 by solicitation participants. The attached letter to Richard Edelman demands that these actions cease and that corrective disclosure be made. We request the Staff to similarly take corrective action with respect to these actions. We are available to discuss this matter further or to answer any questions you may have. The representative of Mackenzie who spoke to the participant and to the representative of [empirestateinvestors.com](http://empirestateinvestors.com) is available to speak with you as well. Best Regards.

Larry

<<3.6.13 Attachment-Guide to Voting No.pdf>> <<3.6.13 Letter to R. Edelman.pdf>>

[CC]80-40476364[/CC]

\*\*\*\*\*

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**From:** McHale, Angela R.  
**Sent:** Thursday, March 07, 2013 9:50 AM  
**To:** (b)(6)  
**Cc:**  
**Subject:** FW: Empire State Realty Trust, Inc.  
**Attachments:** supplement.doc

Hi guys,

Would you mind please looking at the updated distribution section (it's short)? We're hoping to call them with any comments by this afternoon. Thanks!

---

**From:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com) [mailto:[Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com)]  
**Sent:** Wednesday, March 06, 2013 7:03 PM  
**To:** Kluck, Thomas; McHale, Angela R.; Orlic, David L.  
**Cc:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com)  
**Subject:** Empire State Realty Trust, Inc.

Tom, Angela and David,

As discussed attached please find for your review a draft of the supplement we would like to send to the participants. Thanks and best regards.

Larry

<<supplement.doc>>

[CC]80-40476364[/CC]

\*\*\*\*\*

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**From:** Orlic, David L.  
**Sent:** Thursday, March 07, 2013 9:47 AM  
**To:** Kluck, Thomas; McHale, Angela R.  
**Subject:** FW: Empire State Realty Trust, Inc.  
**Attachments:** supplement.doc

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**Flag Status:** Flagged

I have no comments on this. -David

---

**From:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com) [<mailto:Larry.Medvinsky@CliffordChance.com>]  
**Sent:** Wednesday, March 06, 2013 7:03 PM  
**To:** Kluck, Thomas; McHale, Angela R.; Orlic, David L.  
**Cc:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com)  
**Subject:** Empire State Realty Trust, Inc.

Tom, Angela and David,

As discussed attached please find for your review a draft of the supplement we would like to send to the participants. Thanks and best regards.

Larry

<<supplement.doc>>

[CC]80-40476364[/CC]

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**From:** McHale, Angela R.  
**Sent:** Tuesday, March 05, 2013 11:02 AM  
**To:** Orlic, David L.  
**Subject:** FW: Empire State Realty Trust, Inc.

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi—I'm going to sit in instead of Tom, if that's okay. I can do either time.

---

**From:** Kluck, Thomas  
**Sent:** Tuesday, March 05, 2013 10:58 AM  
**To:** McHale, Angela R.  
**Subject:** FW: Empire State Realty Trust, Inc.

Fyi -- could you sit in on this call with Larry today? Thanks!

---

**From:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com) [<mailto:Larry.Medvinsky@CliffordChance.com>]  
**Sent:** Tuesday, March 05, 2013 10:55 AM  
**To:** Kluck, Thomas; Orlic, David L.  
**Cc:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com); [ajacobs@proskauer.com](mailto:ajacobs@proskauer.com); [BLane@gibsondunn.com](mailto:BLane@gibsondunn.com)  
**Subject:** Empire State Realty Trust, Inc.

Tom and David,

Attached below please find a quote on the opening page of the Edelman website [empirestateinvestors.com](http://empirestateinvestors.com). We would like to have a call with you today to discuss your interpretation of the 14a-9 issues associated with this statement and to discuss certain potential statements our client is considering making regarding the status of the vote. Please let us know if 2:00 pm or 4:30 pm work for you today.

We can use the following dial-in information:

Dial-In Number: 866-592-5236

Conference Code: 4468607279

Thanks and best regards.

Larry

*"2/25/13: Early Voting feedback. Large numbers of ESBA Investors not sending in ballots. Same as Voting No".*

[CC]80-40476364[/CC]

\*\*\*\*\*

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**From:** Orlic, David L.  
**Sent:** Monday, January 14, 2013 3:11 PM  
**To:** [b:(6)]  
**Subject:** FW: Empire State Realty Trust, Inc.  
**Attachments:** esba wall.doc

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Purely fyi. -David

---

**From:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com) [<mailto:Larry.Medvinsky@CliffordChance.com>]  
**Sent:** Monday, January 14, 2013 1:49 PM  
**To:** Kluck, Thomas; Orlic, David L.  
**Cc:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com)  
**Subject:** Empire State Realty Trust, Inc.

Tom and David,

Attached for your review, please find a letter to investors. Best Regards.

Larry

<<esba wall.doc>>

[CC]80-40476364[/CC]

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[http://www.cliffordchance.com/about\\_us/find\\_people\\_and\\_offices.html](http://www.cliffordchance.com/about_us/find_people_and_offices.html)

**From:** Orlic, David L.  
**Sent:** Monday, January 14, 2013 3:11 PM  
**To:** Kluck, Thomas  
**Subject:** FW: Empire State Realty Trust, Inc.  
**Attachments:** esba wall.doc

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Tom, I have no comments on this. -David

---

**From:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com) [<mailto:Larry.Medvinsky@CliffordChance.com>]  
**Sent:** Monday, January 14, 2013 1:49 PM  
**To:** Kluck, Thomas; Orlic, David L.  
**Cc:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com)  
**Subject:** Empire State Realty Trust, Inc.

Tom and David,

Attached for your review, please find a letter to investors. Best Regards.

Larry

<<esba wall.doc>>

[CC]80-40476364[/CC]

\*\*\*\*\*

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**From:** Kluck, Thomas  
**Sent:** Monday, January 14, 2013 2:17 PM  
**To:** McHale, Angela R.  
**Cc:** [b:(b)] Orlic, David L.  
**Subject:** FW: Empire State Realty Trust, Inc.  
**Attachments:** esba wall.doc

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**Flag Status:** Flagged

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**From:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com) [<mailto:Larry.Medvinsky@CliffordChance.com>]  
**Sent:** Monday, January 14, 2013 1:49 PM  
**To:** Kluck, Thomas; Orlic, David L.  
**Cc:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com)  
**Subject:** Empire State Realty Trust, Inc.

Tom and David,

Attached for your review, please find a letter to investors. Best Regards.

Larry

<<esba wall.doc>>

[CC]80-40476364[/CC]

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**From:** Kluck, Thomas  
**Sent:** Wednesday, January 02, 2013 10:32 AM  
**To:** McHale, Angela R.  
**Cc:** [b:(6)] Orlic, David L.  
**Subject:** FW: Empire State Realty Trust, Inc.  
**Attachments:** empire ltr..pdf; empire.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

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**From:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com) [mailto:[Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com)]  
**Sent:** Wednesday, January 02, 2013 10:28 AM  
**To:** Kluck, Thomas; Orlic, David L.  
**Cc:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com)  
**Subject:** Empire State Realty Trust, Inc.

Tom and David,

Happy New Year. I hope both of you had some time off. Attached please find a letter from Malkin Holdings to its investors for your review. They are quite anxious to send this out as soon as possible. Please let us know if you have any comments. Also attached is an email correspondence from [b:(6)] to Richard [b:(6)] Edelman. We think it is supportive of our view that they are working in concert with respect to the solicitation. Best Regards.

Larry

<<empire ltr..pdf>> <<empire.pdf>>

[CC]80-40476364[/CC]

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**From:** Kluck, Thomas  
**Sent:** Wednesday, April 10, 2013 11:46 AM  
**To:** Orlic, David L.; McHale, Angela R.  
**Subject:** FW: Empire State Realty Trust, Inc "Is Not a..Consolidation"

Let's discuss when you have a minute. Thanks

---

**From:** richard edelman [mailto:richardedelman@hotmail.com]  
**Sent:** Wednesday, April 10, 2013 11:36 AM  
**To:** Kluck, Thomas; [REDACTED]  
**Subject:** Empire State Realty Trust, Inc "Is Not a..Consolidation"

Empire State Realty Trust, Inc.  
CIK#: 0001541401

April 10, 2013

**BY E-MAIL**

Tom Kluck  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street N.E.  
Washington, DC 20549

cc: [REDACTED]

Re: Is this a "Consolidation"?

Dear Mr. Kluck,

On April 8, 2013 Malkin Holdings LLC filed an answer to a lawsuit in the Supreme Court of the State of New York.

*"B. The Transaction Is Not a Statutory Merger or Consolidation" page 14"*

<https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentid=2nPMP4BxlojpoY0p4kfoiQ==&system=prod>

On December 21, 2012 Empire State Realty Trust, Inc. filed their S-4 with the SEC.

**"Consolidation"** appears **over 2,000 times**.

So if Malkin Holdings has now decided the transaction is not a "Consolidation" then shouldn't the S-4 be amended to reflect that?

Does the SEC have any responsibility to point this conflict out to the NY Court?

Is the argument that the word "Consolidation" has different meanings in New York courtrooms versus Washington D.C. SEC filings?

Thank you for your time and consideration.

Richie Edelman

**From:** Kluck, Thomas  
**Sent:** Friday, April 26, 2013 2:52 PM  
**To:** [REDACTED]  
**Cc:** Orlic, David L.; McHale, Angela R.; [REDACTED]  
**Subject:** FW: Empire State Realty Trust, Inc.

Hi Karen,

Below is a second complaint letter sent by [REDACTED]. This complaint raises concerns about inconsistent statements being made in the solicitation. We are still considering the complaint. We wanted to bring this to your attention. Note that the first email below was forwarded to you in January 2013.

Please let us know if you have any questions.

Thanks,

Tom  
X13233

---

**From:** [REDACTED]  
**Sent:** Friday, April 19, 2013 9:29 AM  
**To:** Kluck, Thomas  
**Subject:** FW: Empire State Realty Trust, Inc.

Tom Kluck, Legal Branch Chief  
Office of Real Estate and Commodities  
Division of Corporation Finance  
United States Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Dear Mr. Kluck:

The following inconsistency – when viewed alongside the threatened \$100-per-unit forced buyout by Malkin Holdings LLC that flies in the face of New York’s limited liability company statute – reveals a pattern of fraud in this proposed transaction. If the transaction is approved, however, participants in Empire State Building Associates L.L.C. will have explicitly waived their right to recover from the sponsors any damages arising from the fraud.

1. Peter Malkin’s 7/2/2012 letter highlights that the “new structure [whereby investors can elect to receive Operating Partnership units rather than Class A REIT shares or Class B REIT shares] that would give you the option to defer any tax that could be triggered by the proposed consolidation . . . is unique, was never used before, and was conceived by the Malkin Holdings team and made possible through the work of our third-party legal and investment advisors.”
2. Malkin Holdings LLC’s 4/18/2013 telephone scripts for use by itself and its proxy solicitation agent both recite, “We want to make sure you know that this tax deferral treatment is well established and is not contingent upon obtaining any IRS or SEC ruling.”

To locate the above excerpts, compare the second paragraph of Peter Malkin's letter to Participants in Empire State Building Associates L.L.C. (reflected in the 7/2/2012 SEC filing of Empire State Realty Trust, Inc.) to the third bullet point of Malkin Holdings LLC's telephone script and the seventh bullet point of MacKenzie Partners, Inc.'s telephone script (both reflected in the 4/18/2013 SEC filing of Empire State Realty Trust, Inc.):

<http://www.sec.gov/Archives/edgar/data/1541401/000119312512292003/d376103d425.htm>

<http://www.sec.gov/Archives/edgar/data/1541401/000119312513160673/d522474d425.htm>

Although it may be true that no IRS ruling is technically required, it seems highly imprudent that a Private Letter Ruling has not been sought in advance from the IRS. As a matter of precedent, the IRS would certainly not concur with the sponsor's widely-touted tax deferral that is purportedly available to participants in Empire State Building Associates L.L.C. who voluntarily elect to receive Operating Partnership units (instead of Class A REIT shares or Class B REIT shares) despite their constructive receipt of income through the deemed sale of their participation units in the proposed transaction. Instead, the IRS will likely adjust the tax liability of all taxpayers receiving a Schedule K-1 from Empire State Building Associates L.L.C. for the year in which the transaction is consummated.

Please take any appropriate action to protect the many surviving octogenarians who purchased their units in Empire State Building Associates L.L.C. during its original 1961 syndication and whose estates will forego the long-anticipated tax-free step-up in cost basis upon their death if those elderly participants succumb to the sponsor's relentless pressure to approve this now-demonstrably-fraudulent transaction.

Respectfully yours,

(b)(6)

Beneficiary of a participant in Empire State Building Associates L.L.C.

tel: (b)(6)

---

**From:** (b)(6)  
**Sent:** Wednesday, January 23, 2013 11:18 AM  
**To:** 'kluckt@sec.gov'  
**Subject:** Empire State Realty Trust, Inc.

Tom Kluck, Legal Branch Chief  
Office of Real Estate and Commodities  
Division of Corporation Finance  
United States Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Dear Mr. Kluck:

A few months ago, I was taken aback to receive an extremely aggressive, high-pressure telephone call (quite threatening in tone) from a proxy solicitation firm asking for my oral commitment at that instant to vote in favor of the conversion of Empire State Building Associates L.L.C. into a real estate investment trust.

(b)(6) so that I received this unexpected telephone call as president of our small family investment partnership that holds his investment in Empire State Building Associates L.L.C., I was skeptical about the call.

I fear, however, that other senior citizens who receive such a call will feel that they made a binding oral commitment through this proxy solicitation firm – on similar telephone calls they presumably received – to vote in favor of the conversion even though it may actually be contrary to the financial interest of themselves or their families.

In the past few years, I have received – and have retained (both in my memory in and in my file cabinet) – 2-3 pieces of written correspondence from an affiliate of Malkin Holdings LLC admonishing me that my failure to vote timely in favor of its proposals – including a much less significant one being proposed at that time – would result in the automatic forfeiture of this investment by our family investment partnership in exchange for the nominal compensation of \$100 per unit.

When valuing this asset in my late father's estate a few years ago, I recall Malkin Securities LLC's dramatically understating the estimated arm's length trading value of this asset in a private transaction. Perhaps the Malkin family, whose financial interests are in conflict with the "public" unitholders of Empire State Building Associates L.L.C. in a multitude of ways, provided these low-ball estimates as a way of conditioning the market for the currently proposed conversion in addition to perhaps inadvertently(?) defrauding the Internal Revenue Service of estate taxes owed at the death of Mr. Lawrence Wien, co-founder of Wien & Malkin Securities and father-in-law of Mr. Peter Malkin, whose son Anthony Malkin leads Malkin Holdings LLC today.

The Malkin family wears so many hats throughout the layers of ownership and management of this iconic property that they are uniquely motivated to secure reflexive "yes" votes from the many financially unsophisticated unitholders whose grandparents or parents believed they were making a rock-solid investment 60 years ago to provide predictable monthly income to their descendents for the 99-year term of Empire State Building Associates L.L.C.'s sublease to the Wien, Malkin, and Helmsley families (through their ownership of Empire State Building Company L.L.C. that is both directly and indirectly adverse to the "public" investors in Empire State Building Associates L.L.C. in so many ways).

These conflicts of interest by the Malkin family and its affiliates suggest that replacement of management – and entrepreneurial establishment of a secondary trading market that might be made possible thereby – would be a necessary precondition for the proposed conversion of Empire State Building Associates L.L.C. into a real estate investment trust. Otherwise, the Securities and Exchange Commission will have failed to do its job to protect the public investors that own Empire State Building Associates L.L.C. today following the deaths of the original purchasers and the intergenerational transfers of units that have occurred.

(b)(6)

**From:** Kluck, Thomas  
**Sent:** Wednesday, January 30, 2013 8:59 AM  
**To:** Orlic, David L.; [REDACTED]  
**Cc:** McHale, Angela R.  
**Subject:** FW: Empire State Realty Trust, Inc 1/29/13 Class Action Lawsuit Filings  
**Attachments:** Kovacs Affidavit\_ExhA\_52\_130129.pdf; Kovacs Affidavit\_ExhB\_53\_130129.pdf; Kovacs Objection to Settlement\_50\_130129.pdf; Kovacs Affidavit\_51\_130129.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Fyi

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**From:** richard edelman [mailto:richardedelman@hotmail.com]  
**Sent:** Tuesday, January 29, 2013 11:51 PM  
**To:** Kluck, Thomas; [REDACTED]  
**Subject:** Empire State Realty Trust, Inc 1/29/13 Class Action Lawsuit Filings

Mr. Kluck and [REDACTED]

These are new Class Action Lawsuit filings from today, January 29, 2012. Attached.

Link to filings.

<http://iapps.courts.state.ny.us/iscroll/SQLData.isp?IndexNo=650607-2012>

Till next time.

Richie Edelman

**EXHIBIT 1**

**To**

**Objection of  
Alan L. Kovacs, Trustee**





- (c) permitting the ESBA Sub-Class to conduct discovery into its claims and the settlement proposed by the Plaintiffs (the "Proposed Settlement") in their motion herein;
- (d) amending this Court's June 25, 2012 order of consolidation (the "Consolidation Order") to require that a separate complaint be filed on behalf of the ESBA Sub-Class and that a separate Consolidated Amended Complaint be filed on behalf of putative class members other than the ESBA Sub-Class by existing counsel; and
- (e) granting the Proposed Intervenors all such other and further relief as this Court deems just and proper.

3. I have been practicing law since 1972. Since 1979 have been involved as class counsel, and/or as counsel for named plaintiffs, in a significant number of class actions filed in Massachusetts State Courts and a variety of Federal District Courts, involving antitrust claims, unfair and deceptive acts and practices claims and securities claims.

4. I have reviewed and am familiar with:

- a. The Complaints heretofore filed herein;
- b. The Memorandum of Law submitted by Plaintiffs in support of their Motion seeking preliminary approval of a settlement of this action and, in connection therewith, preliminary certification of a class consisting of all investors in all of the entities to be rolled-up into the REIT;
- c. The Stipulation of Settlement attached as an exhibit to Affirmation of Lawrence P. Kolker in support of Plaintiffs' motion;
- d. The Prospectus issued by the REIT dated January 21, 2013, as well as prior versions of same that had been submitted to the SEC;
- e. The Memorandum of Law submitted by the Proposed Intervenors, in which they object to the proposed Settlement and seek leave to intervene and to file a complaint on behalf of a class consisting only of investors in Empire State Building Associates, LLC;
- f. The Affirmation of Stephen B. Meister, Esq., submitted in support of the Motion and Objection of the Proposed Intervenors; and
- g. The exhibits attached to the Affirmation of Stephen B. Meister, Esq., including but not limited to the organizational documents related to ESBA.

5. Attached hereto as Exhibit A are true and correct copies of certain pages from the Empire State Realty Trust Prospectus, dated January 21, 2013.

6. Attached hereto as Exhibit B is a true and correct copy of Exhibit 99.48 to “Pre-Effective Amendment No. 3 to Form S-4 Registration Statement” filed on August 13, 2012.

7. The Empire State Building is iconic and, because of its storied history and unique characteristics, is wholly dissimilar to any of the other properties involved in the proposed REIT. Accordingly, the interests of the owners of the Empire State Building, namely, the holders of equitable interests in Empire State Building Associates, LLC, in terms of valuing the proposed consolidation, are very different from the interests of holders of equitable interests in each and every one of the other entities that are part of the proposed consolidation.

8. I am unable to make a reasoned decision as to whether to vote in favor of or against the Consolidation, since the Prospectus does not include certain key financial information.

9. Today, January 29, 2013, Anthony Malkin, the President of Defendant Malkin Holdings LLC., was interviewed on Bloomberg Television. During the interview he said, among other things:

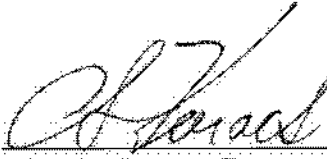
- “Our job is to protect thousands of investors to make sure they have best information to make best decision in their own interests”;
- We “expect distributions to be up much more than if status quo continues”;
- “Malkin Holdings supervises (the Empire State Building) exclusively, but the Helmsley Estate and Malkin Family control Empire State Building Company which is the operating lease (sic) and which makes all decisions which determines in fact the performance based on its decisions”.

82. Yet one must even question the paucity of those most recent distributions. As also admitted during an by the President of defendant Malkin Holdings, his family has “veto power” over all decisions made by the operating lessee, Empire State Building Company “which makes all decision which determines in fact the performance (of the Empire State Building) based on its decision.” Kovacs Aff. ¶ 9.

II. The Settlement Class proposed by Plaintiffs should not be certified, and the Intervenor should be allowed to file a Complaint on behalf of ESBA participants only, for the reasons set forth in the proposed Intervenor’s Memorandum of Law and incorporate same herein by reference as if fully set forth herein.

Though I also am the holder, as Trustee or individually, of interests in other entities to be rolled-up into the REIT, I nevertheless believe that my interests as the holder of a participation in ESBA can only be adequately protected with the certification of a separate and distinct class of only ESBA participants represented only by persons who only hold an interest in ESBA. Furthermore, such class needs to be represented by counsel separate and apart from existing counsel, who entered into the proposed settlement with defendants, and specifically by Stephen Meister of Meister Seelig & Fein LLP, as the proposed Intervenor have requested. Kovacs Aff. ¶¶ 10, 11.

Dated: Newton, Massachusetts  
January 29, 2013

  
\_\_\_\_\_  
Alan L. Kovacs, Esq.  
LAW OFFICE OF ALAN L. KOVACS  
257 Dedham St.  
Newton, MA 02461  
(617)964-1177  
alankovacs@yahoo.com

Of Counsel:

Albert M. Rosenblatt, Esq.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

Index No. 650607/12  
(Sherwood, J.)

IN RE EMPIRE STATE REALTY TRUST, INC.  
INVESTOR LITIGATION

-----X

**SUBMISSION OF PUTATIVE PLAINTIFF ALAN L. KOVACS, TRUSTEE,**

**(A) OBJECTING TO SETTLEMENT AND PRELIMINARY  
CERTIFICATION OF SETTLEMENT CLASS**

**AND**

**(B) IN SUPPORT OF CROSS MOTION OF PROPOSED INTERVENORS SEEKING  
ORDER (1) ALLOWING FILING OF A CLASS ACTION COMPLAINT ON BEHALF  
OF CLASS CONSISTING ONLY OF INVESTORS IN EMPIRE STATE BUILDING  
ASSOCIATES, LLC AND (2) DESIGNATING MEISTER SEELIG & FEIN AS  
COUNSEL FOR SUCH CLASS**

Alan L. Kovacs, Esq.  
**LAW OFFICE OF ALAN L. KOVACS**  
257 Dedham St.  
Newton, MA 02461  
(617) 964-1177  
alankovacs@yahoo.com

Of Counsel:

Albert M. Rosenblatt, Esq.

## INTRODUCTION

On January 18, 2013, Plaintiffs herein noticed their intent to move for an order preliminarily certifying this action as a class action pursuant to CPLR Article 9 for purposes of settlement and preliminarily approving the settlement of this action on the terms set forth in a Stipulation of Settlement dated September 28, 2012 (the "Settlement Stipulation"). The Settlement Stipulation (Kolker Affidavit, Exh. A) defines the proposed settlement class as "all Participants in any of the Public LLCs and Private Entities other than ... Defendants" and certain Defendant related individual and business entities. Per the first WHEREAS clause of the Settlement Stipulation, the Public LLCs and the Private Entities consist of all of the real estate entities that are to be consolidated into the Empire State Realty Trust ("ESRT" or the "REIT"), as proposed in the Prospectus dated January 21, 2013. Thus, the proposed Settlement Class consist of all investors who have an interest in any of the entities that are part of the proposed consolidation into the REIT.

As Trustee of the Hilda Kovacs Family Trust of 2000, I am the owner of one participation unit in Empire State Building Associates, LLC ("ESBA"), and am also the owner of an interest in another property, 1400 Broadway, that may be consolidated into the REIT. Additionally, I am the owner, individually, of small interests in First Stamford Place L.L.C. and 500 Mamaroneck Avenue, L.P. which are two of the "Private" entities also to be rolled-up into the REIT. Kovacs Affidavit, ¶ 1 (Exhibit 1 hereto)(hereinafter "Kovacs Aff. ¶\_\_"). As stated in my Affidavit, I am familiar with the Complaints heretofore filed herein, the Settlement Stipulation, the Memorandum of Law submitted by Plaintiffs in support of their Motion, the Prospectus for the REIT, prior iterations of the Prospectus, and the Motion and supporting documents of the proposed Intervenors. Kovacs Aff. ¶ 4.

Thus, I am a putative member of the class which Plaintiffs seeks to certify (holders of interests in any and all of the entities to be consolidated in the REIT), and I will be a putative member of the class that the Proposed Intervenors seek to represent (holders of an interest in only ESBA, the fee owner of the Empire State Building).

### **OBJECTIONS**

I. The proposed settlement is grossly unfair to Participants in ESBA such as myself. Kovacs Aff. ¶ 10. I therefore object to preliminary approval of the Settlement Stipulation for the reasons set forth in the proposed Intervenors' Memorandum of Law and incorporate same herein by reference as if fully set forth herein.

In this regard, I further strenuously object to the Settlement in light of its failure to require that the Prospectus include key financial information without which I, and other ESBA Participants, cannot reasonably determine whether to vote in favor of or against the Consolidation. Kovacs Aff. ¶ 8. Specifically, the Prospectus fails to include projections as to the cash flow that would be available for distribution to me as an ESBA Participant in future years. Such projections could then be compared to the Cash Flow projections for the REIT that have been provided (see Prospectus Excerpts, Appendix C, pp. 20 - 21, Exh. A to Kovacs Affidavit), and enable me to attempt to quantify distributions I could expect to receive from ESBA on a stand-alone basis should the Consolidation not be approved. Instead, the Prospectus asks me to decide on the Consolidation based on what I, and other ESBA participants have received on average over the years 2007 to 2011 (i.e. past distributions) in comparison with the projected distribution to me from the REIT in 2013. See Prospectus Excerpts, p. 82, Exh. A to Kovacs Affidavit.

Notwithstanding that the President of defendant Malkin Holdings claims that it is their job to make sure ESBA Participants have the “best information” to enable them to make the “best decision in their own interests” (see Kovacs Aff. ¶ 9, it is obvious that that such an analysis is being withheld from ESBA participants by the defendants intentionally. One was done, but the defendants do not think it material or worthy of consideration by ESBA Participants:

While the supervisor did not perform a detailed financial analysis of all these alternatives, other than continued operations of the subject LLCs and liquidation of the subject LLCs, the supervisor believes that these alternatives would not be as beneficial to participants as the consolidation.

Prospectus Excerpts, p. 178, Exh. A to Kovacs Affidavit<sup>1</sup>.

Moreover, such an analysis was included as Exhibit 99.48 to an earlier iteration of the Prospectus, specifically Amendment No. 3 of the S4 (the proposed Prospectus), submitted to the SEC on or about August 13, 2012. Kovacs Aff. ¶ 6, and Exhibit B thereto. Of course, one does not know why such an Exhibit was not ultimately used, or if the calculations contained thereon were accurate, or if not, why not. Whether or not the numbers on Exhibit 99.48 are accurate, that Exhibit reflects the fact that such projections were possible, with appropriate disclaimers, just as the Prospectus provided projections for the REIT on a consolidated basis.

Indeed, the projections contained in Exhibit 99.48 themselves likely give a clue as to why such an analysis was not ultimately included. According to the Exhibit, five years out, in 2016, there would be \$73,221,973 available for distribution to ESBA participants, and in 2021, ten years out, \$93,850,920. Those amounts work out to distributions on each 1/3300 interest in ESBA of approximately \$22,100 in 2016, and \$28,500 in 2021 (see Kovacs Aff. Exh B, p. “12 of 16”), , significantly greater than the average distribution over the years 2007 through 2011 of

---

<sup>1</sup> Interestingly, the language used is clearly designed to confuse readers as to what was and was not done, by starting with the phrase “While the supervisor did not perform . . .” (emphasis supplied).

§3,110. See Kovacs Aff., Exh. A, Prospectus Excerpts, p. 82. Yet one must even question the paucity of those most recent distributions. As also admitted during an by the President of defendant Malkin Holdings, his family has “veto power” over all decisions made by the operating lessee, Empire State Building Company “which makes all decision which determines in fact the performance (of the Empire State Building) based on its decision.” Kovacs Aff. ¶ 9.

II. The Settlement Class proposed by Plaintiffs should not be certified, and the Intervenor should be allowed to file a Complaint on behalf of ESBA participants only, for the reasons set forth in the proposed Intervenor’s Memorandum of Law and incorporate same herein by reference as if fully set forth herein.

Though I also am the holder, as Trustee or individually, of interests in other entities to be rolled-up into the REIT, I nevertheless believe that my interests as the holder of a participation in ESBA can only be adequately protected with the certification of a separate and distinct class of only ESBA participants represented only by persons who only hold an interest in ESBA. Furthermore, such class needs to be represented by counsel separate and apart from existing counsel, who entered into the proposed settlement with defendants, and specifically by Stephen Meister of Meister Seelig & Fein LLP, as the proposed Intervenor has requested. Kovacs Aff. ¶¶ 10,11.

Dated: Newton, Massachusetts  
January , 2013

---

Alan L. Kovacs, Esq.  
LAW OFFICE OF ALAN L. KOVACS  
257 Dedham St.  
Newton, MA 02461  
(617)964-1177  
alankovacs@yahoo.com

Of Counsel:

Albert M. Rosenblatt, Esq.

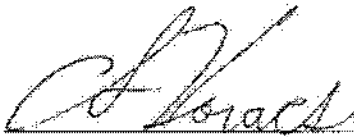


§3,110. See Kovacs Aff., Exh. A, Prospectus Excerpts, p. 82. Yet one must even question the paucity of those most recent distributions. As also admitted during an by the President of defendant Malkin Holdings, his family has “veto power” over all decisions made by the operating lessee, Empire State Building Company “which makes all decision which determines in fact the performance (of the Empire State Building) based on its decision.” Kovacs Aff. ¶ 9.

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Dated: Newton, Massachusetts  
January 29, 2013

  
Alan L. Kovacs, Esq.  
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257 Dedham St.  
Newton, MA 02461  
(617)964-1177  
alankovacs@yahoo.com

Of Counsel:

Albert M. Rosenblatt, Esq.

# EXHIBIT B

To

Affidavit of  
Alan L. Kovacs, Trustee

Calculation of Illustrative Exchange Values Using the Discounted Cash Flow Method to Allocate Residual Value

The following is a calculation of illustrative exchange values using the discounted cash flow method to allocate residual value based on the projections that were used to calculate the preliminary exchange values shown in this prospectus/consent solicitation (except that the projections used for purposes of this calculation are for a longer time period).

The valuations based on the discounted cash flow method, as set forth below, were calculated by the independent valuer based on information provided by the management of the supervisor. The supervisor requested the independent valuer in June 2012 to calculate the exchange values using the discounted cash flow methodology on this basis solely for illustrative purposes to show participants the effect of the different methods.

The tables that follow also include a summary of projections that were utilized by the independent valuer in calculating the exchange values using the discounted cash flow method described above. The projections were prepared solely for the purpose of determining the relative values among the subject LLCs, the private entities and the management companies and to establish exchange values to facilitate the consolidation and should not be relied upon for any other purpose, including without limitation, as an indicator of future performance of the company, the properties, the subject LLCs or the private entities. The projections should not be relied upon in determining the market value or the estimated value of the company after giving effect to the consolidation and the IPO. The actual performance of the properties may be materially different from these projections because of changes in market conditions and many other factors.

Neither the subject LLCs nor the supervisor as a matter of course make public projections as to future performance, earnings or other results beyond the current fiscal year, and the supervisor is especially reluctant to disclose projections for extended periods due to the unpredictability of the underlying assumptions and estimates. The projections with respect to the properties were presented by the independent valuer based on the information provided by management of the supervisor and analysis performed by the independent valuer and reviewed and approved by management of the supervisor.

These projections were not prepared in accordance with published guidelines of the SEC or the guidelines established by the American Institute of Certified Public Accountants for preparation and presentation of financial projections. This information is not fact and should not be relied upon as being necessarily indicative of future results, and readers of this prospectus/consent solicitation are cautioned not to place undue reliance on the prospective financial information. Neither the company's independent registered public accounting firm nor any other independent accountants have examined, compiled or otherwise applied procedures to the projections presented herein or express an opinion or any other form of assurance on them. The summary of the projection is being included in this prospectus/consent solicitation solely because the projections were used by the independent valuer in calculating the illustrative exchange values using the discounted cash flow method to allocate residual value.

The projections were based on numerous assumptions that may prove to be wrong. Important factors that may affect actual results and cause the projections to not be achieved include, but are not limited to, risks and uncertainties relating to the company and other factors described under "Risk Factors" and "Forward-Looking Statements." The projections also reflect assumptions as to certain business decisions that are subject to change. As a result, actual results may differ materially from those contained in the projections. Accordingly, there can be no assurance that the projections will be realized.

Certain of the prospective financial information set forth herein may be considered non-U.S. GAAP financial measures. The independent valuer believed this information could be useful in valuing the properties. Non-U.S. GAAP financial measures should not be considered in isolation from, or as a substitute for, financial information presented in compliance with U.S. GAAP, and non-U.S. GAAP financial measures may not be comparable to similarly stated amounts used by other companies.

The inclusion of the summary of the projections in this prospectus/consent solicitation should not be regarded as an indication that any of the company, the subject LLCs or the supervisor or their respective affiliates, advisors or representatives considered the projections to be predictive of actual future events, and the projections should not be relied upon as such. None of the company, the subject LLCs or the supervisor or their respective affiliates, advisors, officers, directors, partners or representatives can give any assurance that actual results will not differ from the projections, and none of them undertakes any obligation to update or otherwise revise or reconcile the projections to reflect circumstances existing after the date the projections were generated or to reflect the occurrence of future events even in the event that any or all of the assumptions underlying the projections are shown to be in error. None of the company, the supervisor and the subject LLCs intend to make publicly available any update or other revision to the projections. None of the company, the supervisor and the subject LLCs or their respective affiliates, advisors, officers, directors, partners, or representatives has made or makes any representation to any participant or other person regarding the company's or the subject LLC's ultimate performance compared to the information contained in the projections or that forecasted results will be achieved. None of the subject LLCs, the private entities, the management companies or any of their affiliates has made any representation to the company concerning the projections.

The projections were prepared solely to determine the relative value among the subject LLCs, the private entities and the management companies and to establish exchange values to facilitate the consolidation and should not be relied upon for any other purpose, including without limitation, as an indicator of future performance of the company, the properties, the subject LLCs, the private entities or the management companies. The projections should not be relied upon in determining the market value or the estimated value of the company after giving effect to the consolidation and the IPO. The actual performance of the properties and management companies may be materially different from these projections because of changes in market conditions and many other factors.

One Grand Central Place Long-Term DCF Method Estimate

For the Years Ending	Year 1 Jun-2013	Year 2 Jun-2014	Year 3 Jun-2014	Year 4 Jun-2014	Year 5 Jun-2015	Year 6 Jun-2017	Year 7 Jun-2018	Year 8 Jun-2019	Year 9 Jun-2020	Year 10 Jun-2021	Year 11 Jun-2022	Year 12 Jun-2023	Year 13 Jun-2024	Year 14 Jun-2025	Year 15 Jun-2026
Total Potential Gross Rent	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
General Vacancy	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)
Common Area	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)
Operating Expenses	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)
Capital Expenditures	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)
Income Tax	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)
Net Operating Income	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000
Discount Rate	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%
Present Value	450,000	400,000	350,000	300,000	250,000	200,000	150,000	100,000	50,000	0	0	0	0	0	0
Total Present Value	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000







	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
<b>Security</b>															
Professional Fees															
Management Fee															
Wholesaler Fees (10%)															
Real Estate Taxes															
Rel. Fee															
Insurance															
Assumed Growth Rate	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Total Operating Expenses	761,353,146	171,556,249	177,576,537	182,852,744	188,338,327	193,988,417	199,808,171	205,808,175	211,998,175	218,387,747	224,988,512	231,803,147	238,843,147	246,128,147	253,678,147
Leasing & Capital Costs	3,800,000,000	2,576,800,000	2,050,000,000	1,520,000,000	1,000,000,000	500,000,000	200,000,000	100,000,000	50,000,000	25,000,000	12,500,000	6,250,000	3,125,000	1,562,500	781,250
Human Resources															
Learning Curve/Start-up															
Fixed Costs															
Capital Improvements															
Base Rent															
Assumed Growth Rate	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Total Operating Costs	11,413,146,792	10,775,795,248	10,206,537,534	9,708,845,488	9,281,338,654	8,924,338,587	8,634,146,648	8,402,186,350	8,228,184,350	8,103,182,350	8,028,180,350	7,993,178,350	7,978,176,350	7,978,174,350	7,983,172,350
Cash Flow Before Debt Service & Taxes	27,432,171,714	33,449,416,416	40,466,661,118	47,483,905,820	54,501,200,522	61,518,495,224	68,535,790,926	75,553,085,628	82,570,380,330	89,587,675,032	96,604,969,734	103,622,264,436	110,639,559,138	117,656,853,840	124,674,148,542
Base Rent	21,000,000	21,000,000	21,000,000	21,000,000	21,000,000	21,000,000	21,000,000	21,000,000	21,000,000	21,000,000	21,000,000	21,000,000	21,000,000	21,000,000	21,000,000
Property Management Fees	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
Total Fixed Rent	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
Operating Costs	4,100,000,000	4,290,000,000	4,480,000,000	4,670,000,000	4,860,000,000	5,050,000,000	5,240,000,000	5,430,000,000	5,620,000,000	5,810,000,000	6,000,000,000	6,190,000,000	6,380,000,000	6,570,000,000	6,760,000,000
Total Operating Expenses	4,100,000,000	4,290,000,000	4,480,000,000	4,670,000,000	4,860,000,000	5,050,000,000	5,240,000,000	5,430,000,000	5,620,000,000	5,810,000,000	6,000,000,000	6,190,000,000	6,380,000,000	6,570,000,000	6,760,000,000
Net Operating Income	26,432,171,714	32,449,416,416	39,466,661,118	46,483,905,820	53,501,200,522	60,518,495,224	67,535,790,926	74,553,085,628	81,570,380,330	88,587,675,032	95,604,969,734	102,622,264,436	109,639,559,138	116,656,853,840	123,674,148,542
Fixed Costs															
Line - Total Fixed Costs	11,000,000,000	11,000,000,000	11,000,000,000	11,000,000,000	11,000,000,000	11,000,000,000	11,000,000,000	11,000,000,000	11,000,000,000	11,000,000,000	11,000,000,000	11,000,000,000	11,000,000,000	11,000,000,000	11,000,000,000
Operating Income (Pre-Tax)	15,432,171,714	21,449,416,416	28,466,661,118	35,483,905,820	42,501,200,522	49,518,495,224	56,535,790,926	63,553,085,628	70,570,380,330	77,587,675,032	84,604,969,734	91,622,264,436	98,639,559,138	105,656,853,840	112,674,148,542
Depreciation															
Operating Costs	2,100,000,000	2,100,000,000	2,100,000,000	2,100,000,000	2,100,000,000	2,100,000,000	2,100,000,000	2,100,000,000	2,100,000,000	2,100,000,000	2,100,000,000	2,100,000,000	2,100,000,000	2,100,000,000	2,100,000,000
Operating Income (After Tax)	13,332,171,714	19,349,416,416	26,366,661,118	33,383,905,820	40,401,200,522	47,418,495,224	54,435,790,926	61,453,085,628	68,470,380,330	75,487,675,032	82,504,969,734	89,522,264,436	96,539,559,138	103,556,853,840	110,574,148,542
Operating Cost @ 50%	1,050,000,000	1,050,000,000	1,050,000,000	1,050,000,000	1,050,000,000	1,050,000,000	1,050,000,000	1,050,000,000	1,050,000,000	1,050,000,000	1,050,000,000	1,050,000,000	1,050,000,000	1,050,000,000	1,050,000,000
<b>PV to Eyr</b>															
Base Rent	21,000,000	21,000,000	21,000,000	21,000,000	21,000,000	21,000,000	21,000,000	21,000,000	21,000,000	21,000,000	21,000,000	21,000,000	21,000,000	21,000,000	21,000,000
Property Management Fees	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
Operating Costs	4,100,000,000	4,290,000,000	4,480,000,000	4,670,000,000	4,860,000,000	5,050,000,000	5,240,000,000	5,430,000,000	5,620,000,000	5,810,000,000	6,000,000,000	6,190,000,000	6,380,000,000	6,570,000,000	6,760,000,000
Discount Rate	7.75%														
<b>PV to Eyr</b>															
Operating Income (After Tax)	13,332,171,714	19,349,416,416	26,366,661,118	33,383,905,820	40,401,200,522	47,418,495,224	54,435,790,926	61,453,085,628	68,470,380,330	75,487,675,032	82,504,969,734	89,522,264,436	96,539,559,138	103,556,853,840	110,574,148,542
<b>PV to Operator</b>															
Operating Income (After Tax)	13,332,171,714	19,349,416,416	26,366,661,118	33,383,905,820	40,401,200,522	47,418,495,224	54,435,790,926	61,453,085,628	68,470,380,330	75,487,675,032	82,504,969,734	89,522,264,436	96,539,559,138	103,556,853,840	110,574,148,542
Discount Rate	6.25%														
<b>PV to Operator</b>															
Operating Income (After Tax)	13,332,171,714	19,349,416,416	26,366,661,118	33,383,905,820	40,401,200,522	47,418,495,224	54,435,790,926	61,453,085,628	68,470,380,330	75,487,675,032	82,504,969,734	89,522,264,436	96,539,559,138	103,556,853,840	110,574,148,542
Discount Rate	6.25%														
<b>PV to Operator</b>															
Operating Income (After Tax)	13,332,171,714	19,349,416,416	26,366,661,118	33,383,905,820	40,401,200,522	47,418,495,224	54,435,790,926	61,453,085,628	68,470,380,330	75,487,675,032	82,504,969,734	89,522,264,436	96,539,559,138	103,556,853,840	110,574,148,542
Discount Rate	6.25%														
<b>PV to Operator</b>															
Operating Income (After Tax)	13,332,171,714	19,349,416,416	26,366,661,118	33,383,905,820	40,401,200,522	47,418,495,224	54,435,790,926	61,453,085,628	68,470,380,330	75,487,675,032	82,504,969,734	89,522,264,436	96,539,559,138	103,556,853,840	110,574,148,542
Discount Rate	6.25%														
<b>PV to Operator</b>															
Operating Income (After Tax)	13,332,171,714	19,349,416,416	26,366,661,118	33,383,905,820	40,401,200,522	47,418,495,224	54,435,790,926	61,453,085,628	68,470,380,330	75,487,675,032	82,504,969,734	89,522,264,436	96,539,559,138	103,556,853,840	110,574,148,542
Discount Rate	6.25%														
<b>PV to Operator</b>															
Operating Income (After Tax)	13,332,171,714	19,349,416,416	26,366,661,118	33,383,905,820	40,401,200,522	47,418,495,224	54,435,790,926	61,453,085,628	68,470,380,330	75,487,675,032	82,504,969,734	89,522,264,436	96,539,559,138	103,556,853,840	110,574,148,542
Discount Rate	6.25%														
<b>PV to Operator</b>															
Operating Income (After Tax)	13,332,171,714	19,349,416,416	26,366,661,118	33,383,905,820	40,401,200,522	47,418,495,224	54,435,790,926	61,453,085,628	68,470,380,330	75,487,675,032	82,504,969,734	89,522,264,436	96,539,559,138	103,556,853,840	110,574,148,542
Discount Rate	6.25%														
<b>PV to Operator</b>															
Operating Income (After Tax)	13,332,171,714	19,349,416,416	26,366,661,118	33,383,905,820	40,401,200,522	47,418,495,224	54,435,790,926	61,453,085,628	68,470,380,330	75,487,675,032	82,504,969,734	89,522,264,436	96,539,559,138	103,556,853,840	110,574,148,542
Discount Rate	6.25%														
<b>PV to Operator</b>															
Operating Income (After Tax)	13,332,171,714	19,349,416,416	26,366,661,118	33,383,905,820	40,401,200,522	47,418,495,224	54,435,790,926	61,453,085,628	68,470,380,330	75,487,675,032	82,504,969,734	89,522,264,436	96,539,559,138	103,556,853,840	110,574,148,542
Discount Rate	6.25%														
<b>PV to Operator</b>															
Operating Income (After Tax)	13,332,171,714	19,349,416,416</													





Calculation of Changes in Value

		2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Future Free Single Value (see below)		15,841,891	16,469,131	17,103,528	17,744,991	18,393,528	19,049,131	19,711,808	20,381,551	21,058,361	21,742,138	22,432,881	23,130,591	23,835,268	24,546,911
Discount Rate	8.0%														
PV of Free		15,240,000	15,680,000	16,120,000	16,560,000	17,000,000	17,440,000	17,880,000	18,320,000	18,760,000	19,200,000	19,640,000	20,080,000	20,520,000	20,960,000
<b>PV to Operator</b>		<b>15,240,000</b>													
Cash Flow Before Debt Service		20,500,000	21,000,000	21,500,000	22,000,000	22,500,000	23,000,000	23,500,000	24,000,000	24,500,000	25,000,000	25,500,000	26,000,000	26,500,000	27,000,000
Fixed Costs		(2,000,000)	(2,100,000)	(2,200,000)	(2,300,000)	(2,400,000)	(2,500,000)	(2,600,000)	(2,700,000)	(2,800,000)	(2,900,000)	(3,000,000)	(3,100,000)	(3,200,000)	(3,300,000)
Operating Costs		(1,500,000)	(1,600,000)	(1,700,000)	(1,800,000)	(1,900,000)	(2,000,000)	(2,100,000)	(2,200,000)	(2,300,000)	(2,400,000)	(2,500,000)	(2,600,000)	(2,700,000)	(2,800,000)
Total Cash Flow to Operator		17,000,000	17,300,000	17,600,000	17,900,000	18,200,000	18,500,000	18,800,000	19,100,000	19,400,000	19,700,000	20,000,000	20,300,000	20,600,000	20,900,000
Discount Rate	8.0%														
PV to Operator		142,000,000													
<b>Combined Value</b>		<b>116,000,000</b>													
<b>Units (see Sample Value)</b>															
Cash Flow Before Debt Service		20,500,000	21,000,000	21,500,000	22,000,000	22,500,000	23,000,000	23,500,000	24,000,000	24,500,000	25,000,000	25,500,000	26,000,000	26,500,000	27,000,000
Fixed Costs		(2,000,000)	(2,100,000)	(2,200,000)	(2,300,000)	(2,400,000)	(2,500,000)	(2,600,000)	(2,700,000)	(2,800,000)	(2,900,000)	(3,000,000)	(3,100,000)	(3,200,000)	(3,300,000)
Operating Costs		(1,500,000)	(1,600,000)	(1,700,000)	(1,800,000)	(1,900,000)	(2,000,000)	(2,100,000)	(2,200,000)	(2,300,000)	(2,400,000)	(2,500,000)	(2,600,000)	(2,700,000)	(2,800,000)
Total Cash Flow to Operator		17,000,000	17,300,000	17,600,000	17,900,000	18,200,000	18,500,000	18,800,000	19,100,000	19,400,000	19,700,000	20,000,000	20,300,000	20,600,000	20,900,000
Discount Rate	8.0%														
PV to Operator		142,000,000													
<b>Combined Value</b>		<b>116,000,000</b>													
<b>Units (see Sample Value)</b>															
Cash Flow Before Debt Service		20,500,000	21,000,000	21,500,000	22,000,000	22,500,000	23,000,000	23,500,000	24,000,000	24,500,000	25,000,000	25,500,000	26,000,000	26,500,000	27,000,000
Fixed Costs		(2,000,000)	(2,100,000)	(2,200,000)	(2,300,000)	(2,400,000)	(2,500,000)	(2,600,000)	(2,700,000)	(2,800,000)	(2,900,000)	(3,000,000)	(3,100,000)	(3,200,000)	(3,300,000)
Operating Costs		(1,500,000)	(1,600,000)	(1,700,000)	(1,800,000)	(1,900,000)	(2,000,000)	(2,100,000)	(2,200,000)	(2,300,000)	(2,400,000)	(2,500,000)	(2,600,000)	(2,700,000)	(2,800,000)
Total Cash Flow to Operator		17,000,000	17,300,000	17,600,000	17,900,000	18,200,000	18,500,000	18,800,000	19,100,000	19,400,000	19,700,000	20,000,000	20,300,000	20,600,000	20,900,000
Discount Rate	8.0%														
PV to Operator		142,000,000													
<b>Combined Value</b>		<b>116,000,000</b>													
<b>Units (see Sample Value)</b>															
Cash Flow Before Debt Service		20,500,000	21,000,000	21,500,000	22,000,000	22,500,000	23,000,000	23,500,000	24,000,000	24,500,000	25,000,000	25,500,000	26,000,000	26,500,000	27,000,000
Fixed Costs		(2,000,000)	(2,100,000)	(2,200,000)	(2,300,000)	(2,400,000)	(2,500,000)	(2,600,000)	(2,700,000)	(2,800,000)	(2,900,000)	(3,000,000)	(3,100,000)	(3,200,000)	(3,300,000)
Operating Costs		(1,500,000)	(1,600,000)	(1,700,000)	(1,800,000)	(1,900,000)	(2,000,000)	(2,100,000)	(2,200,000)	(2,300,000)	(2,400,000)	(2,500,000)	(2,600,000)	(2,700,000)	(2,800,000)
Total Cash Flow to Operator		17,000,000	17,300,000	17,600,000	17,900,000	18,200,000	18,500,000	18,800,000	19,100,000	19,400,000	19,700,000	20,000,000	20,300,000	20,600,000	20,900,000
Discount Rate	8.0%														
PV to Operator		142,000,000													
<b>Combined Value</b>		<b>116,000,000</b>													
<b>Units (see Sample Value)</b>															

The projections were prepared solely to determine the relative value among the subject LLCs, the private entities and the management companies and to establish exchange values to facilitate the consolidation and should not be relied upon for any other purpose, including without limitation, as an indicator of future performance of the company, the properties, the subject LLCs, the private entities or the management companies. The projections should not be relied upon in determining the market value of the company after giving effect to the consolidation and the IPO. The actual performance of the properties and management companies may be materially different from these projections because of changes in market conditions and other effect factors.

250 W 7th Street  
Long-term DCF Method Estimate

For the Years Ending	Year 51 Jun-2042	Year 52 Jun-2043	Year 53 Jun-2044	Year 54 Jun-2045	Year 55 Jun-2046	Year 56 Jun-2047	Year 57 Jun-2048	Year 58 Jun-2049	Year 59 Jun-2050	Year 60 Jun-2051	Year 61 Jun-2052	Year 62 Jun-2053	Year 63 Jun-2054	Year 64 Jun-2055	Year 65 Jun-2056
Final Period Cash Flow	24,000,000	24,000,000	24,000,000	24,000,000	24,000,000	24,000,000	24,000,000	24,000,000	24,000,000	24,000,000	24,000,000	24,000,000	24,000,000	24,000,000	24,000,000
General Velocity	(1,355,895)	0	(1,687,116)	(514,654)	(1,371,624)	(1,355,051)									
Combined Cash	22,644,105	24,000,000	22,312,884	23,485,346	22,628,376	22,644,949	22,644,949	22,644,949	22,644,949	22,644,949	22,644,949	22,644,949	22,644,949	22,644,949	22,644,949
Assumed Growth Rate	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%
Operating Expenses	2,000,000	2,100,000	2,200,000	2,300,000	2,400,000	2,500,000	2,600,000	2,700,000	2,800,000	2,900,000	3,000,000	3,100,000	3,200,000	3,300,000	3,400,000
Fixed Costs	2,000,000	2,100,000	2,200,000	2,300,000	2,400,000	2,500,000	2,600,000	2,700,000	2,800,000	2,900,000	3,000,000	3,100,000	3,200,000	3,300,000	3,400,000
Operating Costs	1,500,000	1,600,000	1,700,000	1,800,000	1,900,000	2,000,000	2,100,000	2,200,000	2,300,000	2,400,000	2,500,000	2,600,000	2,700,000	2,800,000	2,900,000
Total Cash Flow to Operator	17,000,000	17,300,000	17,600,000	17,900,000	18,200,000	18,500,000	18,800,000	19,100,000	19,400,000	19,700,000	20,000,000	20,300,000	20,600,000	20,900,000	21,200,000
Discount Rate	8.0%														
PV to Operator	142,000,000														
<b>Combined Value</b>	<b>116,000,000</b>														
<b>Units (see Sample Value)</b>															



Calculation of Changes in Value

The projections were prepared solely to determine the relative value among the subject LLCs, the private entities and the management companies and to establish exchange values to facilitate the consolidation and should not be relied upon for any other purpose, including without limitation, as an indicator of future performance of the company, the properties, the subject LLCs, the private entities or the management companies. The projections should not be relied upon in determining the market value or the estimated value of the company after giving effect to the consolidation and the IPO. The actual performance of the properties and management companies may be materially different from these projections because of changes in market conditions and many other factors.

250 W57th Street  
Long-term DCF Method Estimate

For the Year Ending	Year 61 Jun-2072	Year 62 Jun-2073	Year 63 Jun-2074	Year 64 Jun-2075	Year 65 Jun-2076	Year 66 Jun-2077	Year 67 Jun-2078	Year 68 Jun-2079	Year 69 Jun-2080	Year 70 Jun-2081	Year 71 Jun-2082	Year 72 Jun-2083	Year 73 Jun-2084	Year 74 Jun-2085	Year 75 Jun-2086
Total Potential Gross Rent	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
Operating Expenses	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)
Net Operating Income	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000
Capital Expenditures	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)
Free Cash Flow	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000
Discount Rate	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%
Present Value	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000
Terminal Value	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000
Discount Rate	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%
Present Value	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000
Combined Value	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000

The projections were prepared solely to determine the relative value among the subject LLCs, the private entities and the management companies and to establish exchange values to facilitate the consolidation and should not be relied upon for any other purpose, including without limitation, as an indicator of future performance of the company, the properties, the subject LLCs, the private entities or the management companies. The projections should not be relied upon in determining the market value or the estimated value of the company after giving effect to the consolidation and the IPO. The actual performance of the properties and management companies may be materially different from these projections because of changes in market conditions and many other factors.

250 W57th Street  
Long-term DCF Method Estimate

For the Year Ending	Year 76 Jan-2087	Year 77 Jan-2088	Year 78 Jan-2089	Year 79 Jan-2090	Year 80 Jan-2091	Year 81 Jan-2092	Year 82 Jan-2093	Year 83 Jan-2094	Year 84 Jan-2095	Year 85 Jan-2096	Year 86 Jan-2097	Year 87 Jan-2098	Year 88 Jan-2099	Year 89 Jan-2100	Year 90 Jan-2101	Year 91 Jan-2102	Year 92 Jan-2103	Year 92 reference month September-82
Total Potential Gross Rent	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	
Operating Expenses	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	
Net Operating Income	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	900,000	
Capital Expenditures	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	
Free Cash Flow	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	850,000	
Discount Rate	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	
Present Value	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	
Terminal Value	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	
Discount Rate	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	8.50%	
Present Value	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	
Combined Value	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	







Calculation of Changes in Value

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Total Cash Flow to Operator	209,925,391	176,044,812	160,066,427	138,503,372	123,543,706	113,561,291	104,066,401	95,442,590	87,412,590	79,810,215	72,581,705	65,582,803	58,676,851	51,741,111	44,771,423	37,771,494
Discount Rate	8.14%															
PV to Operator	1,448,000,000															
<b>PV to Operator</b>	<b>1,448,000,000</b>															
Cash Flow Before Debt Service	186,297,257	153,403,611	137,377,216	116,033,336	101,201,336	91,701,903	83,254,628	75,799,158	69,242,908	63,566,816	58,780,100	54,859,808	51,781,223	49,441,221	47,781,221	46,666,667
Fixed Costs	(5,895,625)	(5,895,625)	(5,895,625)	(5,895,625)	(5,895,625)	(5,895,625)	(5,895,625)	(5,895,625)	(5,895,625)	(5,895,625)	(5,895,625)	(5,895,625)	(5,895,625)	(5,895,625)	(5,895,625)	(5,895,625)
Operating Costs	(229,839,856)	(164,988,023)	(140,136,807)	(129,239,493)	(123,859,229)	(120,363,636)	(118,016,613)	(116,583,725)	(115,721,921)	(115,296,150)	(115,147,173)	(115,183,122)	(115,301,222)	(115,491,222)	(115,741,222)	(116,041,222)
Total Cash Flow to Operator	201,492,601	181,590,983	161,180,409	139,568,357	123,039,155	113,901,681	104,971,001	97,475,755	91,771,091	86,771,691	82,684,925	79,487,178	77,141,222	75,545,596	74,471,494	73,771,494
Discount Rate	8.33%															
PV to Operator	1,971,000,000															
<b>Estimated Value</b>	<b>1,971,000,000</b>															
<b>Units Per Simple Value</b>	<b>1,971,000,000</b>															
Cash Flow Before Debt Service	1,971,000,000															
Fixed Costs	1,971,000,000															
Operating Costs	1,971,000,000															
Total Cash Flow to Operator	1,971,000,000															
Discount Rate	8.33%															
<b>Free Simple Value Today</b>	<b>1,971,000,000</b>															
<b>Value For Simple Value</b>	<b>1,971,000,000</b>															
Cash Flow Before Debt Service	1,971,000,000															
Fixed Costs	1,971,000,000															
Operating Costs	1,971,000,000															
Total Cash Flow to Operator	1,971,000,000															
Discount Rate	8.33%															
<b>Free Simple Value Today</b>	<b>1,971,000,000</b>															
<b>Value For Simple Value</b>	<b>1,971,000,000</b>															
Cash Flow Before Debt Service	1,971,000,000															
Fixed Costs	1,971,000,000															
Operating Costs	1,971,000,000															
Total Cash Flow to Operator	1,971,000,000															
Discount Rate	8.33%															
<b>Free Simple Value Today</b>	<b>1,971,000,000</b>															
<b>Value For Simple Value</b>	<b>1,971,000,000</b>															
Cash Flow Before Debt Service	1,971,000,000															
Fixed Costs	1,971,000,000															
Operating Costs	1,971,000,000															
Total Cash Flow to Operator	1,971,000,000															
Discount Rate	8.33%															
<b>Free Simple Value Today</b>	<b>1,971,000,000</b>															
<b>Value For Simple Value</b>	<b>1,971,000,000</b>															

The projections were prepared solely to determine the relative value among the subject LLCs, the private entities and the management companies and to facilitate exchange values to facilitate the consolidation and should not be relied upon for any other purpose, including without limitation, as an indicator of future performance of the company, the properties, the subject LLCs, the private entities or the management companies. The projections should not be relied upon for determining the market value of the estimated value of the company and/or giving effect to the consolidation and the IPM. The actual performance of the properties and management companies may be materially different from these projections because of changes in market conditions and many other factors.

Empire State Building  
Long-term DCF Method Estimate

	Year 46 Jun-2017	Year 47 Jun-2018	Year 48 Jun-2019	Year 49 Jun-2020	Year 50 Jun-2021	Year 51 Jun-2022	Year 52 Jun-2023	Year 53 Jun-2024	Year 54 Jun-2025	Year 55 Jun-2026	Year 56 Jun-2027	Year 57 Jun-2028	Year 58 Jun-2029	Year 59 Jun-2030	Year 60 Jun-2031	
Total Cash Flow to Operator	201,492,601	181,590,983	161,180,409	139,568,357	123,039,155	113,901,681	104,971,001	97,475,755	91,771,091	86,771,691	82,684,925	79,487,178	77,141,222	75,545,596	74,471,494	
Discount Rate	8.33%															
PV to Operator	1,971,000,000															
<b>Estimated Value</b>	<b>1,971,000,000</b>															
<b>Units Per Simple Value</b>	<b>1,971,000,000</b>															
Cash Flow Before Debt Service	1,971,000,000															
Fixed Costs	1,971,000,000															
Operating Costs	1,971,000,000															
Total Cash Flow to Operator	1,971,000,000															
Discount Rate	8.33%															
<b>Free Simple Value Today</b>	<b>1,971,000,000</b>															
<b>Value For Simple Value</b>	<b>1,971,000,000</b>															
Cash Flow Before Debt Service	1,971,000,000															
Fixed Costs	1,971,000,000															
Operating Costs	1,971,000,000															
Total Cash Flow to Operator	1,971,000,000															
Discount Rate	8.33%															
<b>Free Simple Value Today</b>	<b>1,971,000,000</b>															
<b>Value For Simple Value</b>	<b>1,971,000,000</b>															
Cash Flow Before Debt Service	1,971,000,000															
Fixed Costs	1,971,000,000															
Operating Costs	1,971,000,000															
Total Cash Flow to Operator	1,971,000,000															
Discount Rate	8.33%															
<b>Free Simple Value Today</b>	<b>1,971,000,000</b>															
<b>Value For Simple Value</b>	<b>1,971,000,000</b>															





**EXHIBIT A**

**To**

**Affidavit of  
Alan L. Kovacs, Trustee**

# EMPIRE STATE REALTY TRUST

## PROSPECTUS/CONSENT SOLICITATION STATEMENT

Empire State Building  
Associates L.L.C.

60 East 42nd St. Associates L.L.C.

250 West 57th St.  
Associates L.L.C.

One Grand Central Place  
60 East 42nd Street  
New York, New York 10165

## NOTICE OF CONSENT SOLICITATION TO PARTICIPANTS January 21, 2013

Malkin Holdings LLC, the supervisor of each limited liability company listed above, requests that you consent to the following:

*Proposed consolidation of your subject LLC into Empire State Realty Trust, Inc.* As described in the attached Prospectus/Consent Solicitation Statement, Malkin Holdings LLC, as supervisor, proposes a consolidation of certain office and retail properties in Manhattan and the greater New York metropolitan area owned by Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C. and 250 West 57th St. Associates L.L.C., or the subject LLCs, and certain private entities supervised by the supervisor, and certain related management businesses into Empire State Realty Trust, Inc., or the company. The consolidation is conditioned, among other things, upon the closing of the initial public offering, or the IPO, of the company's Class A common stock. The company will issue to each of the participants in the subject LLCs a specified number of operating partnership units, or at each participant's election, Class A common stock or, to a limited extent, Class B common stock. Each participant may elect to receive one share of Class B common stock instead of one operating partnership unit for every 50 operating partnership units such participant would otherwise receive in the consolidation. Each share of Class B common stock has 50 votes on all matters on which stockholders are entitled to vote and the same economic interest as a share of Class A common stock, and one share of Class B common stock and 49 operating partnership units together represent a similar economic value as 50 shares of Class A common stock. The company expects the Class A common stock and the operating partnership units offered herein to be listed on the New York Stock Exchange. After the series of transactions in which the subject LLCs will be consolidated into the company, the company will own, through direct and indirect subsidiaries, the assets of the subject LLCs and the assets of the private entities, along with certain related management businesses. There are 22 private entities involved in the consolidation, including the operating lessees of each of the subject LLCs, from which all required consents to the consolidation have previously been obtained. Attached to the supplement for each subject LLC as Appendix B is the contribution agreement for each subject LLC, which describes the terms of the consolidation in detail. Only the participants holding participation interests in a subject LLC during the consent solicitation period are entitled to notice of, and to vote "FOR" or "AGAINST," the proposed consolidation. For the reasons the supervisor believes this proposal is fair and reasonable, see "Background of and Reasons for the Consolidation."

*Proposal to authorize the supervisor to sell or contribute the property interests in a third-party portfolio transaction.* As a potential alternative to the consolidation, the supervisor requests that the participants consent to the sale or contribution of the subject LLCs' property interests as part of a sale or contribution of the properties owned by the subject LLCs, the private entities and the management companies as a portfolio to an unaffiliated third party. The third-party portfolio transaction would be undertaken only if the aggregate consideration is at least 115% of the aggregate exchange value for the subject LLCs, the private entities and the management companies included in the third-party portfolio transaction and certain other conditions are met. The proposal must provide for all cash, payable in full at closing, but such proposal may provide for an option for all participants to elect to receive securities as an alternative to cash. If the proposal provides for a securities option, the Malkin Family will have the right to elect to receive securities only on the same proportional basis as other participants. No member of the Malkin Family will be an affiliate, consultant, employee, officer or director of the acquirer after the closing or receive any compensation from the acquirer (other than their pro rata share of the consideration that they will receive in the third-party portfolio transaction). For the reasons the supervisor believes this proposal is fair and reasonable, see "Third-Party Portfolio Proposal."

## Comparison of Distributions

The following table sets forth a comparison of the distributions by the subject LLCs and by the company:

Subject LLC	Average Annual Distribution for the years ending December 31, 2007-2011 Per \$10,000 Original Investment <sup>(1)</sup>	Estimated Initial Distribution of the Company to Former Participants for the year ending September 30, 2013 Per \$10,000 Original Investment <sup>(2)</sup>
<b>Empire State Building Associates L.L.C.</b>		
Distributions out of basic rent	\$ 1,179	
Distributions out of overage rent		
Overage rent distributions attributable to borrowing <sup>(1)</sup>	\$ 140	
Overage rent distributions attributable to operations	\$ 1,791	
<b>Total distributions</b>	<b>\$ 3,110</b>	<b>\$ 5,866<sup>(4)</sup></b>
<b>60 East 42nd St. Associates L.L.C.</b>		
Distributions out of basic rent	\$ 1,495	
Distributions out of overage rent		
Overage rent distributions attributable to borrowing <sup>(1)</sup>	\$ 1,498	
Overage rent distributions attributable to operations	\$ 3,317	
<b>Total distributions</b>	<b>\$ 6,310</b>	<b>\$ 7,294</b>
<b>250 West 57th St. Associates L.L.C.</b>		
Distributions out of basic rent	\$ 2,000	
Distributions out of overage rent		
Overage rent distributions attributable to borrowing <sup>(1)</sup>	\$ 3,308	
Overage rent distributions attributable to extraordinary lease cancellation payment <sup>(3)</sup>	\$ 652	
Overage rent distributions attributable to operations	\$ 5,016	
<b>Total distributions</b>	<b>\$ 10,976</b>	<b>\$ 7,421<sup>(4)</sup></b>

- (1) Distributions each year consist of small regular monthly distributions out of basic rent and larger, but variable, distributions out of overage rent. The amount of distributions out of overage rent varies from year to year depending on factors such as:
- capital expenditures funded out of operating cash flow which reduced distributions;
  - borrowings to fund capital expenditures which must be agreed to by the operating lessees of each subject LLC and which would otherwise have been paid out of operating cash flow, which increases overage rent and the amount available for distribution; and
  - non-recurring events that generate additional cash, such as early lease cancellations, which may increase distributions and non-recurring events that require expenditure of funds, which may decrease distributions.

Accordingly, participants should not treat the amount distributed in any year as indicative of the amount that they would have received in future years if the subject LLC continued its operations. After the consolidation, a diverse collection of properties will be combined with more efficient access to capital and, as a result, the supervisor expects that overall distributions should be more consistent with less fluctuation due to these factors.

- (2) The calculation of the estimated annual distributions to stockholders of the company is shown in the table under "Background of and Reasons for the Consolidation---Comparison of Distributions by the Subject LLCs and the Company---Distributions by the Company."
- (3) In 2010, the operating lessee received an extraordinary lease cancellation payment from a space tenant in the amount of \$7.9 million, which contributed to \$3,259 per \$10,000 original investment of overage rent distributions in that year (or \$652 per \$10,000 original investment of average annual overage rent distributions over the period).
- (4) Assumes that a participant is subject to the voluntary override.

the necessary financial statements and tax returns required to complete and deliver Schedules K-1 to participants in time to file their federal income tax returns by April 15, causing participants to have to file their tax returns on extension. After the consolidation, tax returns will be required only for the company and the operating partnership. Participants who receive operating partnership units will receive only one Schedule K-1. Participants who receive only common stock in the consolidation will receive one Form 1099 for all their interests. The supervisor believes that the simplified financial reporting and tax filings will allow for faster completion and distribution of Forms 1099 and Schedules K-1 for participants and allow participants to file their taxes by April 15 of each year and

- Loss of benefits from the consolidation described under “—The Supervisor’s Reasons for Proposing the Consolidation.”

*Conversion of the subject LLCs into individual REITs.* The supervisor considered the possibility of converting each subject LLC into a separate REIT that would list its shares on a national securities exchange. The supervisor believes that a REIT with a relatively small capitalization that is advised by an outside advisor and owns an interest in the ground lessor of a single property with most of its cash flow dependent on overage rent under the operating lease would not be well-received by traditional open-market purchasers of REIT common stock. The supervisor, therefore, believes that this alternative would not fulfill the objectives of participants in the subject LLCs.

*Listing of the participation interests on a national securities exchange.* The supervisor believes there would be limited trading interest in the presently outstanding participation interests due to, among other things, (i) the fact that the subject LLCs have a relatively small capitalization, own an interest in a property which is operated by an operating lessee that has significant decision-making authority with respect to the property; and (ii) the two-tier subject LLC structure, including the relative lack of certain corporate governance attributes, such as the ability to elect directors.

*Other means of producing liquidity.* The supervisor also considered other means of producing liquidity for the participants, such as cash tender offers to acquire participation interests from participants or borrowing by the subject LLCs secured by their interests in properties to provide funds for distribution to participants. The supervisor believes that cash tender offers are costly and would not yield a good value for participants and that borrowing to fund added distributions is not a feasible alternative given that most of its cash flow is dependent on overage rent under the operating lease.

The supervisor believes that cash tender offers would not be desirable because the price that could be offered to participants would be adversely affected by the current two-tier owner-lessee structure through which the subject LLCs own their interests in the properties and the limited resale market for participation interests.

The supervisor believes that it would be difficult for a subject LLC to borrow to fund added distributions because, among other things, such financing would require the operating lessee’s consent and agreement to join in the financing. Additionally, increasing the leverage on the properties would result in increased risks to the participants in the subject LLCs.

While the supervisor did not perform a detailed financial analysis of all these alternatives, other than continued operations of the subject LLCs and liquidation of the subject LLCs, the supervisor believes that these alternatives would not be as beneficial to participants as the consolidation.

*Certain potential alternatives as to Empire State Building Associates L.L.C. not considered viable by the supervisor.*

*Empire State Building stand-alone REIT.* The supervisor does not believe a REIT which includes only the Empire State Building is a feasible alternative. Any Empire State Building-only REIT would require the consent of Empire State Building Company L.L.C. which is controlled by the Malkin Family and the Helmsley estate. The Malkin Family and the Helmsley estate have consented only to the proposed consolidation and believe that a single-asset REIT would not be desirable.

The projections were prepared solely to determine the relative value among the subject LLCs, the private entities and the management companies and to establish exchange values to facilitate the consolidation and should not be relied upon for any other purpose, including without limitation, as an indicator of future performance of the company, the properties, the subject LLCs, the private entities or the management companies. The projections should not be relied upon determining the market value or the estimated value of the company after giving effect to the consolidation and the IPO. The actual performance of the properties and management companies may be materially different from these projections because of changes in market conditions and many other factors.

Projected Financial Statements													Empire State Building Cash Flows	
For the Years Ending	Year 1 Jun-2013	Year 2 Jun-2014	Year 3 Jun-2015	Year 4 Jun-2016	Year 5 Jun-2017	Year 6 Jun-2018	Year 7 Jun-2019	Year 8 Jun-2020	Year 9 Jun-2021	Year 10 Jun-2022	Year 11 Jun-2023	Year 12 Jun-2024	Year 13 Jun-2025	
<b>Potential Gross Revenue</b>														
Base Rental Revenue	106,458.98	124,000.84	131,583.95	139,590.33	142,789.94	151,060.14	160,824.64	168,533.74	179,660.79	185,777.70	189,425.77	196,923.78	202,218.52	
Antenna Revenue	\$ 17,353,196	\$ 18,098,447	\$ 18,526,017	\$ 18,961,616	\$ 19,664,138	\$ 21,004,972	\$ 22,252,180	\$ 22,988,285	\$ 23,647,711	\$ 23,744,477	\$ 23,536,339	\$ 24,046,935	\$ 24,758,539	
Absorption & Turnover Vacancy	(23,692.88)	(16,931.36)												
Base Rent Abatements														
Scheduled Base Rental Revenue	86,114.453	112,108.25	138,442.11	155,264.09	160,844.95	166,118.48	177,733.57	183,478.30	196,594.33	206,002.13	209,062.50	213,610.12	221,157.24	
Base Rental Step Revenue	72,360	72,360	73,446	84,606	87,712	13,802	6,210	6,210	3,105	0	0	0	0	
CPI & Other Adjustment Revenue	6,005,085	6,219,495	6,723,298	7,019,254	6,485,287	4,781,908	2,387,551	2,129,718	1,593,468	1,207,676	588,805	46,404	0	
<b>Expense</b>														
Real Estate Taxes	3,123,279	3,333,271	3,818,411	4,199,920	4,692,009	5,461,688	6,019,889	6,622,679	6,915,936	7,631,017	8,489,741	8,946,324	9,481,215	
Operating expenses	945,019	657,632	732,172	1,666,361	3,276,703	4,897,414	6,296,056	7,350,127	8,605,605	10,055,060	11,758,172	12,904,682	14,166,786	
Electric Inclusion	2,056,321	1,446,103	1,120,461	698,780	268,792	226,609	159,840	121,452	57,587	616	636	654	222	
Electric Submetering	3,493,841	4,443,486	5,384,900	5,717,229	6,007,125	6,221,184	6,341,839	6,505,052	6,766,047	7,028,698	7,217,774	7,264,790	7,330,163	
Escalation	102,839	104,381	107,513	64,114	19,419	20,002	20,601	21,220	3,589	0	0	0	0	
RF Monitoring Reimb.	150,696	150,913	153,358	157,972	149,083	117,443	52,006	38,696	23,294	14,213	870	0	0	
Broadcasting Base Rental Revenue	3,582,307	3,710,393	3,783,380	3,819,268	3,955,987	4,312,123	6,177,879	6,949,857	6,946,574	7,109,861	7,409,184	7,739,067	8,025,958	
Total Reimbursement Revenue	13,454,302	13,848,179	13,050,195	16,323,644	18,369,118	21,256,463	25,068,110	27,809,083	29,318,632	31,839,465	34,876,337	36,855,317	39,204,344	
Percentage Rent	284,090	292,520	301,296	310,334	319,644	329,233	339,111	349,285	359,762	370,556	381,672	393,122	404,916	
Observatory Income	64,999,999	66,950,000	66,950,000	66,950,000	66,950,000	68,958,500	71,027,256	73,158,072	75,353,815	77,613,399	79,941,302	82,340,034	84,810,257	

ESRT Prospectus, January 21, 2013  
Appendix C-1

Operating Exp														
Esc.	678,999	658,631	638,871	619,705	601,114	583,080	565,587	548,621	532,162	516,196	500,712	485,688	471,120	
Submetering														
Broadcasters	4,735,000	4,877,051	5,023,360	5,174,064	5,329,283	5,489,162	5,653,837	5,823,454	5,998,156	6,178,102	6,363,444	6,554,348	6,750,977	
Electric Retro	839,000	864,169	890,097	916,798	944,302	972,631	1,001,808	1,031,866	1,062,819	1,094,704	1,127,545	1,161,373	1,196,213	
Legal Fees	128,000	131,841	135,794	139,870	144,064	148,388	152,839	157,423	162,146	167,012	172,020	177,182	182,498	
Carpet Care &														
Shampoo	302,000	311,060	320,391	330,004	339,904	350,101	360,603	371,423	382,564	394,042	405,863	418,039	430,579	
Cleaning Service	892,000	919,789	947,585	975,804	1,005,080	1,035,231	1,066,289	1,098,277	1,131,227	1,165,163	1,200,117	1,236,120	1,273,205	
Porter/Matron														
Service	235,000	242,051	249,311	256,790	264,495	272,429	280,604	289,019	297,692	306,621	315,820	325,296	335,052	
Robbush														
Removal	208,000	214,240	220,668	227,287	234,106	241,128	248,364	255,813	263,488	271,392	279,536	287,920	296,558	
Waxing/Floor														
Maintenance	265,000	272,951	281,137	289,573	298,260	307,208	316,424	325,917	335,694	345,764	356,136	366,823	377,827	
Water	140,000	144,201	148,524	152,982	157,573	162,299	167,167	172,183	177,347	182,668	188,148	193,793	199,608	
Skyride Security														
Reimb	402,000	414,060	426,481	439,277	452,455	466,028	480,009	494,409	509,241	524,519	540,254	556,463	573,155	
Exterminating	8,999	9,270	9,549	9,834	10,128	10,434	10,748	11,068	11,401	11,744	12,095	12,458	12,831	
Elevator Service	105,000	108,150	111,395	114,735	118,178	121,724	125,376	129,136	133,011	137,002	141,110	145,345	149,705	
Labor	110,000	113,301	116,699	120,199	123,805	127,522	131,344	135,288	139,345	143,525	147,831	152,266	156,833	
Keys	11,000	11,329	11,670	12,021	12,381	12,752	13,134	13,528	13,935	14,352	14,784	15,227	15,683	
Lamp Sales	33,999	35,020	36,071	37,132	38,208	39,415	40,697	41,817	43,070	44,363	45,693	47,064	48,476	

C-1-20

The projections were prepared solely to determine the relative value among the subject LLCs, the private entities and the management companies and to establish exchange values to facilitate the consolidation and should not be relied upon for any other purpose, including without limitation, as an indicator of future performance of the company, the properties, the subject LLCs, the private entities or the management companies. The projections should not be relied upon determining the market value or the estimated value of the company after giving effect to the consolidation and the IPO. The actual performance of the properties and management companies may be materially different from these projections because of changes in market conditions and many other factors.

For the Years Ending	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13
	Jun-2013	Jun-2014	Jun-2015	Jun-2016	Jun-2017	Jun-2018	Jun-2019	Jun-2020	Jun-2021	Jun-2022	Jun-2023	Jun-2024	Jun-2025
Captive	25,999	26,781	27,583	28,411	29,263	30,141	31,044	31,978	32,936	33,923	34,942	35,990	37,069
Window Cleaning	49,000	50,470	51,984	53,544	55,150	56,805	58,508	60,263	62,072	63,934	65,852	67,827	69,864
Trademark													
Licensing	76,000	78,280	80,628	83,048	85,538	88,103	90,747	93,471	96,275	99,163	102,136	105,203	108,358
Location													
Agreements	20,000	20,600	21,217	21,854	22,511	23,184	23,881	24,598	25,334	26,096	26,879	27,684	28,515
Event Income	265,000	272,951	281,137	289,573	298,260	307,208	316,424	325,917	335,694	345,764	356,136	366,823	377,827
Extended													
Lighting	13,000	13,391	13,790	14,207	14,631	15,072	15,523	15,988	16,468	16,962	17,471	17,995	18,535
Interest	65,000	65,000	65,000	65,000	65,000	65,000	65,000	65,000	65,000	65,000	65,000	65,000	65,000
Late Payment													
Charges	256,000	263,680	271,591	279,738	288,130	296,773	305,677	314,848	324,293	334,022	344,043	354,363	364,995
Miscellaneous													
Income	288,001	296,640	305,540	314,704	324,147	333,872	343,886	354,204	364,829	375,776	387,047	398,660	410,618
One-time ICIP													
Refund	3,158,371	0	0	0	0	0	0	0	0	0	0	0	0
Total Potential Gross													
Revenue	184,141,567	209,905,714	238,226,221	266,918,108	294,112,741	323,014,087	368,427,231	299,116,186	315,738,316	329,891,038	338,061,779	346,820,170	359,527,861

ESRT Prospectus, January 21, 2013

Appendix C-1

General Vacancy	(628,065)	(615,897)	(1,677,118)	(3,225,217)	(4,037,547)	(2,827,582)	(2,506,598)	(2,018,388)	(3,550,066)	(4,622,520)	(4,192,486)	(3,076,196)	(3,841,477)
Collection Loss	(1,799,880)	(2,659,972)	(2,339,309)	(2,528,001)	(2,598,598)	(2,678,181)	(2,826,904)	(2,931,153)	(3,097,525)	(3,233,513)	(3,309,137)	(3,598,032)	(3,524,067)
Effective Gross Revenue	181,813,622	207,229,842	234,209,794	251,164,890	257,676,596	267,508,324	283,093,729	294,166,645	309,110,725	322,035,005	330,560,156	340,345,942	352,162,317
Operating Expenses													
Real Estate Taxes	30,883,340	31,689,114	32,502,197	33,322,641	34,150,496	35,320,740	36,532,116	37,786,073	39,084,107	40,427,766	41,614,870	42,837,585	44,096,983
Cleaning	7,797,100	8,031,015	8,271,945	8,520,103	8,725,705	9,058,976	9,310,148	9,589,351	9,877,135	10,173,447	10,478,652	10,793,012	11,116,800
Security	6,904,235	7,111,362	7,324,703	7,544,443	7,770,778	8,003,901	8,244,016	8,491,340	8,746,078	9,008,460	9,278,715	9,557,076	9,843,789
Professional Fees	6,983,099	6,667,179	6,074,544	6,256,777	6,444,481	6,637,817	6,836,951	7,042,058	7,254,321	7,470,922	7,695,047	7,928,900	8,163,676
Insurance	8,262,100	8,509,964	8,765,260	9,028,221	9,299,066	9,578,039	9,865,379	10,161,340	10,466,182	10,780,166	11,103,572	11,436,679	11,779,778
Repairs & Maintenance	9,794,999	8,148,775	6,667,178	6,867,196	7,073,211	7,285,407	7,503,971	7,729,089	7,960,960	8,199,792	8,445,783	8,699,158	8,960,133
Payroll	10,371,169	10,682,305	11,002,774	11,332,857	11,672,842	12,023,027	12,383,719	12,755,229	13,137,887	13,532,023	13,937,984	14,356,124	14,786,807
Utilities	15,556,752	16,023,456	16,504,159	16,999,284	17,509,262	18,034,540	18,575,578	19,132,843	19,706,830	20,298,035	20,906,975	21,534,184	22,180,240
Management Fee	909,068	1,036,149	1,171,049	1,255,824	1,288,383	1,337,542	1,415,469	1,470,833	1,545,554	1,610,175	1,652,801	1,701,730	1,760,812
Total Operating Expenses	97,462,762	97,899,319	98,283,809	101,127,346	103,984,224	107,259,989	110,667,347	114,158,256	117,778,054	121,500,786	123,114,399	128,841,448	132,688,988
Net Operating Income	84,350,860	109,330,523	135,925,985	150,037,544	153,692,372	160,248,335	172,426,382	180,008,389	191,332,671	200,534,219	205,445,757	211,504,494	219,473,329
Leasing & Capital Costs													
Tenant Improvements	19,812,540	13,751,587	8,369,066	2,320,384	1,098,829	1,221,484	3,311,156	5,989,828	3,732,665	2,496,115	2,391,103	4,917,140	3,379,021
Leasing Commissions	11,231,059	12,818,065	9,393,090	2,463,621	1,113,588	7,294,599	6,177,918	9,166,961	5,821,906	4,001,446	2,437,267	5,271,154	3,223,497
Capital Expenditures	87,990,460	55,555,355	24,176,013	15,407,824	11,429,417	7,923,416	6,344,798	2,231,149	2,031,723	2,278,180	0	0	0
Base Building Costs	1,749,999	1,163,901	1,103,336	1,562,600	787,857	2,109,877	1,552,269	3,308,360	2,242,181	1,317,820	0	0	0
LI & Fung LC/BB/TT	21,420,876	11,144,684	4,828,698	0	0	0	0	0	0	0	0	0	0
Total Leasing & Capital Costs	142,204,934	94,833,590	47,870,201	21,754,429	14,429,691	18,549,376	17,386,141	20,696,296	13,828,477	10,093,561	4,828,870	10,188,294	6,602,518
Cash Flow Before Debt Service & Taxes	(\$ 57,854,074)\$	14,796,933	\$ 88,055,784	\$ 128,283,115	\$ 139,262,681	\$ 141,698,959	\$ 155,040,241	\$ 159,312,091	\$ 177,504,194	\$ 190,440,658	\$ 200,616,887	\$ 201,316,200	\$ 212,870,811

**From:** Kluck, Thomas  
**Sent:** Sunday, February 10, 2013 3:36 PM  
**To:** Orlic, David L.  
**Cc:** [b:(6)] McHale, Angela R.  
**Subject:** FW: Empire State Realty Trust, Inc Solicitation new "buy-out" disclosure

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Fyi – please see below.

I found the following relevant disclosures in the Form S-4:

- While the supervisor believes that it would be more beneficial to participants if all of the subject LLCs participate in the consolidation, the supervisor believes that, through a combination of the properties of the private entities, for which necessary approvals have been obtained, and the property interests of Empire State Building Associates L.L.C. (page 70)
- The supervisor commenced solicitation of consents of the participants in the private entities in November 2011. The solicitation was completed in January 2012, and contribution of the assets of each of the private entities to the company pursuant to the consolidation was approved by the required consent, if any, of participants in each of the private entities. (page 166)

[b:(6)]

Tom

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**From:** richard edelman [mailto:richardedelman@hotmail.com]  
**Sent:** Saturday, February 09, 2013 11:34 AM  
**To:** Kluck, Thomas; [b:(6)]  
**Subject:** Empire State Realty Trust, Inc Solicitation new "buy-out" disclosure

February 9, 2012

**BY E-MAIL**

Tom Kluck  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street N.E.  
Washington, DC 20549

cc: [b:(6)]



Re: 2/8/13 Court disclosure by Malkin Holdings "...(*no investor-none-was subject to the buyout in votes at the Private entities*)"

Dear Mr. Kluck and (b)(6)

Participant Investors in ESBA are being told in nearly every phone call by Malkin Holdings and their solicitation firm MacKenzie Partners that if they vote No there is substantial risk of having their investment suffering a "buy-out" for a \$100.

This message has been repeated in numerous written communications to ESBA investors.

The SEC and reporters for the NY Times, Bloomberg, Reuters, WSJ, Times of London and newsletter REITzone have spoken to ESBA investors who are repeating stories of calls by Malkin Holdings representatives where this "buy-out" is being framed as a huge risk if an investor votes No.

Many ESBA investors have been told a Yes vote is the only "safe" way to ensure no risk of the "buy-out".

Now for the first time, in a 2/08/13 court filing, lawyers for Malkin Holdings have disclosed that over the past year;

*"...(*no investor-none-was subject to the buyout in votes at the Private entities*)"*

<https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentid=qKJzXlr7uNL2O2rz2e4WQ==&system=prod>

page 3

**I believe this is the first time this has ever been disclosed.**

Almost a year of SEC filings by Empire State Realty Trust, Inc., through six revisions, this was never disclosed.

Over a year of SEC filings (forty plus separate filings) by Empire State Realty Trust, Inc and Empire State Building Associates LLC. mailed to ESBA participant investors, this was never disclosed.

Malkin Holdings, faced with a \$800 million lawsuit, has now admitted the actual risk of investors experiencing a "buy-out" up until now was 0% during the REIT Vote process.

This information, so critical to a decision on how to vote, needs to be brought to the attention of ESBA participant investors by the SEC process that addresses such material omissions of fact.

I can guarantee you ESBA investors are going to come forward now, publicly, who will say if they knew this they would have voted differently.

I'm thrilled the SEC has been so responsive to prior requests. Please be the institution that brings this information to light. Reporters shouldn't be. And investors, at times, need to look to the SEC for leadership. This is one of those times.

I apologize if I never forwarded to the SEC the right question to solicit this disclosure. I, we, screwed up big time, if when the comment letters come out the question of whether there were any buyout's in the past was never asked.

Thank you for your attention to this.

Richie Edelman

**From:** Orlic, David L.  
**Sent:** Tuesday, January 29, 2013 1:37 PM  
**To:** [b:(6)]  
**Subject:** FW: Empire State Realty Trust - investor call on 1-28-13

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

fyi

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**From:** Kluck, Thomas  
**Sent:** Tuesday, January 29, 2013 1:36 PM  
**To:** [b:(6)]  
**Cc:** Orlic, David L.  
**Subject:** Empire State Realty Trust - investor call on 1-28-13

Mike,

As we discussed, late in the afternoon yesterday, David Orlic and I returned a call to an investor in ESBA named [b:(6)]. She had a complaint in regards to the unfairness of the buyout provision. During the call, she informed us that [b:(6)]

[b:(6)]  
[b:(6)]

We discussed with her that our review is mainly to determine compliance with the disclosure requirements under the federal securities laws and that we do not approve transactions based on the merits of the deal. She had concerns that the offering involves many elderly investors and that the 10 day period to allow investors who voted no to then change their vote to yes and not be subject to the buyout provision would not be enough time. She also thought that the buyout provision may cause investors to be afraid to vote no since they could be bought out at \$100 if for some reason they were unable to change their vote, e.g., were out of town, mailed to wrong address etc. She asked what could be done to change this and who is responsible?

She understood our limited authority under the statute and we suggested that she contact the company/supervisor with her concerns. She also stated that she may contact the Attorney General's Office in New York.

We wanted to bring this to your attention. Please let us know if you have any questions.

Thanks,

Tom

**From:** Kluck, Thomas  
**Sent:** Wednesday, May 15, 2013 3:54 PM  
**To:** Orlic, David L.  
**Cc:** McHale, Angela R.  
**Subject:** FW: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

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**From:** [REDACTED]  
**Sent:** Wednesday, May 15, 2013 3:53 PM  
**To:** McHale, Angela R.; Kluck, Thomas  
**Cc:** [REDACTED]  
**Subject:** Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

MEMORANDUM

**SUBJECT:** Empire State Realty Trust Solicitation: The Opt-Out Provision of the Class Action Settlement

In our view, the Class Action Settlement failed to provide an effective opt-out because the price of opting out is not limited to foregoing a share of the Settlement funds, but also requires giving up the right to convert a no vote to a yes vote when the Buyout notice is received. Nowhere in the Settlement or in the S-4 is this price of opting out disclosed. Thus, investors had no way to validly exercise the right to opt out of the Settlement.

The S-4 describes the Class Action Settlement in detail. Pages 47 to 48 of the S-4 describe the class action, state that a stipulation and settlement was filed on September 28, 2012, and provide an overview of the Settlement. Each investor's share of settlement proceeds is identified on page 59. A much more detailed description of the class action litigation and Settlement appears on pages 453-454. The claims in the complaints are there stated to include breaches of fiduciary duty, unjust enrichment, and failure to make adequate disclosures in the S-4 prospectus. On page 454, the Settlement is characterized as stating that concerns raised in the complaints have been satisfied by adequate access to relevant information, amendments to the S-4, and modifications to the transaction. It also states: "Members of the putative class have the right to opt out of the monetary portion of the settlement, but not the portion providing for equitable relief." There is no statement that an opting out class member would lose his right to sue if he would later be forced to vote in favor of the REIT proposal in order to avoid the Buyout.

At the same time, the S-4 makes it clear that a vote to approve the transaction constitutes a waiver of all equitable claims against the Malkins for the conflicts of interest, indemnifications, and self-dealing revealed in the S-4. This actually comes in several parts. First, the S-4 reveals in explicit detail numerous instances of conflict of interest and self-dealing. See, e.g., S-4 at 55-58, 279-284. Second, Malkin strongly recommends approval of the proposed transaction, and claims that he recommends this, notwithstanding the conflicts of interest, because of the transaction's overall fairness to the investors. S-4 at 75-82. This is repeated at pages 190-196, and includes the statement: "While the supervisor has conflicts of interest which are described under 'Conflicts of Interest' (pp. 279-284), the supervisor does not

believe that these conflicts of interests affect its fairness determination." S-4 at 192.

Third, the S-4 contains an acknowledgement that: "The agent of each participating group is a fiduciary for the participants in its participating group and owes such participant a duty of loyalty and a duty of due care. In connection with these duties, the agent is required to exercise good faith and fair dealing in conducting the affairs of the subject LLC on behalf of its participating group." S-4 at 518. Notwithstanding this acknowledgement, the S-4 provides an indemnification and a disclaimer. "The company's duties, as the general partner, to the operating partnership and its partners, therefore, may come into conflict with the duties of the company's directors and officers to the company and its stockholders. The company will be under no obligation to give priority to the separate interests of the limited partners of the operating partnership or the company's stockholders in deciding whether to cause the operating partnership to take or decline to take any actions. The limited partners of the operating partnership have agreed that in the event of a conflict of the duties owed by the company's directors and officers to the company and the its [sic] stockholders and the fiduciary duties owed by the company, in its capacity as general partner of the operating partnership, to such limited partners, **the company will fulfill its fiduciary duties to such limited partners by acting in the best interests of the company's stockholders. The limited partners of the operating partnership expressly acknowledged that the company is acting for the benefit of the operating partnership, the limited partners and the company's stockholders collectively.**" S-4 at 518.

Finally, this acknowledgement concludes with a disclaimer: "Insofar as the foregoing provisions permit indemnification for liability arising under the Securities Act, the company has been informed that, in the opinion of the SEC, this indemnification is against public policy as expressed in the Securities Act and therefore unenforceable." S-4 at 518. It is clear, though, that this is the view of the SEC and not of the Malkins. So, if one votes in favor of the REIT, one does so on the basis all of these disclosures and approves the indemnification on page 518. Thereafter, Malkin will certainly argue that, as in Koppel, a vote to approve the REIT, even if made to avoid the Buyout, exonerates Malkin for all conflicts of interest disclosed in the S-4.

Koppel recognizes that, under New York law, "a party will not be held liable for self-dealing where he secures the 'informed consent' of those to whom he owes a duty of utmost good faith." Koppel v. 4987 Corp., Fed. Sec. L. Rep. P 91,306 at 6. The vote in favor "has the effect of 'exonerating' the defendants." *Id.* Koppel found that Malkin, under facts similar to those presented here, had obtained 'informed consent' from those who voted in favor of his proposal in order to avoid a buyout provision. Of course, Koppel distinguished Delano v. Kitch, 542 F.2d 550 (10<sup>th</sup> Cir. 1976), on the issue of informed consent, and so the question here is whether the instant facts are closer to Delano than to Koppel. In Delano, shareholders had only 10 days to decide to agree to a proposed sale or reject it, and the court found that the tight time constraint coerced the shareholders into voting to approve. Here the investors also have only 10 days to agree to change a no vote to an approval. However, the investors here have also had since January 25 to consider the proposal, as outlined in the S-4.

However, this digresses from the issue of how the Settlement was unfair because it provided no effective opt-out. The Settlement is unfair because neither it nor the S-4 informs the class members that, if they opt-out, they will also need to take a second action to preserve the right to sue that they seek to preserve by opting out, i.e., forfeiture of their shares for a token \$100 when presented with the Buyout. This arises when a supermajority in an investor's group is reached, and the investor is then presented with a notice to change his no vote to yes or suffer to forced purchase of his unit for a mere \$100. As illustrated above, the S-4 indicates that a vote in favor of the REIT constitutes a waiver of the right to sue, but fails to disclose that, by converting a no vote to yes, an opting out class member will lose the right to sue that he sought to preserve by opting out.

(b)(6)

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**From:** McHale, Angela R.  
**Sent:** Wednesday, May 15, 2013 5:39 PM  
**To:** Orlic, David L.; Kluck, Thomas  
**Subject:** FW: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

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**From:** [REDACTED] **On Behalf Of** [REDACTED]  
**Sent:** Wednesday, May 15, 2013 4:15 PM  
**To:** McHale, Angela R.  
**Subject:** Fwd: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

Angela,

Please excuse the flurry of emails from me but things are going to move very quickly once Malkin declares the 10 period is running and I have absolutely no idea how my stepmother is going to vote with the information we have now. John states...

Koppel recognizes that, under New York law, "a party will not be held liable for self-dealing where he secures the 'informed consent' of those to whom he owes a duty of utmost good faith." Koppel v. 4987 Corp., Fed. Sec. L. Rep. P 91,306 at 6. The vote in favor "has the effect of 'exonerating' the defendants." Id. Koppel found that Malkin, under facts similar to those presented here, had obtained 'informed consent' from those who voted in favor of his proposal in order to avoid a buyout provision.

It seem to if there is even the slightest ambiguity about whether or deciding to reverse would result in anything less than the full rights we opted to preserve by opting out of the settlement my stepmother has a right to have that clarified.

It also seems to me that the language of the S-4 and Malkin's assertions which he successfully argued and won go way beyond there being "the slightest ambiguity." What is in the S-4 leads me to believe there is not good reason to believe but a not unreasonable presumption that reversing one loses those rights. At a minimum they are endangered.

So what the settlement giveth the S-4 taketh away. However not wanting to reveal that this is the true state of affairs, Malkin simply refuses to be pinned down. Don't let him get away with this. Investors have a right know the full consequences of their vote.

The settlement says by opting out we preserved certain rights. I only ask that Malkin go on record as to whether this is in fact the case. The settlement and the public filing ought not to conflict, apparently conflict, or even be vague enough on such a key point as whether you have to give up your entire investment or not in order to retain the right to sue. If there is one thing in this entire deal that ought to be clear at this point, this is it.

I'm only asking that Malkin tell us what the deal is. Do we have to reverse or not to retain our rights?

I'm not stupid. I've spend a year and half on this and I can't tell from the documents. How can the SEC expect anyone to? How can they expect anyone to make a decision without knowing?

(b)(6)

Begin forwarded message:

**From:** (b)(6)  
**Subject: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out**  
**Date:** May 15, 2013 12:53:15 PM PDT  
**To:** <mchalea@sec.gov>, <kluckt@sec.gov>  
**Cc:** (b)(6)

#### MEMORANDUM

**SUBJECT:** Empire State Realty Trust Solicitation: The Opt-Out Provision of the Class Action Settlement

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interest, because of the transaction's overall fairness to the investors. S-4 at 75-82. This is repeated at pages 190-196, and includes the statement: "While the supervisor has conflicts of interest which are described under 'Conflicts of Interest' (pp. 279-284), the supervisor does not believe that these conflicts of interests affect its fairness determination." S-4 at 192.

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However, this digresses from the issue of how the Settlement was unfair because it provided no effective opt-out. The Settlement is unfair because neither it nor the S-4 informs the class members that, if they opt-out, they will also need to take a second action to preserve the right to sue that they seek to preserve by opting out, i.e., forfeiture of their shares for a token \$100 when presented with the Buyout. This arises when a supermajority in an investor's group is reached, and the investor is then presented with a notice to change his no vote to yes or suffer to forced purchase of his unit for a mere \$100. As illustrated above, the S-4 indicates that a vote in favor of the REIT constitutes a waiver of the right to sue, but fails to disclose that, by converting a

no vote to yes, an opting out class member will lose the right to sue that he sought to preserve by opting out.



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**From:** Kluck, Thomas  
**Sent:** Friday, May 10, 2013 9:22 AM  
**To:** McHale, Angela R.  
**Subject:** FW: Empire State Realty Trust Open-ended Solicitation

Hi Angela,

(b)(5)

Thanks,

Tom

---

**From:** (b)(6)  
**Sent:** Thursday, May 09, 2013 11:01 AM  
**To:** Kluck, Thomas; McHale, Angela R.  
**Cc:** (b)(6); Richard Edelman; RMachleder@aol.com; (b)(6)  
**Subject:** Empire State Realty Trust Open-ended Solicitation

Dear Mr. Kluck, Ms. McHale & Mr. Orlick:

We spoke to you on April 1, 2013, and again on April 17, 2013, regarding our concerns about the Empire State Realty Trust solicitation that is presently underway. As you know, the solicitation commenced on or about January 21, 2013, and was scheduled to expire 60 days later on March 25, 2013. It was recently extended for an indefinite period, however, by Malkin Holdings. In a letter to investors dated March 21, 2013, it was stated that the solicitation will remain "open until at least such time as the Court overseeing the class action settlement issues its decision on the LLC matter". The court on April 30, 2013, decided the LLC issue, upholding what is often referred to as the Buyout provision. However, no new termination date for the solicitation of consents has been set.

The registration statement (S-4) for the current solicitation states repeatedly that consents will be solicited for sixty days, and that the solicitation will end at the expiration of that 60-day period. See S-4 at pages 20, 90-92, 317-318. Although the S-4 indicates that the supervisor may extend the expiration date of the solicitation period, it does not state that the solicitation can be extended indefinitely. Furthermore, the S-4 states that application of the Buyout procedures will not occur until after a participant who has voted against the proposal is given notice that a supermajority in his group has been attained and has been provided an opportunity to change his vote in order to avoid the Buyout. The S-4 states explicitly that this will not happen "before the expiration of the 60-day solicitation period as the same may be extended." S-4 at page 318. This is reinforced by the hypothetical timeline provided on page 20 of the S-4, which posits a supermajority achieved on day 46, and the notice triggering the Buyout being sent out on day 61.

Malkin Holdings' failure to set a new termination date for the solicitation period is clearly at odds with the S-4 and grossly unfair to the investors whose consents are being solicited. So far, Malkin Holdings has been unable to attain the consents of the required supermajority in any of the participating groups. Using this as an excuse to create an open-ended solicitation subjects investors to the fear that they could be subject to a forced Buyout without an opportunity to change their votes. This could result if an investor were out of town for ten or more days and the investor therefore did not receive the notice and opportunity to change his vote. With nonnotice of when the solicitation period will conclude, investors have no way to anticipate receipt of a notice. If the Buyout were applied in their absence, they would essentially forfeit for a token \$100 an investment valued at over \$300,000 per unit.

In reliance on the S-4, investors were able to anticipate an end to the solicitation period, and for those who chose not to provide their consent, an end to the danger of missing the notice and opportunity to change their vote to avoid the Buyout. Now, they do not know when a notice and opportunity to change will arrive. Without that knowledge, and facing the need to schedule out-of-town events, investors who voted "no" will feel compelled to change their votes to "yes" just to avoid the chance that they might miss the notice and thereby forfeit their investment. Further, the lack of a new, reasonable expiration date creates the fear among investors that there will be no end to the letters, repeated telephone calls, and other forms of persuasion undertaken by the Malkins to obtain consents to the transaction. This results in another form of undue pressure on the investors to consent to the solicitations in an attempt to achieve some closure and an end to the prospect of unreasonable, prolonged pressure from the Malkins.

In our view, the current uncertainty is inconsistent with the disclosures in the S-4 and constitutes a deceptive practice in violation of Section 10(b) of the Securities Act of 1934 and Rule 10b-5.

Please contact us with any comments or questions you may have.

(b)(6)



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**From:** Orlic, David L.  
**Sent:** Wednesday, March 06, 2013 5:55 PM  
**To:** Kluck, Thomas; McHale, Angela R.  
**Subject:** FW: Empire State Realty Trust

(b)(5);(b)(6)

---

**From:** Medvinsky, Larry (Capital Markets-NY) [mailto:Larry.Medvinsky@CliffordChance.com]  
**Sent:** Wednesday, March 06, 2013 4:46 PM  
**To:** Orlic, David L.  
**Cc:** Kluck, Thomas; McHale, Angela R.  
**Subject:** Re: Empire State Realty Trust

David,

Can i call you at 5 in your office?

Larry

Sent from my iPhone

On Mar 6, 2013, at 3:49 PM, "Orlic, David L." <OrlicD@SEC.GOV> wrote:

Larry, the SEC is closed today but I will be here for several more hours if you want to call. Tomorrow I will be in meetings most of the morning, so it will be hard to reach me then. I am not sure if Tom or Angela are available this afternoon, but this really is an OMA issue and I can take the call by myself if you want to talk..

David L. Orlic  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
Washington, D.C. 20549  
202-551-3503

-----Original Message-----

**From:** Medvinsky, Larry (Capital Markets-NY) [mailto:Larry.Medvinsky@CliffordChance.com]  
**Sent:** Wednesday, March 06, 2013 3:29 PM  
**To:** Kluck, Thomas; Orlic, David L.; McHale, Angela R.  
**Cc:** Medvinsky Larry  
**Subject:** Empire State Realty Trust

Tom, David and Angela,

Thanks for speaking with us yesterday. It was helpful. We have reflected on our conversation and believe we need to discuss it further. Given the Edelmanns have an additional conference call tomorrow we would like speak this afternoon or early tomorrow morning. Please let us know your availability. Thanks and best regards.

Larry

Sent from my iPhone

\*\*\*\*\*

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[http://www.cliffordchance.com/about\\_us/find\\_people\\_and\\_offices.html](http://www.cliffordchance.com/about_us/find_people_and_offices.html)

**From:** McHale, Angela R.  
**Sent:** Thursday, April 04, 2013 9:55 AM  
**To:** Kluck, Thomas; Orlic, David L.  
**Subject:** FW: ESBA participants' audit of the REIT vote

FYI

---

**From:** [b:(6)]  
**Sent:** Wednesday, April 03, 2013 8:43 AM  
**To:** Tom Keltner  
**Cc:** McHale, Angela R.  
**Subject:** ESBA participants' audit of the REIT vote

Tom,

Thanks for affirming the right of participants in ESBA to independently audit the vote.

If you agree, we will perform our audit when you have reached the 80% required consent in all three Joint Ventures. The audit will consist of two activities, will require three days to complete, and should conclude before any letter is sent to investors informing them of your option to buy back their interest unless their vote is changed.

Each of the two activities will require some support from you as follows:

1) We will conduct a re-count of all the votes processed by MacKenzie Partners. This will be done on your premises by us, under the supervision of Mackenzie Partners and/or Malkin Holdings as you desire. The re-count will commence within a week of your notifying us of the 80% threshold being achieved, and will take no more than three days to complete. The support we require for this activity consists of office space on your premises sufficient for three individuals for three days, including any credentials needed to access the space during the audit. Of course, the original, signed ballots must also be made available to us for this task.

2) We will telephone a random sample of voters to confirm their vote. The sample size will be about 10-15% of all those who voted for the roll-up. This will be done by ESBA volunteers who will not require any access to your premises. To perform this task, we will need you to provide a spreadsheet containing the list of investors who voted for the transaction, their interest in ESBA, which of the three Joint Ventures they are part of, and the telephone number at which they can be reached. This activity will also take place over three days, concurrent with the re-count activity.

Please let me know if these terms are acceptable to you.

Thanks for your help,

[b:(6)]

----- Original Message -----

**From:** Tom Keltner  
**To:** [b:(6)]  
**Sent:** Thursday, March 14, 2013 6:49 PM  
**Subject:** RE: empire state realty trust

[b:(6)]

you have a right to audit the vote after it is completed, & you can let us know then if you would like to conduct such an audit.

best regards.

tom



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**From:** [b:(6)]  
**Sent:** Thursday, March 14, 2013 12:41 PM  
**To:** Tom Keltner  
**Subject:** Re: empire state realty trust

Tom,

Any further thoughts on how we can get independent validation of the vote?

Thanks,

[b:(6)]

----- Original Message -----

**From:** Tom Keltner  
**To:** [b:(6)]  
**Sent:** Monday, March 04, 2013 4:59 PM  
**Subject:** RE: empire state realty trust

[b:(6)]

responses noted below.

best regards.

tom



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**From:** [b:(6)]  
**Sent:** Thursday, February 28, 2013 12:22 PM  
**To:** Tom Keltner  
**Subject:** Re: empire state realty trust

Tom,



On the subject of how to get independent validation of the vote when 80% has been achieved in one of the Joint Ventures, would you consider this as a possible solution:

I would be willing to travel to your offices at my expense, either by myself or with a small group of other investors (including some who have voted FOR), and spend a couple of days re-counting the votes. I would be happy to be overseen in this process by MacKenzie or by anyone else of your choosing. This would take place during the ten-day period during which the investors who had voted AGAINST were being offered a chance to change their vote or be bought out, and would conclude before that 10-day period had elapsed.

- will respond further on this.

Do you have any further information yet on the question of whether an investor who must change his vote in a particular Joint Venture must also change his vote in the others he might be part of?

- As disclosed in the consent solicitation statement, a participant's participation interests will be subject to a buyout only if the participant does not vote in favor of the proposal within ten days after notice that the required supermajority consent has been received from the participants in a participant's participating group. To avoid the buyout in accordance with the procedure described in the consent solicitation, a participant who did not vote in favor of the proposal would be required to vote in favor of the proposal in the indicated time period only in the group where the supermajority was attained.

Lastly, can you tell me when we can expect our overage checks this year, and how much they will be?

- Distribution should be sent by 3/11/13.
- Amount will be announced in supplement to s-4 on or prior to such distribution date.

Thanks,

Peter

----- Original Message -----

**From:** Tom Keltner

**To:** (b):(6)

**Sent:** Monday, February 25, 2013 11:01 PM

**Subject:** Re: empire state realty trust

Thank you, (b):(6);(b):(7):(C)

I look forward to speaking further with you.

---

**From:** (b):(6)

**Sent:** Monday, February 25, 2013 10:09 PM

**To:** Tom Keltner

**Subject:** Re: empire state realty trust

Tom,

This is great - just what I've been wanting to see for years. Thanks so much!

I'll study the data more, but my first impression is that I was wrong in thinking that distributions never exceeded their levels from the early years. In fact, after more-or-less static returns in the first fifteen years, there was steady growth in distributions between 1977-1989.

But my feeling that there has been little or no growth for a very long time is, in the main, correct. If I read this right, only once in the last 24 years (2001) has the total distribution exceeded the 1989 level. This is very disappointing.

If you have a similar document showing changes in gross rents and other income, as well as outflows for expenses such as management fees, etc., a clearer picture of how the participants have really fared will emerge.

Thanks again for being so responsive on this, and I look forward to further communications.

All the best,

(b)(6)

On Mon, Feb 25, 2013 at 8:21 PM, Tom Keltner <[TKeltner@malkinholdings.com](mailto:TKeltner@malkinholdings.com)> wrote:

(b)(6)

thanks for speaking with me on saturday regarding our proposals.

as you requested, i am attaching a schedule of esba distributions from inception. please feel free to call me with question at any time 212-850-2680.

i still owe you several other answers & will be back to you soon.

best regards,

tom



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**From:** McHale, Angela R.  
**Sent:** Tuesday, April 30, 2013 9:08 AM  
**To:** Kluck, Thomas; Orlic, David L.  
**Subject:** FW: ESBA participants' audit of the REIT vote

FYI

---

**From:** Tom Keltner [mailto:TKeltner@malkinholdings.com]  
**Sent:** Monday, April 29, 2013 7:23 PM  
**To:** [REDACTED]  
**Cc:** McHale, Angela R.  
**Subject:** RE: ESBA participants' audit of the REIT vote

[REDACTED]

thank you for your follow-up letter.

after review, we continue to believe the audit protocol outlined in my 4/9 email below is correct & should not be amended to incorporate your additional items.

we will make an announcement to all affected investors when a solicitation is closed as to any entity, & you can at that time make arrangements for such an audit, if you wish to do so.

please let me know if I can address any question at any time.

best regards,  
tom



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**From:** [REDACTED]  
**Sent:** Tuesday, April 16, 2013 10:26 AM  
**To:** Tom Keltner  
**Cc:** Angela McHale  
**Subject:** Re: ESBA participants' audit of the REIT vote

Tom,

I believe when you say " the other conditions suggested in your message below are not consistent with such terms & cannot be added here", you are referring to our requirement to verify votes by contacting a sampling of investors by phone, and that you should provide us with telephone numbers.

I remind you that you have already provided me with the full list of investors and their contact information (though without phone numbers), for the expressed purpose of contacting them about the transaction. From our affidavit which you required at the time you provided the list:

As to (c)(2): The proposal that is the subject of my solicitation is to have the capability of contacting other participants in the Company so as to discuss and evaluate the transaction that has been proposed by Wien & Malkin to create a REIT that includes the Empire State Building.

The purpose of the audit is twofold:

- 1) to confirm that the votes have been counted correctly and
- 2) to confirm that the correct votes have been counted.

To achieve the second, we must have the freedom to contact investors directly. This is because there are some who have submitted two (or more) votes, the most recent of which represents their final decision. This introduces an opportunity for error that typically does not exist in other kinds of voting, and requires follow-up in an audit.

Further, we would require that the audit should take place and conclude before you make any announcement to investors about the results of the vote. When you say, "we will make an announcement to all affected investors when a solicitation is closed as to any entity, & you can at that time make arrangements for an audit, if you wish", you miss the point of an audit. The vote would not be independently validated until an audit is concluded.

Lastly, original ballots should be examined as a primary source, not just electronic copies as you suggest. Both should be readily available in the audit room without any requirement for additional permissions to be granted or conditions to be met.

If MH is unable to meet these basic requirements, there is really no point in doing an audit at all. In our phone conversation a while back, you said that Malkin Holdings and MacKenzie both value their reputation so dearly that any mistakes in counting would be unlikely. In fact, the best way to enhance your reputation is to fully cooperate in an independent audit of the vote by people who are not employed by you. This ensures the transparency and fairness that is only appropriate in a transaction that is as important as this one.

Best,

Peter

----- Original Message -----

**From:** Tom Keltner  
**To:** [b:(6)]  
**Cc:** Angela McHale  
**Sent:** Tuesday, April 09, 2013 1:47 PM  
**Subject:** FW: ESBA participants' audit of the REIT vote

[b:(6)]

thanks for your inquiry. an investor may audit the vote of his entity after the entity's solicitation is closed, based on this protocol:

1. the investor should request the audit in writing to malkin holdings, identifying any person who intends to be present
2. each such person must sign a confidentiality agreement protecting the identity & vote of other investors, substantially as follows:
  - the auditing investor may use information gained from this inspection only for audit purpose
  - the auditing investor may not disclose the vote of any investor except to counsel, agent or fellow auditing investor who signs same agreement (thus may not use audit info to contact another investor about his vote)
3. the audit will be conducted during business hours on reasonable prior notice at the nyc offices of mackenzie partners in an audit room as follows:
  - ballots for the entity will be available for inspection in the form of:
    - digital copies on mackenzie computer in audit room &
    - if requested, paper photocopies, which may be examined but not removed from the room
      - on request, mackenzie will bring to the audit room an original of a particular ballot as to which the auditing investor identifies an issue, so it can be examined but not removed from mackenzie's premises
  - mackenzie & malkin holdings may each have a rep in the room during the audit

this format is substantially the same as used in the private solicitation, based on the terms of the operative agreements & normal practices. the other conditions suggested in your message below are not consistent with such terms & cannot be added here.

we will make an announcement to all affected investors when a solicitation is closed as to any entity, & you can at that time make arrangements for an audit, if you wish.

please let me know if I can help to answer any further question.

best regards.

tom



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**From:** [REDACTED]  
**Sent:** Wednesday, April 03, 2013 8:43 AM  
**To:** Tom Keltner

**Cc:** Angela McHale  
**Subject:** ESBA participants' audit of the REIT vote

Tom,

Thanks for affirming the right of participants in ESBA to independently audit the vote.

If you agree, we will perform our audit when you have reached the 80% required consent in all three Joint Ventures. The audit will consist of two activities, will require three days to complete, and should conclude before any letter is sent to investors informing them of your option to buy back their interest unless their vote is changed.

Each of the two activities will require some support from you as follows:

1) We will conduct a re-count of all the votes processed by MacKenzie Partners. This will be done on your premises by us, under the supervision of Mackenzie Partners and/or Malkin Holdings as you desire. The re-count will commence within a week of your notifying us of the 80% threshold being achieved, and will take no more than three days to complete. The support we require for this activity consists of office space on your premises sufficient for three individuals for three days, including any credentials needed to access the space during the audit. Of course, the original, signed ballots must also be made available to us for this task.

2) We will telephone a random sample of voters to confirm their vote. The sample size will be about 10-15% of all those who voted for the roll-up. This will be done by ESBA volunteers who will not require any access to your premises. To perform this task, we will need you to provide a spreadsheet containing the list of investors who voted for the transaction, their interest in ESBA, which of the three Joint Ventures they are part of, and the telephone number at which they can be reached. This activity will also take place over three days, concurrent with the re-count activity.

Please let me know if these terms are acceptable to you.

Thanks for your help,

[Redacted]

----- Original Message -----

**From:** Tom Keltner

**To:** [Redacted]

**Sent:** Thursday, March 14, 2013 6:49 PM

**Subject:** RE: empire state realty trust

[Redacted]

you have a right to audit the vote after it is completed, & you can let us know then if you would like to conduct such an audit.

best regards.  
tom



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**From:** [b:(6)]  
**Sent:** Thursday, March 14, 2013 12:41 PM  
**To:** Tom Keltner  
**Subject:** Re: empire state realty trust

Tom,

Any further thoughts on how we can get independent validation of the vote?

Thanks,

[b:(6)]

----- Original Message -----

**From:** Tom Keltner  
**To:** [b:(6)]  
**Sent:** Monday, March 04, 2013 4:59 PM  
**Subject:** RE: empire state realty trust

[b:(6)]

responses noted below.

best regards.  
tom



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**From:** [b:(6)]  
**Sent:** Thursday, February 28, 2013 12:22 PM  
**To:** Tom Keltner  
**Subject:** Re: empire state realty trust

Tom,

On the subject of how to get independent validation of the vote when 80% has been achieved in one of the Joint Ventures, would you consider this as a possible solution:

I would be willing to travel to your offices at my expense, either by myself or with a small group of other investors (including some who have voted FOR), and spend a couple of days re-counting the votes. I would be happy to be overseen in this process by MacKenzie or by anyone else of your choosing. This would take place during the ten-day period during which the investors who had voted AGAINST were being offered a chance to change their vote or be bought out, and would conclude before that 10-day period had elapsed.

- will respond further on this.

Do you have any further information yet on the question of whether an investor who must change his vote in a particular Joint Venture must also change his vote in the others he might be part of?

- As disclosed in the consent solicitation statement, a participant's participation interests will be subject to a buyout only if the participant does not vote in favor of the proposal within ten



days after notice that the required supermajority consent has been received from the participants in a participant's participating group. To avoid the buyout in accordance with the procedure described in the consent solicitation, a participant who did not vote in favor of the proposal would be required to vote in favor of the proposal in the indicated time period only in the group where the supermajority was attained.

Lastly, can you tell me when we can expect our overage checks this year, and how much they will be?

- Distribution should be sent by 3/11/13.
- Amount will be announced in supplement to s-4 on or prior to such distribution date.

Thanks,

(b)(6)

----- Original Message -----

**From:** Tom Keltner

**To:** (b)(6)

**Sent:** Monday, February 25, 2013 11:01 PM

**Subject:** Re: empire state realty trust

Thank you (b)(6)

I look forward to speaking further with you.

---

**From:** (b)(6)

**Sent:** Monday, February 25, 2013 10:09 PM

**To:** Tom Keltner

**Subject:** Re: empire state realty trust

Tom,

This is great - just what I've been wanting to see for years. Thanks so much!

I'll study the data more, but my first impression is that I was wrong in thinking that distributions never exceeded their levels from the early years. In fact, after more-or-less static returns in the first fifteen years, there was steady growth in distributions between 1977-1989.

But my feeling that there has been little or no growth for a very long time is, in the main, correct. If I read this right, only once in the last 24 years (2001) has the total distribution exceeded the 1989 level. This is very disappointing.

If you have a similar document showing changes in gross rents and other income, as well as outflows for expenses such as management fees, etc., a clearer picture of how the participants have really fared will emerge.

Thanks again for being so responsive on this, and I look forward to further communications.

All the best,

(b)(6)

On Mon, Feb 25, 2013 at 8:21 PM, Tom Keltner <[TKeltner@malkinholdings.com](mailto:TKeltner@malkinholdings.com)> wrote:  
peter:

thanks for speaking with me on saturday regarding our proposals.

as you requested, I am attaching a schedule of esba distributions from inception. please feel free to call me with question at any time 212-850-2680.

i still owe you several other answers & will be back to you soon.

best regards.  
tom



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**From:** Orlic, David L.  
**Sent:** Wednesday, January 09, 2013 10:51 AM  
**To:** Kluck, Thomas  
**Subject:** FW: ESRT: Investor Letter  
**Attachments:** Outcomes Letter.doc

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

12:30pm is not good for me. 2pm or later would be better. Thanks.

---

**From:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com) [mailto:[Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com)]  
**Sent:** Wednesday, January 09, 2013 10:38 AM  
**To:** Kluck, Thomas; Orlic, David L.  
**Cc:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com)  
**Subject:** FW: ESRT: Investor Letter

Tom and David,

Attached for your review is a draft letter to investors that is intended to be sent a few days after the main mailing. I saw your email suggesting 1130am today. We appreciate that but it conflicts with a meeting I will be at. Would 1230 pm today work for you. Please let me know. Thanks.

Larry

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[letterhead of malkin holdings]

[X], 2013

re: Empire State Realty Trust, Inc.

To Participants in Empire State Building Associates L.L.C., 60 East 42<sup>nd</sup> St. Associates L.L.C., and 250 West 57<sup>th</sup> St. Associates L.L.C.

Dear Fellow Participant:

By this time, you have received the prospectus/consent solicitation statement which is part of the Form S-4 recently declared effective by the SEC. You are now in the position to make your decision and vote on the recommended consolidation of properties into Empire State Realty Trust ("ESRT") and its Initial Public Offering ("IPO"), and these are the final disclosure documents which you are advised to review to inform yourself about the choices before you.

The choices you have to make are important to you and your fellow investors. There are three recommendations we have made to you: (i) our proposed consolidation and the simultaneous IPO of ESRT; (ii) our proposed alternative for the sale of all the properties to be included in the consolidation at a price of a minimum of 115% of the aggregate exchange value; and (iii) a voluntary reimbursement of certain litigation costs. In addition, the disclosure documents contain information to assist you in choosing the securities which are best for you for when the proposed consolidation goes forward.

In this letter we offer you our view of the strengths of our recommended courses of action as well as our view of the weaknesses if the current ownership structures remain, commonly referred to as "the status quo." In addition, the booklet which accompanies this letter contains each of the other information letters we have sent to you over the past year. We hope having all these resources in one place, along with our disclosure documents will make your task easier. Of course, we stand by ready, willing, and able to answer your questions.

We greatly value the opportunity we have had to represent all of you, from the smallest owner to the largest investor, for over half a century. Years of thought and preparation and great expense have gone into this opportunity and our recommendation of it to you. Peter L. Malkin is Lawrence A. Wien's son-in-law and was his right hand man for more than three decades. Anthony E. Malkin is Lawrence A. Wien's grandson and has been his father's right hand man for more than two decades.

Malkin Holdings is the firm Mr. Wien founded and the firm which structured and has supervised your investments from inception. We know that if Mr. Wien, our father-in-law and grandfather, were alive today, he would be delighted to offer you and his other investors the chance to simplify and modernize their investment and its management, continue as investors in a transaction that offers you the option to receive your interest on what is expected to be a 100% tax deferred basis, spread your risk, receive more predictable distributions which we believe have greater potential to increase over time in this format than if the status quo remains, and have the

opportunity to sell and receive an efficient market price for all or part of your investments if and when you choose (after an initial lock-up period).

Now that the Form S-4 has been declared effective, we are able to conduct the active solicitation of you, our investors, with complete clarity. No longer in the SEC imposed “quiet period”, we can also answer all questions about every step of the proposed transaction. We have already begun our outreach to you. In addition, a special Malkin Holdings website ([www.//////.com](http://www.//////.com)) which contains additional materials which are filed with the SEC and allows you to register for conference calls to hear from Peter and Anthony Malkin is now available to you.

You can take your pick of the scheduled, organized conference calls and raise questions you would like to ask by visiting [www.//////.com](http://www.//////.com) or by phoning xxx-xxx-xxxx. You are amongst thousands of investors, so conference calls are expected to fill up quickly. Please do not worry, we will hold as many calls as are necessary. Malkin Holdings staff, in addition to our proxy agent’s staff, are standing by to answer your specific questions to the fullest extent we can by law. We feel confident that you will see that it is in your best interest to join with us and the thousands of other investors who have already given the necessary authority to conclude the proposed consolidation and IPO.

You have a simple, but very important choice in front of you: *Should I vote for or against the proposed transaction?* Please read this summary of the benefits we believe you will receive from a vote for the proposed transaction, and the lesser prospects we believe you face if you do not.

### **If The Transaction Proceeds**

**You will have the ability to choose the securities that you will receive in exchange for your current interests, including a 100% tax deferred option, out of the following:**

- Fully tax deferred: Operating Partnership Units (“OP Units”) without voting rights;
- 98% tax-deferred: OP Units combined with Class B Common Stock with the same voting rights as if you had selected all Class A Common Stock; and
- Fully taxable: Class A Common Stock with full voting rights.

**Note: the Malkin family has chosen to receive a combination of Class B Common Stock, OP Units, and Class A Common Stock with the same voting rights as if it had elected all Class A Common Stock.**

Each one of these options will provide you with ownership in prime, improved or improving office and retail real estate in Manhattan and the Greater New York metropolitan area and give you the opportunity to receive regular distributions with the potential for increased distributions and capital appreciation. Class A Common Stock and OP Units will be traded on the New York Stock Exchange; OP Units will be exchangeable for cash (at the market value) or, at the ESRT’s option, Class A Common Stock; and Class B Common Stock will be convertible into Class A Common Stock, granting you great investment and tax planning flexibility.

**You will continue to receive regular distributions, which we believe have greater potential to increase over time than if the status quo remains.**

- As a stockholder in ESRT or holder of OP Units, we expect that you will receive quarterly distributions.
  - In order for ESRT to qualify as a real estate investment trust ("REIT"), these distributions are required to be at least 90% of ESRT's annual REIT taxable income.
  - We believe that these distributions will be more consistent than the current distributions out of base rent and fluctuating annual distributions, if any, of overage rent, which are paid to the extent of available cash.
  - Because ESRT will have the combined balance sheet of all properties and greater and more efficient access to capital markets, there should be no need to maintain property level reserves, so that such cash will be available for distribution as well.
- Currently you receive distributions monthly.
  - If there is overage rent paid by the operating lessee to your subject LLC, and there are adequate reserves for your subject LLC, there is an annual, one-time additional distribution.
  - Whether or not there is overage rent to allow for an additional, annual, one-time distribution is determined by decisions made by the operating lessee for your property (ies), over which you have no control.

The combined property portfolio will provide greater performance stability through diversification, better access to capital markets, streamlined financial reporting, and a simplified management structure eliminating certain expenses from many groups which exist under the current ownership structure, and will allow for better planning for distributions to investors.

The combined balance sheets of all the properties have low leverage which will allow ESRT to pursue acquisitions that have the potential to increase its cash flow through further growth. You will not have this opportunity under the status quo.

**Distributions will be based on the performance of a portfolio of properties and are expected to be more predictable than your current distributions.**

ESRT expects to pay regular quarterly dividends, and those distributions are required to be at least 90% of ESRT's annual REIT taxable income to maintain ESRT's qualification as a REIT. REIT taxable income will be determined by the performance of the portfolio of its properties and unaffected by the Company's stock price. Because of our REIT structure, we expect your distributions to be more consistent and predictable.

As a stockholder in ESRT, you will have the best of both worlds: regular distributions based on performance of a portfolio of properties and the right to sell your shares when you wish (after an initial lock-up period) based upon an efficient market price. And, unlike the current structure where year-end distributions beyond a minimum are discretionary and based on the need to maintain reserves, with ESRT, distributions will be based on the need to distribute at least 90% of ESRT's annual REIT taxable income, which will be determined by the performance of ERST's portfolio of properties.

Finally, the combined balance sheet will give us capital planning flexibility. As a combined company, we will no longer need to hold cash reserves in each individual entity, allowing for a one-time distribution of cash reserves at or just after completion of the



consolidation and IPO and no expected need to establish entity level reserves at your LLC at any time.

**Investors will own publicly traded shares in a company with a centralized, experienced management team governed by a board in which six out of seven directors are independent.**

Presently, your investment entity is supervised by Malkin Holdings, and day-to-day property management, leasing, and financial reporting is directed by Malkin Holdings on behalf of a separate investment group, the operating lessee. Several third party managers and a variety of outside accountants provide services under the supervision of Malkin Holdings. This is very inefficient, adds unique costs, reduces responsiveness and accountability, and relies upon Anthony E. Malkin and Peter L. Malkin for governance and continuity.

For ESRT, management, leasing, and financial reporting will be combined and centralized, and financial statements will be audited by Ernst & Young. The combined entity is expected to maintain existing management personnel, as well as attract quality additional corporate and property executives, to the extent such additional executives are needed by ERST. Management continuity for ERST will be clear and organized and not reliant upon the Malkin family providing another generation of expert property and business excellence.

The summary biographies of the six proposed independent directors are set forth in the prospectus/consent solicitation statement and in our September 6, 2012 letter. The only Malkin family member who will be on the board or employed full time by ESRT will be Anthony E. Malkin. Peter L. Malkin will be Chairman Emeritus and will receive limited compensation and the use of an office and administrative assistance.

Each outside board member nominee has successful experience either in real estate, public companies, or both. As a publicly traded company, your board will be accountable to you, and those of you who elect securities with a right to vote will elect board members and vote on other corporate matters each year.

ESRT's modern corporate governance structure will allow decisions to be made more efficiently, on behalf of all investors, with less wasteful duplication. It is expected to help ESRT attract top talent, to the extent needed by ERST, and provide for management succession planning for what will happen after Anthony E. Malkin is no longer CEO. It will also eliminate the risk of damaging deadlocks in decision-making inherent in the current ownership structure. Protected from potential conflicts and ongoing inefficiencies of the current structure, you will benefit from owning a piece of a major new public company with one set of objectives.

**Investors will also receive numerous other benefits, including:**

- Simpler annual income tax filings.
  - Instead of receiving a different K-1 for each investment you have with Malkin Holdings (and receiving it too late for you to be able make an April 15<sup>th</sup> tax filing), holders of Class A or B Common Stock will receive a single form 1099, and holders of OP Units will receive a single form K-1.
  - ESRT has committed to make efforts to deliver form K-1's and 1099's by [March 31<sup>st</sup>] to help you to file your tax returns without going on extension.

- A one-time special distribution equal to the existing reserves in excess of working capital and the expenditures relating to the consolidation and IPO which shall be reimbursed by ESRT.
- Your share of the proceeds of the settlement of the class action, subject to approval of the settlement by the court.
- Greater transparency through regular, quarterly earnings reports and mandated SEC and NYSE disclosures of material events.
- Protections afforded all stockholders in public companies with securities listed on a national securities exchange through SEC, NYSE, and Dodd-Frank rules and regulations.
- Continued benefits of ownership of real estate.
  - If you elect to receive OP Units, you can continue to own interests in real estate on a tax-deferred basis, and each type of security will offer the potential for capital appreciation.

#### **If The Transaction Does Not Proceed**

We believe voting against our proposal is **not** in your interest, and you will have several, materially adverse consequences if the consolidation does not proceed.

**You would continue to own an illiquid interest in a portion of the economies of a single property.**

You will not have the ability to realize efficient market pricing for your interest determined on a national securities exchange, and you will limit materially your ability to monetize all or part of your interest at a price and time of your choosing.

While some have been able to sell their interests in the past, to our knowledge it has been a time consuming and inefficient process and only accomplished at substantial discounts to the long-term value of the participation interests.

**Your distributions rely on overage rent from the operating lessees, and there is no requirement to make distributions under the current ownership structure.**

As presently structured, your investment relies on the operating lessees' payment of overage rents for extra distributions. Without consolidated ownership and management, your operating lessee makes all decisions which determine the amount of overage rent, if any, your subject LLC receives each year. Your subject LLC has been required to maintain reserves which are not distributed, and will likely continue to do so.

If the consolidation does not close, you will not receive the one-time special distribution of existing reserves in excess of working capital and expenditures relating to the consolidation and IPO which are to be reimbursed by ESRT from the IPO proceeds. In addition, you will not receive your share of the proceeds of the settlement of the class action, payment of which is subject to the closing of the consolidation and approval of the settlement by the court.

**If your operating lessee for any reason chooses to use cash flow to fund future capital improvements, tenant installation costs, commissions, and other expenses rather than to use financing to maximize cash flows, your distributions from overage rent may decrease or cease.**

You have personally experienced inconsistent property distributions, together with a lack of efficient access to the capital markets, which has interrupted, and can interrupt, distributions. Unlike in the REIT structure, making distributions beyond a small, required minimum is not mandated in the present structure. Under the present ownership structure you rely only on the performance of your property. Major expenditures unique to your property, or major tenant failure, will impact you directly and not be smoothed out by the performance of a portfolio of quality assets.

**You will continue to be subject to an archaic structure which limits your rights and the value of your investment.**

The current structure of the property in which you are invested is not centralized and efficient. Decision-making and financial reporting structures require unique costs, limit your partnership's access to capital markets, require large entity level cash reserves, and therefore have limited the money available for distribution to you. Your distributions are more inconsistent and volatile, subject to the performance of a single property and the decisions made by the operating lessee over which you have no control.

Your investment presently relies on a separately owned operating lessee and requires the second and third generations of the Wien and Malkin family for supervision, operations, financial planning, and fulfillment of fiduciary obligations. The present organizational structure is not attractive to top corporate management, which is today attracted primarily by our personal reputations. We think attracting new management personnel will become more difficult as time passes and there is no next generation of Malkin family to run Malkin Holdings.

Your investment presently relies on third party service providers and outside accountants chosen by your operating lessee. These professionals are part of a group of outside service providers and accountants who are coordinated by Malkin Holdings as supervisor. This is not efficient, is costly, and causes delays in financial and tax reporting.

**No access to growth through beneficial acquisitions.**

A combined balance sheet creates the opportunity to acquire additional properties, which have the potential for additional revenue and capital appreciation, while still maintaining the conservative levels of leverage for which we are well known. Over time, new acquisitions offer you the potential for additional distributions and capital appreciation.

**There are also special considerations for Empire State Building ("ESB") investors.**

We all take pride in being involved with such a special property. Its potential has been reflected in the value allocated to it by Duff & Phelps, the independent valuer. ESB is approximately 34% of total square feet of ESRT, but has been afforded more than 56% of the exchange value.

But owning this unique property has unique risks as well. The August 2012 shooting which took place just outside the building reminds us that activities beyond our control can

impact our performance, regardless of how well we plan or execute our plans. Terror attack is an everyday risk for which we plan.

Approximately 40% of the revenue of the ESB operating lessee in 2011 was from the observatory and driven by tourists. That has been a major source of overage rent payments to your LLC which contributes to your additional distribution. The growing worldwide economic slowdown may adversely affect tourism and results at the observatory, despite our best executed plans. Additionally, the new One World Trade Center will have a new observatory which will bring new competition to the market for the tourists who do visit. With change in the economy and increased competition, the benefits from the observatory may be less, which may adversely impact additional distributions.

One World Trade Center has also announced that it will offer a full broadcast platform for television, radio, and other broadcasters. Approximately 10.4% of the revenue of the ESB operating lessee in 2011 was from the broadcast operations of the building. That has been a major source of overage rent payments to your subject LLC which contributes to your additional distribution. With increased competition, the benefits from the broadcast operations may be less, which may adversely impact additional distributions.

Clearly, a major effort of our work has been to make the office and retail spaces of the building more profitable, as well as to protect and enhance observatory and broadcast operations. However, we believe these risk factors underscore the benefit of diversifying your assets through the proposed transaction so that you are not solely dependent on the ESB. These risks have the potential to reduce future distributions.

Each of the Malkin family and Helmsley Estate has a veto over ESB operating decisions. Another significant risk to ESB investors is the imminent sale by the Helmsley Estate of its real estate assets. If the proposed consolidation and IPO do not move forward, and the Helmsley Estate sells its interest in Empire State Building Company, you have no way of knowing who will step into their shoes and can exercise that veto.

Past deadlocks have led to operating, leasing and financing problems that have impaired property performance and reduced distributions. Importantly, through the proposed transaction, you would avoid the risk and uncertainty of such damaging deadlocks with a new owner, who may have a very different approach to operating the building and to decisions over leasing, financing and cash distributions.

**Lastly, filing your annual income taxes would remain a time-consuming and complicated burden.**

There would continue to be a separate K-1 for each investment entity. This process is time-consuming and expensive, and, with increasingly complex tax rules and regulations, not practical to complete so as to be able to send to investors in time to allow them to make April 15<sup>th</sup> tax filings.

*In closing, we strongly believe that the proposed transaction is in the best interests of all investors.* It provides:

- An option for tax-deferral;

- More consistent distributions than the status quo, with greater potential for increased distributions as a holder of OP units or common stock than as a participant in a subject LLC;
- Reduced risk through diversity;
- Opportunity for liquidity at a true market price and at a time of your choosing;
- Better access to capital markets;
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- Modern corporate governance with an experienced and independent board;
- Better preparation for management transition;
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**IMPORTANTLY, THE MALKIN FAMILY WILL NOT BE SELLING ANY SHARES IN THE PROPOSED TRANSACTION.**

**How to Vote**

The SEC has declared ESRT's Registration Statement on Form S-4 effective. You should have received the prospectus/consent solicitation statement, which is part of the Registration Statement on Form S-4.

You may simply indicate on the enclosed consent form how you want to vote for each proposal, then sign and mail it in the enclosed return envelope as soon as possible so that your participation interest may be counted.

If you sign and send in your consent form and do not indicate how you want to vote on either one of these proposals, your consent will be counted as a vote "FOR" such proposal.

If you do not submit your consent form or you indicate on your consent form that you "ABSTAIN" from any proposal, it will have the effect of voting "AGAINST" such proposal.

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- View the DVD which accompanied your consent solicitation materials and view the chapter titled "xxxxx".
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**There are material risks and conflicts of interest associated with the consolidation. You should carefully review the sections entitled "Risk Factors" and "Conflicts of Interest" in the prospectus/consent solicitation statement included in the Form S-4 which has been declared effective by the SEC. There can be no assurance that participants will realize the benefits described herein, including the potential increase in distributions and capital appreciation. In addition, the prospectus/consent solicitation statement includes a more detailed discussion of the tax consequences of the consolidation.**

**We also caution you that this letter contains forward-looking statements. These forward-looking statements, including the potential for more consistent distributions than the status quo, with greater potential for increased distributions as a holder of operating partnership units or common stock than as a participant in a subject LLC, and the potential for additional capital appreciation over time, are based on our beliefs and expectations as applicable, which may not be correct. Important factors that could cause such actual results to differ materially from the expectations reflected in these forward-looking statements include those set forth in the prospectus/consent solicitation statement.**

While we believe that the terms of the consolidation are fair and in the best interests of participants, there can never be any guaranty that the consideration you will receive from the consolidation represents the fair market value of your interests.

**We recommend your approval of the various consents we have requested.** We believe that the consolidation/IPO is the best way for you to achieve liquidity, receive potentially greater distributions, maximize the value of your investment and maximize the potential for future value enhancement while also retaining an interest in the property owned by your subject LLC.

We remain available to answer your questions within the limitations imposed under the securities laws. Please feel free to contact us with any question.

Sincerely,

MALKIN HOLDINGS LLC

Peter L. Malkin  
Chairman

Anthony E. Malkin  
President

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*jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.*

*Each of the three public entities, Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C., and 250 West 57th St. Associates L.L.C. (the "Companies") and their agents and supervisor, and each officer and director of them or of Empire State Realty Trust, Inc. (the "REIT") may be deemed to be a participant in the solicitation of consents in connection with the proposed consolidation. The names of such persons and a description of their interests in the Companies and the REIT are set forth, respectively, in each Company's Annual Report on Form 10-K for the year ended December 31, 2011 and the REIT's Registration Statement on Form S-4, which have been filed with the SEC.*

*We urge you to review such Registration Statement on Form S-4 and other related documents now filed or to be filed with the SEC, because they contain important information. You can obtain them without charge on the SEC's website at [www.sec.gov](http://www.sec.gov). You can also obtain without charge a copy of the prospectus/consent solicitation and the supplements relating to the individual entities by contacting Ned H. Cohen at Malkin Holdings.*







**From:** Larry.Medvinsky@CliffordChance.com  
**Sent:** Wednesday, January 09, 2013 10:38 AM  
**To:** Kluck, Thomas; Orlic, David L.  
**Cc:** Larry.Medvinsky@CliffordChance.com  
**Subject:** FW: ESRT: Investor Letter  
**Attachments:** Outcomes Letter.doc

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Tom and David,

Attached for your review is a draft letter to investors that is intended to be sent a few days after the main mailing. I saw your email suggesting 1130am today. We appreciate that but it conflicts with a meeting I will be at. Would 1230 pm today work for you. Please let me know. Thanks.

Larry

\*\*\*\*\*

This message and any attachment are confidential and may be privileged or otherwise protected from disclosure.

If you are not the intended recipient, please telephone or email the sender and delete this message and any attachment from your system. If you are not the intended recipient you must not copy this message or attachment or disclose the contents to any other person.

Clifford Chance as a global firm regularly shares client and/or matter-related data among its different offices and support entities in strict compliance with internal control policies and statutory requirements.

Incoming and outgoing email communications may be monitored by Clifford Chance, as permitted by applicable law and regulations.

For further information about Clifford Chance please see our website at <http://www.cliffordchance.com> or refer to any Clifford Chance office.

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To contact any other office  
[http://www.cliffordchance.com/about\\_us/find\\_people\\_and\\_offices.html](http://www.cliffordchance.com/about_us/find_people_and_offices.html)

[letterhead of malkin holdings]

[X], 2013

re: Empire State Realty Trust, Inc.

To Participants in Empire State Building Associates L.L.C., 60 East 42<sup>nd</sup> St. Associates L.L.C., and 250 West 57<sup>th</sup> St. Associates L.L.C.

Dear Fellow Participant:

By this time, you have received the prospectus/consent solicitation statement which is part of the Form S-4 recently declared effective by the SEC. You are now in the position to make your decision and vote on the recommended consolidation of properties into Empire State Realty Trust ("ESRT") and its Initial Public Offering ("IPO"), and these are the final disclosure documents which you are advised to review to inform yourself about the choices before you.

The choices you have to make are important to you and your fellow investors. There are three recommendations we have made to you: (i) our proposed consolidation and the simultaneous IPO of ESRT; (ii) our proposed alternative for the sale of all the properties to be included in the consolidation at a price of a minimum of 115% of the aggregate exchange value; and (iii) a voluntary reimbursement of certain litigation costs. In addition, the disclosure documents contain information to assist you in choosing the securities which are best for you for when the proposed consolidation goes forward.

In this letter we offer you our view of the strengths of our recommended courses of action as well as our view of the weaknesses if the current ownership structures remain, commonly referred to as "the status quo." In addition, the booklet which accompanies this letter contains each of the other information letters we have sent to you over the past year. We hope having all these resources in one place, along with our disclosure documents will make your task easier. Of course, we stand by ready, willing, and able to answer your questions.

We greatly value the opportunity we have had to represent all of you, from the smallest owner to the largest investor, for over half a century. Years of thought and preparation and great expense have gone into this opportunity and our recommendation of it to you. Peter L. Malkin is Lawrence A. Wien's son-in-law and was his right hand man for more than three decades. Anthony E. Malkin is Lawrence A. Wien's grandson and has been his father's right hand man for more than two decades.

Malkin Holdings is the firm Mr. Wien founded and the firm which structured and has supervised your investments from inception. We know that if Mr. Wien, our father-in-law and grandfather, were alive today, he would be delighted to offer you and his other investors the chance to simplify and modernize their investment and its management, continue as investors in a transaction that offers you the option to receive your interest on what is expected to be a 100% tax deferred basis, spread your risk, receive more predictable distributions which we believe have greater potential to increase over time in this format than if the status quo remains, and have the

opportunity to sell and receive an efficient market price for all or part of your investments if and when you choose (after an initial lock-up period).

Now that the Form S-4 has been declared effective, we are able to conduct the active solicitation of you, our investors, with complete clarity. No longer in the SEC imposed “quiet period”, we can also answer all questions about every step of the proposed transaction. We have already begun our outreach to you. In addition, a special Malkin Holdings website ([www.//////.com](http://www.//////.com)) which contains additional materials which are filed with the SEC and allows you to register for conference calls to hear from Peter and Anthony Malkin is now available to you.

You can take your pick of the scheduled, organized conference calls and raise questions you would like to ask by visiting [www.//////.com](http://www.//////.com) or by phoning xxx-xxx-xxxx. You are amongst thousands of investors, so conference calls are expected to fill up quickly. Please do not worry, we will hold as many calls as are necessary. Malkin Holdings staff, in addition to our proxy agent’s staff, are standing by to answer your specific questions to the fullest extent we can by law. We feel confident that you will see that it is in your best interest to join with us and the thousands of other investors who have already given the necessary authority to conclude the proposed consolidation and IPO.

You have a simple, but very important choice in front of you: *Should I vote for or against the proposed transaction?* Please read this summary of the benefits we believe you will receive from a vote for the proposed transaction, and the lesser prospects we believe you face if you do not.

### **If The Transaction Proceeds**

**You will have the ability to choose the securities that you will receive in exchange for your current interests, including a 100% tax deferred option, out of the following:**

- Fully tax deferred: Operating Partnership Units (“OP Units”) without voting rights;
- 98% tax-deferred: OP Units combined with Class B Common Stock with the same voting rights as if you had selected all Class A Common Stock; and
- Fully taxable: Class A Common Stock with full voting rights.

**Note: the Malkin family has chosen to receive a combination of Class B Common Stock, OP Units, and Class A Common Stock with the same voting rights as if it had elected all Class A Common Stock.**

Each one of these options will provide you with ownership in prime, improved or improving office and retail real estate in Manhattan and the Greater New York metropolitan area and give you the opportunity to receive regular distributions with the potential for increased distributions and capital appreciation. Class A Common Stock and OP Units will be traded on the New York Stock Exchange; OP Units will be exchangeable for cash (at the market value) or, at the ESRT’s option, Class A Common Stock; and Class B Common Stock will be convertible into Class A Common Stock, granting you great investment and tax planning flexibility.

**You will continue to receive regular distributions, which we believe have greater potential to increase over time than if the status quo remains.**

- As a stockholder in ESRT or holder of OP Units, we expect that you will receive quarterly distributions.
  - In order for ESRT to qualify as a real estate investment trust ("REIT"), these distributions are required to be at least 90% of ESRT's annual REIT taxable income.
  - We believe that these distributions will be more consistent than the current distributions out of base rent and fluctuating annual distributions, if any, of overage rent, which are paid to the extent of available cash.
  - Because ESRT will have the combined balance sheet of all properties and greater and more efficient access to capital markets, there should be no need to maintain property level reserves, so that such cash will be available for distribution as well.
- Currently you receive distributions monthly.
  - If there is overage rent paid by the operating lessee to your subject LLC, and there are adequate reserves for your subject LLC, there is an annual, one-time additional distribution.
  - Whether or not there is overage rent to allow for an additional, annual, one-time distribution is determined by decisions made by the operating lessee for your property (ies), over which you have no control.

The combined property portfolio will provide greater performance stability through diversification, better access to capital markets, streamlined financial reporting, and a simplified management structure eliminating certain expenses from many groups which exist under the current ownership structure, and will allow for better planning for distributions to investors.

The combined balance sheets of all the properties have low leverage which will allow ESRT to pursue acquisitions that have the potential to increase its cash flow through further growth. You will not have this opportunity under the status quo.

**Distributions will be based on the performance of a portfolio of properties and are expected to be more predictable than your current distributions.**

ESRT expects to pay regular quarterly dividends, and those distributions are required to be at least 90% of ESRT's annual REIT taxable income to maintain ESRT's qualification as a REIT. REIT taxable income will be determined by the performance of the portfolio of its properties and unaffected by the Company's stock price. Because of our REIT structure, we expect your distributions to be more consistent and predictable.

As a stockholder in ESRT, you will have the best of both worlds: regular distributions based on performance of a portfolio of properties and the right to sell your shares when you wish (after an initial lock-up period) based upon an efficient market price. And, unlike the current structure where year-end distributions beyond a minimum are discretionary and based on the need to maintain reserves, with ESRT, distributions will be based on the need to distribute at least 90% of ESRT's annual REIT taxable income, which will be determined by the performance of ERST's portfolio of properties.

Finally, the combined balance sheet will give us capital planning flexibility. As a combined company, we will no longer need to hold cash reserves in each individual entity, allowing for a one-time distribution of cash reserves at or just after completion of the

consolidation and IPO and no expected need to establish entity level reserves at your LLC at any time.

**Investors will own publicly traded shares in a company with a centralized, experienced management team governed by a board in which six out of seven directors are independent.**

Presently, your investment entity is supervised by Malkin Holdings, and day-to-day property management, leasing, and financial reporting is directed by Malkin Holdings on behalf of a separate investment group, the operating lessee. Several third party managers and a variety of outside accountants provide services under the supervision of Malkin Holdings. This is very inefficient, adds unique costs, reduces responsiveness and accountability, and relies upon Anthony E. Malkin and Peter L. Malkin for governance and continuity.

For ESRT, management, leasing, and financial reporting will be combined and centralized, and financial statements will be audited by Ernst & Young. The combined entity is expected to maintain existing management personnel, as well as attract quality additional corporate and property executives, to the extent such additional executives are needed by ERST. Management continuity for ERST will be clear and organized and not reliant upon the Malkin family providing another generation of expert property and business excellence.

The summary biographies of the six proposed independent directors are set forth in the prospectus/consent solicitation statement and in our September 6, 2012 letter. The only Malkin family member who will be on the board or employed full time by ESRT will be Anthony E. Malkin. Peter L. Malkin will be Chairman Emeritus and will receive limited compensation and the use of an office and administrative assistance.

Each outside board member nominee has successful experience either in real estate, public companies, or both. As a publicly traded company, your board will be accountable to you, and those of you who elect securities with a right to vote will elect board members and vote on other corporate matters each year.

ESRT's modern corporate governance structure will allow decisions to be made more efficiently, on behalf of all investors, with less wasteful duplication. It is expected to help ESRT attract top talent, to the extent needed by ERST, and provide for management succession planning for what will happen after Anthony E. Malkin is no longer CEO. It will also eliminate the risk of damaging deadlocks in decision-making inherent in the current ownership structure. Protected from potential conflicts and ongoing inefficiencies of the current structure, you will benefit from owning a piece of a major new public company with one set of objectives.

**Investors will also receive numerous other benefits, including:**

- Simpler annual income tax filings.
  - Instead of receiving a different K-1 for each investment you have with Malkin Holdings (and receiving it too late for you to be able make an April 15<sup>th</sup> tax filing), holders of Class A or B Common Stock will receive a single form 1099, and holders of OP Units will receive a single form K-1.
  - ESRT has committed to make efforts to deliver form K-1's and 1099's by [March 31<sup>st</sup>] to help you to file your tax returns without going on extension.

- A one-time special distribution equal to the existing reserves in excess of working capital and the expenditures relating to the consolidation and IPO which shall be reimbursed by ESRT.
- Your share of the proceeds of the settlement of the class action, subject to approval of the settlement by the court.
- Greater transparency through regular, quarterly earnings reports and mandated SEC and NYSE disclosures of material events.
- Protections afforded all stockholders in public companies with securities listed on a national securities exchange through SEC, NYSE, and Dodd-Frank rules and regulations.
- Continued benefits of ownership of real estate.
  - If you elect to receive OP Units, you can continue to own interests in real estate on a tax-deferred basis, and each type of security will offer the potential for capital appreciation.

#### **If The Transaction Does Not Proceed**

We believe voting against our proposal is **not** in your interest, and you will have several, materially adverse consequences if the consolidation does not proceed.

**You would continue to own an illiquid interest in a portion of the economies of a single property.**

You will not have the ability to realize efficient market pricing for your interest determined on a national securities exchange, and you will limit materially your ability to monetize all or part of your interest at a price and time of your choosing.

While some have been able to sell their interests in the past, to our knowledge it has been a time consuming and inefficient process and only accomplished at substantial discounts to the long-term value of the participation interests.

**Your distributions rely on overage rent from the operating lessees, and there is no requirement to make distributions under the current ownership structure.**

As presently structured, your investment relies on the operating lessees' payment of overage rents for extra distributions. Without consolidated ownership and management, your operating lessee makes all decisions which determine the amount of overage rent, if any, your subject LLC receives each year. Your subject LLC has been required to maintain reserves which are not distributed, and will likely continue to do so.

If the consolidation does not close, you will not receive the one-time special distribution of existing reserves in excess of working capital and expenditures relating to the consolidation and IPO which are to be reimbursed by ESRT from the IPO proceeds. In addition, you will not receive your share of the proceeds of the settlement of the class action, payment of which is subject to the closing of the consolidation and approval of the settlement by the court.

**If your operating lessee for any reason chooses to use cash flow to fund future capital improvements, tenant installation costs, commissions, and other expenses rather than to use financing to maximize cash flows, your distributions from overage rent may decrease or cease.**

You have personally experienced inconsistent property distributions, together with a lack of efficient access to the capital markets, which has interrupted, and can interrupt, distributions. Unlike in the REIT structure, making distributions beyond a small, required minimum is not mandated in the present structure. Under the present ownership structure you rely only on the performance of your property. Major expenditures unique to your property, or major tenant failure, will impact you directly and not be smoothed out by the performance of a portfolio of quality assets.

**You will continue to be subject to an archaic structure which limits your rights and the value of your investment.**

The current structure of the property in which you are invested is not centralized and efficient. Decision-making and financial reporting structures require unique costs, limit your partnership's access to capital markets, require large entity level cash reserves, and therefore have limited the money available for distribution to you. Your distributions are more inconsistent and volatile, subject to the performance of a single property and the decisions made by the operating lessee over which you have no control.

Your investment presently relies on a separately owned operating lessee and requires the second and third generations of the Wien and Malkin family for supervision, operations, financial planning, and fulfillment of fiduciary obligations. The present organizational structure is not attractive to top corporate management, which is today attracted primarily by our personal reputations. We think attracting new management personnel will become more difficult as time passes and there is no next generation of Malkin family to run Malkin Holdings.

Your investment presently relies on third party service providers and outside accountants chosen by your operating lessee. These professionals are part of a group of outside service providers and accountants who are coordinated by Malkin Holdings as supervisor. This is not efficient, is costly, and causes delays in financial and tax reporting.

**No access to growth through beneficial acquisitions.**

A combined balance sheet creates the opportunity to acquire additional properties, which have the potential for additional revenue and capital appreciation, while still maintaining the conservative levels of leverage for which we are well known. Over time, new acquisitions offer you the potential for additional distributions and capital appreciation.

**There are also special considerations for Empire State Building ("ESB") investors.**

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While we believe that the terms of the consolidation are fair and in the best interests of participants, there can never be any guaranty that the consideration you will receive from the consolidation represents the fair market value of your interests.

**We recommend your approval of the various consents we have requested. We believe that the consolidation/IPO is the best way for you to achieve liquidity, receive potentially greater distributions, maximize the value of your investment and maximize the potential for future value enhancement while also retaining an interest in the property owned by your subject LLC.**

We remain available to answer your questions within the limitations imposed under the securities laws. Please feel free to contact us with any question.

Sincerely,

MALKIN HOLDINGS LLC

Peter L. Malkin  
Chairman

Anthony E. Malkin  
President

*This communication shall not constitute an offer to sell or the solicitation of an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any*

*jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.*

*Each of the three public entities, Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C., and 250 West 57th St. Associates L.L.C. (the "Companies") and their agents and supervisor, and each officer and director of them or of Empire State Realty Trust, Inc. (the "REIT") may be deemed to be a participant in the solicitation of consents in connection with the proposed consolidation. The names of such persons and a description of their interests in the Companies and the REIT are set forth, respectively, in each Company's Annual Report on Form 10-K for the year ended December 31, 2011 and the REIT's Registration Statement on Form S-4, which have been filed with the SEC.*

*We urge you to review such Registration Statement on Form S-4 and other related documents now filed or to be filed with the SEC, because they contain important information. You can obtain them without charge on the SEC's website at [www.sec.gov](http://www.sec.gov). You can also obtain without charge a copy of the prospectus/consent solicitation and the supplements relating to the individual entities by contacting Ned H. Cohen at Malkin Holdings.*





**From:** Orlic, David L.  
**Sent:** Wednesday, January 09, 2013 11:11 AM  
**To:** Kluck, Thomas  
**Subject:** FW: ESRT: Investor Letter  
**Attachments:** Outcomes Letter.doc

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

[b]:(6);(b):(6);

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**From:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com) [<mailto:Larry.Medvinsky@CliffordChance.com>]  
**Sent:** Wednesday, January 09, 2013 10:38 AM  
**To:** Kluck, Thomas; Orlic, David L.  
**Cc:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com)  
**Subject:** FW: ESRT: Investor Letter

Tom and David,

Attached for your review is a draft letter to investors that is intended to be sent a few days after the main mailing. I saw your email suggesting 1130am today. We appreciate that but it conflicts with a meeting I will be at. Would 1230 pm today work for you. Please let me know. Thanks.

Larry

\*\*\*\*\*

This message and any attachment are confidential and may be privileged or otherwise protected from disclosure.

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[letterhead of malkin holdings]

[X], 2013

re: Empire State Realty Trust, Inc.

To Participants in Empire State Building Associates L.L.C., 60 East 42<sup>nd</sup> St. Associates L.L.C., and 250 West 57<sup>th</sup> St. Associates L.L.C.

Dear Fellow Participant:

By this time, you have received the prospectus/consent solicitation statement which is part of the Form S-4 recently declared effective by the SEC. You are now in the position to make your decision and vote on the recommended consolidation of properties into Empire State Realty Trust ("ESRT") and its Initial Public Offering ("IPO"), and these are the final disclosure documents which you are advised to review to inform yourself about the choices before you.

The choices you have to make are important to you and your fellow investors. There are three recommendations we have made to you: (i) our proposed consolidation and the simultaneous IPO of ESRT; (ii) our proposed alternative for the sale of all the properties to be included in the consolidation at a price of a minimum of 115% of the aggregate exchange value; and (iii) a voluntary reimbursement of certain litigation costs. In addition, the disclosure documents contain information to assist you in choosing the securities which are best for you for when the proposed consolidation goes forward.

In this letter we offer you our view of the strengths of our recommended courses of action as well as our view of the weaknesses if the current ownership structures remain, commonly referred to as "the status quo." In addition, the booklet which accompanies this letter contains each of the other information letters we have sent to you over the past year. We hope having all these resources in one place, along with our disclosure documents will make your task easier. Of course, we stand by ready, willing, and able to answer your questions.

We greatly value the opportunity we have had to represent all of you, from the smallest owner to the largest investor, for over half a century. Years of thought and preparation and great expense have gone into this opportunity and our recommendation of it to you. Peter L. Malkin is Lawrence A. Wien's son-in-law and was his right hand man for more than three decades. Anthony E. Malkin is Lawrence A. Wien's grandson and has been his father's right hand man for more than two decades.

Malkin Holdings is the firm Mr. Wien founded and the firm which structured and has supervised your investments from inception. We know that if Mr. Wien, our father-in-law and grandfather, were alive today, he would be delighted to offer you and his other investors the chance to simplify and modernize their investment and its management, continue as investors in a transaction that offers you the option to receive your interest on what is expected to be a 100% tax deferred basis, spread your risk, receive more predictable distributions which we believe have greater potential to increase over time in this format than if the status quo remains, and have the

opportunity to sell and receive an efficient market price for all or part of your investments if and when you choose (after an initial lock-up period).

Now that the Form S-4 has been declared effective, we are able to conduct the active solicitation of you, our investors, with complete clarity. No longer in the SEC imposed “quiet period”, we can also answer all questions about every step of the proposed transaction. We have already begun our outreach to you. In addition, a special Malkin Holdings website ([www.//////.com](http://www.//////.com)) which contains additional materials which are filed with the SEC and allows you to register for conference calls to hear from Peter and Anthony Malkin is now available to you.

You can take your pick of the scheduled, organized conference calls and raise questions you would like to ask by visiting [www.//////.com](http://www.//////.com) or by phoning xxx-xxx-xxxx. You are amongst thousands of investors, so conference calls are expected to fill up quickly. Please do not worry, we will hold as many calls as are necessary. Malkin Holdings staff, in addition to our proxy agent’s staff, are standing by to answer your specific questions to the fullest extent we can by law. We feel confident that you will see that it is in your best interest to join with us and the thousands of other investors who have already given the necessary authority to conclude the proposed consolidation and IPO.

You have a simple, but very important choice in front of you: *Should I vote for or against the proposed transaction?* Please read this summary of the benefits we believe you will receive from a vote for the proposed transaction, and the lesser prospects we believe you face if you do not.

### **If The Transaction Proceeds**

**You will have the ability to choose the securities that you will receive in exchange for your current interests, including a 100% tax deferred option, out of the following:**

- Fully tax deferred: Operating Partnership Units (“OP Units”) without voting rights;
- 98% tax-deferred: OP Units combined with Class B Common Stock with the same voting rights as if you had selected all Class A Common Stock; and
- Fully taxable: Class A Common Stock with full voting rights.

**Note: the Malkin family has chosen to receive a combination of Class B Common Stock, OP Units, and Class A Common Stock with the same voting rights as if it had elected all Class A Common Stock.**

Each one of these options will provide you with ownership in prime, improved or improving office and retail real estate in Manhattan and the Greater New York metropolitan area and give you the opportunity to receive regular distributions with the potential for increased distributions and capital appreciation. Class A Common Stock and OP Units will be traded on the New York Stock Exchange; OP Units will be exchangeable for cash (at the market value) or, at the ESRT’s option, Class A Common Stock; and Class B Common Stock will be convertible into Class A Common Stock, granting you great investment and tax planning flexibility.

**You will continue to receive regular distributions, which we believe have greater potential to increase over time than if the status quo remains.**

- As a stockholder in ESRT or holder of OP Units, we expect that you will receive quarterly distributions.
  - In order for ESRT to qualify as a real estate investment trust ("REIT"), these distributions are required to be at least 90% of ESRT's annual REIT taxable income.
  - We believe that these distributions will be more consistent than the current distributions out of base rent and fluctuating annual distributions, if any, of overage rent, which are paid to the extent of available cash.
  - Because ESRT will have the combined balance sheet of all properties and greater and more efficient access to capital markets, there should be no need to maintain property level reserves, so that such cash will be available for distribution as well.
- Currently you receive distributions monthly.
  - If there is overage rent paid by the operating lessee to your subject LLC, and there are adequate reserves for your subject LLC, there is an annual, one-time additional distribution.
  - Whether or not there is overage rent to allow for an additional, annual, one-time distribution is determined by decisions made by the operating lessee for your property (ies), over which you have no control.

The combined property portfolio will provide greater performance stability through diversification, better access to capital markets, streamlined financial reporting, and a simplified management structure eliminating certain expenses from many groups which exist under the current ownership structure, and will allow for better planning for distributions to investors.

The combined balance sheets of all the properties have low leverage which will allow ESRT to pursue acquisitions that have the potential to increase its cash flow through further growth. You will not have this opportunity under the status quo.

**Distributions will be based on the performance of a portfolio of properties and are expected to be more predictable than your current distributions.**

ESRT expects to pay regular quarterly dividends, and those distributions are required to be at least 90% of ESRT's annual REIT taxable income to maintain ESRT's qualification as a REIT. REIT taxable income will be determined by the performance of the portfolio of its properties and unaffected by the Company's stock price. Because of our REIT structure, we expect your distributions to be more consistent and predictable.

As a stockholder in ESRT, you will have the best of both worlds: regular distributions based on performance of a portfolio of properties and the right to sell your shares when you wish (after an initial lock-up period) based upon an efficient market price. And, unlike the current structure where year-end distributions beyond a minimum are discretionary and based on the need to maintain reserves, with ESRT, distributions will be based on the need to distribute at least 90% of ESRT's annual REIT taxable income, which will be determined by the performance of ERST's portfolio of properties.

Finally, the combined balance sheet will give us capital planning flexibility. As a combined company, we will no longer need to hold cash reserves in each individual entity, allowing for a one-time distribution of cash reserves at or just after completion of the

consolidation and IPO and no expected need to establish entity level reserves at your LLC at any time.

**Investors will own publicly traded shares in a company with a centralized, experienced management team governed by a board in which six out of seven directors are independent.**

Presently, your investment entity is supervised by Malkin Holdings, and day-to-day property management, leasing, and financial reporting is directed by Malkin Holdings on behalf of a separate investment group, the operating lessee. Several third party managers and a variety of outside accountants provide services under the supervision of Malkin Holdings. This is very inefficient, adds unique costs, reduces responsiveness and accountability, and relies upon Anthony E. Malkin and Peter L. Malkin for governance and continuity.

For ESRT, management, leasing, and financial reporting will be combined and centralized, and financial statements will be audited by Ernst & Young. The combined entity is expected to maintain existing management personnel, as well as attract quality additional corporate and property executives, to the extent such additional executives are needed by ERST. Management continuity for ERST will be clear and organized and not reliant upon the Malkin family providing another generation of expert property and business excellence.

The summary biographies of the six proposed independent directors are set forth in the prospectus/consent solicitation statement and in our September 6, 2012 letter. The only Malkin family member who will be on the board or employed full time by ESRT will be Anthony E. Malkin. Peter L. Malkin will be Chairman Emeritus and will receive limited compensation and the use of an office and administrative assistance.

Each outside board member nominee has successful experience either in real estate, public companies, or both. As a publicly traded company, your board will be accountable to you, and those of you who elect securities with a right to vote will elect board members and vote on other corporate matters each year.

ESRT's modern corporate governance structure will allow decisions to be made more efficiently, on behalf of all investors, with less wasteful duplication. It is expected to help ESRT attract top talent, to the extent needed by ERST, and provide for management succession planning for what will happen after Anthony E. Malkin is no longer CEO. It will also eliminate the risk of damaging deadlocks in decision-making inherent in the current ownership structure. Protected from potential conflicts and ongoing inefficiencies of the current structure, you will benefit from owning a piece of a major new public company with one set of objectives.

**Investors will also receive numerous other benefits, including:**

- Simpler annual income tax filings.
  - Instead of receiving a different K-1 for each investment you have with Malkin Holdings (and receiving it too late for you to be able make an April 15<sup>th</sup> tax filing), holders of Class A or B Common Stock will receive a single form 1099, and holders of OP Units will receive a single form K-1.
  - ESRT has committed to make efforts to deliver form K-1's and 1099's by [March 31<sup>st</sup>] to help you to file your tax returns without going on extension.

- A one-time special distribution equal to the existing reserves in excess of working capital and the expenditures relating to the consolidation and IPO which shall be reimbursed by ESRT.
- Your share of the proceeds of the settlement of the class action, subject to approval of the settlement by the court.
- Greater transparency through regular, quarterly earnings reports and mandated SEC and NYSE disclosures of material events.
- Protections afforded all stockholders in public companies with securities listed on a national securities exchange through SEC, NYSE, and Dodd-Frank rules and regulations.
- Continued benefits of ownership of real estate.
  - If you elect to receive OP Units, you can continue to own interests in real estate on a tax-deferred basis, and each type of security will offer the potential for capital appreciation.

#### **If The Transaction Does Not Proceed**

We believe voting against our proposal is **not** in your interest, and you will have several, materially adverse consequences if the consolidation does not proceed.

**You would continue to own an illiquid interest in a portion of the economies of a single property.**

You will not have the ability to realize efficient market pricing for your interest determined on a national securities exchange, and you will limit materially your ability to monetize all or part of your interest at a price and time of your choosing.

While some have been able to sell their interests in the past, to our knowledge it has been a time consuming and inefficient process and only accomplished at substantial discounts to the long-term value of the participation interests.

**Your distributions rely on overage rent from the operating lessees, and there is no requirement to make distributions under the current ownership structure.**

As presently structured, your investment relies on the operating lessees' payment of overage rents for extra distributions. Without consolidated ownership and management, your operating lessee makes all decisions which determine the amount of overage rent, if any, your subject LLC receives each year. Your subject LLC has been required to maintain reserves which are not distributed, and will likely continue to do so.

If the consolidation does not close, you will not receive the one-time special distribution of existing reserves in excess of working capital and expenditures relating to the consolidation and IPO which are to be reimbursed by ESRT from the IPO proceeds. In addition, you will not receive your share of the proceeds of the settlement of the class action, payment of which is subject to the closing of the consolidation and approval of the settlement by the court.

**If your operating lessee for any reason chooses to use cash flow to fund future capital improvements, tenant installation costs, commissions, and other expenses rather than to use financing to maximize cash flows, your distributions from overage rent may decrease or cease.**

You have personally experienced inconsistent property distributions, together with a lack of efficient access to the capital markets, which has interrupted, and can interrupt, distributions. Unlike in the REIT structure, making distributions beyond a small, required minimum is not mandated in the present structure. Under the present ownership structure you rely only on the performance of your property. Major expenditures unique to your property, or major tenant failure, will impact you directly and not be smoothed out by the performance of a portfolio of quality assets.

**You will continue to be subject to an archaic structure which limits your rights and the value of your investment.**

The current structure of the property in which you are invested is not centralized and efficient. Decision-making and financial reporting structures require unique costs, limit your partnership's access to capital markets, require large entity level cash reserves, and therefore have limited the money available for distribution to you. Your distributions are more inconsistent and volatile, subject to the performance of a single property and the decisions made by the operating lessee over which you have no control.

Your investment presently relies on a separately owned operating lessee and requires the second and third generations of the Wien and Malkin family for supervision, operations, financial planning, and fulfillment of fiduciary obligations. The present organizational structure is not attractive to top corporate management, which is today attracted primarily by our personal reputations. We think attracting new management personnel will become more difficult as time passes and there is no next generation of Malkin family to run Malkin Holdings.

Your investment presently relies on third party service providers and outside accountants chosen by your operating lessee. These professionals are part of a group of outside service providers and accountants who are coordinated by Malkin Holdings as supervisor. This is not efficient, is costly, and causes delays in financial and tax reporting.

**No access to growth through beneficial acquisitions.**

A combined balance sheet creates the opportunity to acquire additional properties, which have the potential for additional revenue and capital appreciation, while still maintaining the conservative levels of leverage for which we are well known. Over time, new acquisitions offer you the potential for additional distributions and capital appreciation.

**There are also special considerations for Empire State Building ("ESB") investors.**

We all take pride in being involved with such a special property. Its potential has been reflected in the value allocated to it by Duff & Phelps, the independent valuer. ESB is approximately 34% of total square feet of ESRT, but has been afforded more than 56% of the exchange value.

But owning this unique property has unique risks as well. The August 2012 shooting which took place just outside the building reminds us that activities beyond our control can

impact our performance, regardless of how well we plan or execute our plans. Terror attack is an everyday risk for which we plan.

Approximately 40% of the revenue of the ESB operating lessee in 2011 was from the observatory and driven by tourists. That has been a major source of overage rent payments to your LLC which contributes to your additional distribution. The growing worldwide economic slowdown may adversely affect tourism and results at the observatory, despite our best executed plans. Additionally, the new One World Trade Center will have a new observatory which will bring new competition to the market for the tourists who do visit. With change in the economy and increased competition, the benefits from the observatory may be less, which may adversely impact additional distributions.

One World Trade Center has also announced that it will offer a full broadcast platform for television, radio, and other broadcasters. Approximately 10.4% of the revenue of the ESB operating lessee in 2011 was from the broadcast operations of the building. That has been a major source of overage rent payments to your subject LLC which contributes to your additional distribution. With increased competition, the benefits from the broadcast operations may be less, which may adversely impact additional distributions.

Clearly, a major effort of our work has been to make the office and retail spaces of the building more profitable, as well as to protect and enhance observatory and broadcast operations. However, we believe these risk factors underscore the benefit of diversifying your assets through the proposed transaction so that you are not solely dependent on the ESB. These risks have the potential to reduce future distributions.

Each of the Malkin family and Helmsley Estate has a veto over ESB operating decisions. Another significant risk to ESB investors is the imminent sale by the Helmsley Estate of its real estate assets. If the proposed consolidation and IPO do not move forward, and the Helmsley Estate sells its interest in Empire State Building Company, you have no way of knowing who will step into their shoes and can exercise that veto.

Past deadlocks have led to operating, leasing and financing problems that have impaired property performance and reduced distributions. Importantly, through the proposed transaction, you would avoid the risk and uncertainty of such damaging deadlocks with a new owner, who may have a very different approach to operating the building and to decisions over leasing, financing and cash distributions.

**Lastly, filing your annual income taxes would remain a time-consuming and complicated burden.**

There would continue to be a separate K-1 for each investment entity. This process is time-consuming and expensive, and, with increasingly complex tax rules and regulations, not practical to complete so as to be able to send to investors in time to allow them to make April 15<sup>th</sup> tax filings.

*In closing, we strongly believe that the proposed transaction is in the best interests of all investors.* It provides:

- An option for tax-deferral;

- More consistent distributions than the status quo, with greater potential for increased distributions as a holder of OP units or common stock than as a participant in a subject LLC;
- Reduced risk through diversity;
- Opportunity for liquidity at a true market price and at a time of your choosing;
- Better access to capital markets;
- Potential for additional capital appreciation over time;
- Modern corporate governance with an experienced and independent board;
- Better preparation for management transition;
- Greater transparency and more frequent financial reporting; and
- A less costly, less involved, and more prompt tax reporting process to assist tax filing without extensions.

**IMPORTANTLY, THE MALKIN FAMILY WILL NOT BE SELLING ANY SHARES IN THE PROPOSED TRANSACTION.**

**How to Vote**

The SEC has declared ESRT's Registration Statement on Form S-4 effective. You should have received the prospectus/consent solicitation statement, which is part of the Registration Statement on Form S-4.

You may simply indicate on the enclosed consent form how you want to vote for each proposal, then sign and mail it in the enclosed return envelope as soon as possible so that your participation interest may be counted.

If you sign and send in your consent form and do not indicate how you want to vote on either one of these proposals, your consent will be counted as a vote "FOR" such proposal.

If you do not submit your consent form or you indicate on your consent form that you "ABSTAIN" from any proposal, it will have the effect of voting "AGAINST" such proposal.

For assistance in filling out your consent form, please make use of any of the following options for support:

- Visit [www.////.com](http://www.////.com) (give actual sub-page for consent execution assistance)
- View the DVD which accompanied your consent solicitation materials and view the chapter titled "xxxxx".
- Call our proxy solicitation agent at xxx-xxx-xxxx.



Additional information can be found in the prospectus/consent solicitation statement which was recently sent to you and in the Form S-4 available on the SEC's website at <http://www.sec.gov/www.SEC.gov>.

### **Other Disclosures**

**There are material risks and conflicts of interest associated with the consolidation. You should carefully review the sections entitled "Risk Factors" and "Conflicts of Interest" in the prospectus/consent solicitation statement included in the Form S-4 which has been declared effective by the SEC. There can be no assurance that participants will realize the benefits described herein, including the potential increase in distributions and capital appreciation. In addition, the prospectus/consent solicitation statement includes a more detailed discussion of the tax consequences of the consolidation.**

**We also caution you that this letter contains forward-looking statements. These forward-looking statements, including the potential for more consistent distributions than the status quo, with greater potential for increased distributions as a holder of operating partnership units or common stock than as a participant in a subject LLC, and the potential for additional capital appreciation over time, are based on our beliefs and expectations as applicable, which may not be correct. Important factors that could cause such actual results to differ materially from the expectations reflected in these forward-looking statements include those set forth in the prospectus/consent solicitation statement.**

While we believe that the terms of the consolidation are fair and in the best interests of participants, there can never be any guaranty that the consideration you will receive from the consolidation represents the fair market value of your interests.

**We recommend your approval of the various consents we have requested.** We believe that the consolidation/IPO is the best way for you to achieve liquidity, receive potentially greater distributions, maximize the value of your investment and maximize the potential for future value enhancement while also retaining an interest in the property owned by your subject LLC.

We remain available to answer your questions within the limitations imposed under the securities laws. Please feel free to contact us with any question.

Sincerely,

MALKIN HOLDINGS LLC

Peter L. Malkin  
Chairman

Anthony E. Malkin  
President

*This communication shall not constitute an offer to sell or the solicitation of an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any*

*jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.*

*Each of the three public entities, Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C., and 250 West 57th St. Associates L.L.C. (the "Companies") and their agents and supervisor, and each officer and director of them or of Empire State Realty Trust, Inc. (the "REIT") may be deemed to be a participant in the solicitation of consents in connection with the proposed consolidation. The names of such persons and a description of their interests in the Companies and the REIT are set forth, respectively, in each Company's Annual Report on Form 10-K for the year ended December 31, 2011 and the REIT's Registration Statement on Form S-4, which have been filed with the SEC.*

*We urge you to review such Registration Statement on Form S-4 and other related documents now filed or to be filed with the SEC, because they contain important information. You can obtain them without charge on the SEC's website at [www.sec.gov](http://www.sec.gov). You can also obtain without charge a copy of the prospectus/consent solicitation and the supplements relating to the individual entities by contacting Ned H. Cohen at Malkin Holdings.*





**From:** McHale, Angela R.  
**Sent:** Thursday, April 04, 2013 9:22 AM  
**To:** Orlic, David L.  
**Subject:** FW: Huh?  
**Attachments:** 04-03-13 Letter re Vote Status.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

[REDACTED]

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**From:** [REDACTED] **On Behalf Of** [REDACTED]  
**Sent:** Wednesday, April 03, 2013 11:29 AM  
**To:** McHale, Angela R.  
**Cc:** Kluck, Thomas  
**Subject:** Huh?

Angela,

Isn't this exactly what I was told in our last phone call was prohibited?

I'm confused. Please clarify.

[REDACTED]

425 1 d515844d425.htm 425

Filed by Empire State Realty Trust, Inc.  
and Empire State Realty OP, L.P.  
Pursuant to Rule 425 under the Securities Act of 1933

Subject Companies: Empire State Realty Trust, Inc.  
Commission File No. for Registration Statement  
on Form S-4: 333-179486

Empire State Realty OP, L.P.  
Commission File No. for Registration Statement  
on Form S-4: 333-179486-01

The following are (i) forms of a letter providing updated voting results which are being sent to participants in Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C., and 250 West 57th St. Associates LLC (separate forms are attached for participants who have voted for the consolidation, participants who have voted against the consolidation and participants who have not voted) and (ii) an unsolicited letter received from a participant that will accompany the letter sent to participants in Empire State Building Associates L.L.C.:



[For participants who have voted For]

April 2, 2013

To Participants in Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C., and 250 West 57th St. Associates L.L.C.

Dear Fellow Participants:

This is an update of the consent to approve the consolidation and proceed with an IPO as a REIT on the New York Stock Exchange.

As of the close of business on April 2, we have received approximately 94 % of the votes for the proposal needed to approve the transaction from Empire State Building Associates ("ESBA"). As of April 2, approximately 87% of all interests had voted.

<u>Entity</u>	<u>Total Vote For Transaction</u>	<u>Required Vote</u>
Empire State Building Associates	75%	80% per group

In the same vote for 60 East 42<sup>nd</sup> St. Associates, we have received approximately 96% of the votes for the proposal needed to approve the transaction. As of April 2, approximately 90% of all interests had voted. In the same vote for 250 West 57<sup>th</sup> St. Associates, we have received more than the required total of votes.

<u>Entity</u>	<u>Total Vote For Transaction</u>	<u>Required Vote</u>
60 East 42nd St. Associates	86%	90% per group
250 West 57th St. Associates	85%	75% in eight out of ten groups

See below for more detail and important information regarding results for the consolidation proposal and the third party portfolio sale. Note: the consolidation and IPO and the third party portfolio sale proposals are independent of each other. **If we receive consents for the consolidation and IPO, we will proceed with the consolidation and IPO even if the third party portfolio sale is not approved.**

Our letter of March 21 said the solicitation is open until at least such time as the Court overseeing the class action settlement issues its decision on the LLC matter, which could come on or before May 2. While it was in all investors' interests for us to leave the vote open, it is in all investors' interests for us to have the necessary super-majority in hand as soon as possible, even if before the ruling of the Court. **The sooner we complete the solicitation process, the sooner the expenses and disruption to all participants may be brought to an end, and the benefits can be achieved.**

Malkin Holdings LLC One Grand Central Place 60 East 42nd Street New York, NY 10016 T (212) 687-6700 F (212) 956-7679 [www.malkinholdings.com](http://www.malkinholdings.com)

We firmly believe the proposed transaction offers you better advantages and opportunities than your current investment, and we thank you for your support. We hope that you will contact us at 212-850-2660 or our proxy solicitor, MacKenzie Partners, at 1-888-410-7850 if we can assist you in any way.

Sincerely,

MALKIN HOLDINGS LLC

/s/ Peter L. Malkin  
Peter L. Malkin  
Chairman

/s/Anthony E. Malkin  
Anthony E. Malkin  
President

#### IMPORTANT DISCLOSURE

The information in this letter should not be viewed as a prediction of the final outcome. Participants are permitted to change their votes while the solicitation remains open.

Below are the voting results by percentage interest for each entity and the range for the participating groups in each entity with respect to the **consolidation proposal** as of close of business on April 2, 2013:

- Empire State Building Associates:
  - Of those voting, approximately 86% of the entity (86-87% in each group) have approved
  - Consent forms have been received from approximately 87% of the entity (86-87% in each group)
- 60 East 42<sup>nd</sup> St. Associates:
  - Of those voting, approximately 95% of the entity (91-98% in each group) have approved
  - Consent forms have been received from approximately 90% of the entity (86-94% in each group)
- 250 West 57<sup>th</sup> St. Associates:
  - Of those voting, approximately 95% of the entity (88-99% in each group) have approved
  - Consent forms have been received from approximately 90% of the entity (84-97% in each group)

Below are voting results by percentage of interest for each entity and the range for the participating groups in each entity with respect to the **third party portfolio sale proposal** as of close of business April 2, 2013. Note: the consolidation and IPO and the third party portfolio sale proposals are independent of each other. **If we receive consents for the consolidation and IPO, we will proceed with the consolidation and IPO even if the third party portfolio sale is not approved.**



- Empire State Building Associates:
  - Of those voting, approximately 79% of the entity (77-81% in each group) have approved
  - Consent forms have been received from approximately 87% of the entity (86-87% in each group)
- 60 East 42<sup>nd</sup> St. Associates:
  - Of those voting, approximately 86% of the entity (76-91% in each group) have approved
  - Consent forms have been received from approximately 90% of the entity (86-94% in each group)
- 250 West 57<sup>th</sup> St. Associates:
  - Of those voting, approximately 85% of the entity (79-93% in each group) have approved
  - Consent forms have been received from approximately 90% of the entity (84-97% in each group)

*For more information, use your password and please visit [www.EmpireStateRealtyTrust.com](http://www.EmpireStateRealtyTrust.com), view the DVD which accompanied your package of disclosure/consent solicitation materials, send an e-mail to [inquiries@MalkinHoldings.com](mailto:inquiries@MalkinHoldings.com) or call MacKenzie Partners at 1-888-410-7850.*

*There are material risks and conflicts of interest associated with the consolidation, which are described in the prospectus/consent solicitation statement. This letter contains forward-looking statements and actual results could materially differ from our expectations, as described in more detail in the prospectus/consent solicitation statement.*

*Investors are urged to review the Registration Statement on Form S-4, the prospectus/consent solicitation statement, which you have received, and other related documents now filed or to be filed with the SEC because they contain important information. You can obtain them, without charge, on the SEC's website at [www.sec.gov](http://www.sec.gov). You can also obtain, without charge, a copy of the prospectus/consent solicitation statement and the supplements relating to the individual entities by contacting Ned H. Cohen at 212 687-8700 at Malkin Holdings LLC.*



[For participants who have voted against]

April 2, 2013

To Participants in Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C., and 250 West 57th St. Associates L.L.C.

Dear Fellow Participants:

This is an update of the consent to approve the consolidation and proceed with an IPO as a REIT on the New York Stock Exchange.

As of the close of business on April 2, we have received approximately 94 % of the votes for the proposal needed to approve the transaction from Empire State Building Associates ("ESBA"). As of April 2, approximately 87% of all interests had voted.

<u>Entity</u>	<u>Total Vote For Transaction</u>	<u>Required Vote</u>
Empire State Building Associates	75%	80% per group

In the same vote for 60 East 42<sup>nd</sup> St. Associates, we have received approximately 96% of the votes for the proposal needed to approve the transaction. As of April 2, approximately 90% of all interests had voted. In the same vote for 250 West 57<sup>th</sup> St. Associates, we have received more than the required total of votes.

<u>Entity</u>	<u>Total Vote For Transaction</u>	<u>Required Vote</u>
60 East 42nd St. Associates	86%	90% per group
250 West 57th St. Associates	85%	75% in eight out of ten groups

See below for more detail and important information regarding results for the consolidation proposal and the third party portfolio sale. Note: the consolidation and IPO and the third party portfolio sale proposals are independent of each other. **If we receive consents for the consolidation and IPO, we will proceed with the consolidation and IPO even if the third party portfolio sale is not approved.**

Our letter of March 21 said the solicitation is open until at least such time as the Court overseeing the class action settlement issues its decision on the LLC matter, which could come on or before May 2. While it was in all investors' interests for us to leave the vote open, it is in all investors' interests for us to have the necessary super-majority in hand as soon as possible, even if before the ruling of the Court. **The sooner we complete the solicitation process, the sooner the expenses and disruption to all participants may be brought to an end, and the benefits can be achieved.**

Malkin Holdings LLC One Grand Central Place 60 East 42nd Street New York, NY 10016 T (212) 687-6700 F (212) 956-7679 [www.malkinholdings.com](http://www.malkinholdings.com)

If you have voted "against" the consolidation proposal, **we urge you to consider now changing your vote to be "FOR" all the proposals.** We have enclosed a new consent form for your convenience. We are on standby to answer any question you have, including on weekends.

We firmly believe the proposed transaction offers you better advantages and opportunities than your current investment, and we hope that you will change your recorded vote to be in favor of the proposed transaction as soon as possible.

[Contact Person] is available to assist you with any question you may have. You can reach him at [Phone Number]. We hope that you will contact us or our proxy solicitor, MacKenzie Partners, at 1-888-410-7850 if we can assist you in any way.

Sincerely,

MALKIN HOLDINGS LLC

/s/ Peter L. Malkin  
Peter L. Malkin  
Chairman

/s/Anthony E. Malkin  
Anthony E. Malkin  
President

#### IMPORTANT DISCLOSURE:

The information in this letter should not be viewed as a prediction of the final outcome. Participants are permitted to change their votes while the solicitation remains open.

Below are the voting results by percentage interest for each entity and the range for the participating groups in each entity with respect to the **consolidation proposal** as of close of business on April 2, 2013:

- Empire State Building Associates:
  - Of those voting, approximately 86% of the entity (86-87% in each group) have approved
  - Consent forms have been received from approximately 87% of the entity (86-87% in each group)
- 60 East 42<sup>nd</sup> St. Associates:
  - Of those voting, approximately 95% of the entity (91-98% in each group) have approved
  - Consent forms have been received from approximately 90% of the entity (86-94% in each group)
- 250 West 57<sup>th</sup> St. Associates:
  - Of those voting, approximately 95% of the entity (88-99% in each group) have approved
  - Consent forms have been received from approximately 90% of the entity (84-97% in each group)

Below are voting results by percentage of interest for each entity and the range for the participating groups in each entity with respect to the **third party portfolio sale proposal** as of close of business April 2, 2013. Note: the consolidation and IPO and the third party portfolio sale proposals are independent of each other. **If we receive consents for the consolidation and IPO, we will proceed with the consolidation and IPO even if the third party portfolio sale is not approved.**

- Empire State Building Associates:
  - Of those voting, approximately 79% of the entity (77-81% in each group) have approved
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[For participants who have not voted]

April 2, 2013

To Participants in Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C., and 250 West 57th St. Associates L.L.C.

Dear Fellow Participants:

This is an update of the consent to approve the consolidation and proceed with an IPO as a REIT on the New York Stock Exchange.

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See below for more detail and important information regarding results for the consolidation proposal and the third party portfolio sale. Note: the consolidation and IPO and third party portfolio sale proposals are independent of each other. **If we receive consents for the consolidation and IPO, we will proceed with the consolidation and IPO even if the third party portfolio sale is not approved.**

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MALKIN Holdings LLC One Grand Central Place 60 East 42nd Street New York, NY 10065 T (212) 687-8700 F (212) 256-7679 www.malkinholdings.com

If you have not yet voted, **we urge you now to vote "FOR" all the proposals**. We have enclosed a new consent form for your convenience. We are on standby to answer any question you have, including on weekends.

We firmly believe the proposed transaction offers you better advantages and opportunities than your current investment, and we hope that you will submit your vote in favor of the proposed transaction as soon as possible.

[Contact person] is available to assist you with any question you may have. You can reach him at [Phone number]. We hope that you will contact us or our proxy solicitor, MacKenzie Partners, at 1-888-410-7850 if we can assist you in any way.

Sincerely,

MALKIN HOLDINGS LLC

/s/ Peter L. Malkin  
Peter L. Malkin  
Chairman

/s/Anthony E. Malkin  
Anthony E. Malkin  
President

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The following unsolicited letter from an investor with no business or family relationship with Malkin Holdings was sent to Peter Malkin via email on March 28, 2013 with permission to distribute to ESBA investors:

To fellow ESBA Participants:

My name is [REDACTED] handle financial matters for my [REDACTED] who is also a Participant. Our family voted Yes to the Empire State Realty IPO for the following reasons (among others):

Market Realization of an Important Investment --- in the current arcane quasi-partnership format that Participants are in now, there is no organized market, and to my knowledge if we need to realize value or just know what it could be, we have to ask Malkin Properties to privately find a buyer. This is obviously a highly unsatisfactory method of price discovery, and could result in an enormous sacrifice in value depending on the real estate market environment, an investor's need for cash, and the individual situation with the Empire State Building (ESB). It is also quite frustrating to simply not know what our important investment is legitimately worth at any one time. Certainly we believe that bringing our investment public greatly satisfies the need for price discovery and our ability to monetize the investment if we need to do so.

Maintenance of Exposure to the ESB - In the proposed REIT, ESB is a very large proportion of the REIT's initial property pool, so those who are interested in ESBA (such as the Polsons) in terms of the original investment's exposure to a marquis property, similarly participate in its future in the new structure.

We like the prospect of Pooling more properties - we take comfort in the added properties, as we believe diversification should offset the risk of a few properties not performing. ESB is a great building and has great long-term potential but we have obviously seen the partnership payments vary tremendously over the years. Should we newly get exposure to many properties across several markets, there is more potential for outperforming properties to offset the underperforming ones, thereby potentially lending more stability to our distributions. Moreover, if the REIT chooses to grow it can do so through purchasing/leasing new properties, and in turn potentially enhancing the diversification further.

Better Structure for Information Disclosure - as an organized public REIT there will be disclosure requirements mandated by the Securities and Exchange Commission in terms of their frequency and detail (financial and operational), and I would expect that we will get far better disclosure from the new REIT's operations in terms of their frequency and quality than we do now.

Like other Participants, we are not crazy about the 10% overrides, but 10% overrides were approved by the Participants years ago and from my reading of the old documents we think some Participants' arguments as to their inapplicability to the REIT deal are quite flimsy. And frankly, we would much rather have 90% of ESBA in a new strong REIT company than 100% of it in the old structure.

We appreciate the deal-Naysayers' past efforts to challenge the deal insofar as such efforts have produced some benefits. However, it appears that all they really wish to do at this point is to destroy the transaction, and we in turn do not find their efforts to be at all helpful.

[REDACTED]



**From:** Kluck, Thomas  
**Sent:** Tuesday, January 22, 2013 9:29 AM  
**To:** McHale, Angela R.; Orlic, David L.; [b:(6)]  
**Cc:** [b:(6)]  
**Subject:** FW: List of topics for 1/22/12 11am meeting  
**Attachments:** SEC meeting January 22, 2012.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

---

**From:** richard edelman [<mailto:richardedelman@hotmail.com>]  
**Sent:** Tuesday, January 22, 2013 9:18 AM  
**To:** Kluck, Thomas  
**Subject:** List of topics for 1/22/12 11am meeting

Hi Tom,

Here's a list of topics I hope to cover in our meeting today at 11am.

I'll try and arrive in the lobby about 10:45 am.

See you then.

Richie Edelman

SEC

January 22, 2012

Department of Corporate Finance Meeting

## List of Topics

### SEC openness

FOIA

First call

Meeting

Sublease liaison

Investors list

Requests for information

### Threats to Investors

Letters

Calls

SEC filings

Interviews

Marty Cowan

Investor Protections

SEC filings

**"We are concerned that any investor who bases his or her decision and vote on the presentations of the Edelmanns or those acting on their behalf risks material financial damage from not achieving the stated benefits of the proposed consolidation and IPO and **causing damage and loss of such benefits to fellow investors who want the proposed consolidation and IPO to go forward.**"**

1/22/12 Schedule 14A Page 18

### Press

### Class Action Lawsuits

### ESBA

If there is a no vote

### ESBA investor Protection Act

### Questions

Availability of SEC questions to Empire State Realty Trust, Inc.

SEC links changed with upgrade

**From:** Orlic, David L.  
**Sent:** Tuesday, January 22, 2013 9:44 AM  
**To:** [b:(6)]  
**Subject:** FW: List of topics for 1/22/12 11am meeting  
**Attachments:** SEC meeting January 22, 2012.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

fyi

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**From:** Kluck, Thomas  
**Sent:** Tuesday, January 22, 2013 9:29 AM  
**To:** McHale, Angela R.; Orlic, David L.; [b:(6)]  
**Cc:** [b:(6)]  
**Subject:** FW: List of topics for 1/22/12 11am meeting

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1/22/12 Schedule 14A Page 18

### Press

### Class Action Lawsuits

### ESBA

If there is a no vote

### ESBA investor Protection Act

### Questions

Availability of SEC questions to Empire State Realty Trust, Inc.

SEC links changed with upgrade

**From:** Orlic, David L.  
**Sent:** Tuesday, April 30, 2013 2:18 PM  
**To:** Kluck, Thomas; McHale, Angela R.  
**Cc:** Anderson, Michele  
**Subject:** FW: NYSCEF: New York - Commercial Division 650607/2012 <DECISION + ORDER ON MOTION> (In re Empire State Realty Trust, Inc. Investor Litigation) Confirmation Of E Filing

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

00(5)

-David

---

**From:** Larry.Medvinsky@CliffordChance.com [mailto:Larry.Medvinsky@CliffordChance.com]  
**Sent:** Tuesday, April 30, 2013 1:59 PM  
**To:** Orlic, David L.; Kluck, Thomas  
**Subject:** FW: NYSCEF: New York - Commercial Division 650607/2012 <DECISION + ORDER ON MOTION> (In re Empire State Realty Trust, Inc. Investor Litigation) Confirmation Of E Filing

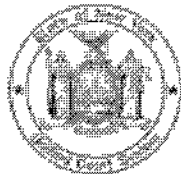
Tom and David,

FYI. Best Regards.

Larry

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**From:** NewYorkEF@courts.state.ny.us [mailto:NewYorkEF@courts.state.ny.us]  
**Sent:** Tuesday, April 30, 2013 1:24 PM  
**To:** rrolfe@cravath.com; kolker@whafh.com; Kara Siegel; alankovacs@yahoo.com; migross@pomlaw.com; Thomas E.L. Dewey; rlm@msf-law.com; gcheyne@cravath.com; David S. Pegno; keaney@whafh.com; rjs@msf-law.com; mao@cravath.com  
**Subject:** NYSCEF: New York - Commercial Division 650607/2012 <DECISION + ORDER ON MOTION> (In re Empire State Realty Trust, Inc. Investor Litigation) Confirmation Of E Filing



***New York County Supreme Court  
Notification - 04/30/2013***

This is an AUTOMATED response for Supreme Court / Court of Claims cases.  
The NYSCEF web site has received document(s) from the court filing user for case/claim  
number

**650607/2012**

E-mail Notifications Sent to:

**CHEYNE, GREGORY CAMERON - [gcheyne@cravath.com](mailto:gcheyne@cravath.com)**

**DEWEY, THOMAS E - [tdewey@dpklaw.com](mailto:tdewey@dpklaw.com)**

**GROSS, MARC IAN - [migross@pomlaw.com](mailto:migross@pomlaw.com)**

**KOLKER, LAWRENCE P. - [kolker@whafh.com](mailto:kolker@whafh.com)**

**KOVACS, ALAN LAWRENCE - [alankovacs@yahoo.com](mailto:alankovacs@yahoo.com)**

**Keaney, Lydia Ann - [keaney@whafh.com](mailto:keaney@whafh.com)**

**MAIDMAN, RANDI LANE - [rlm@msf-law.com](mailto:rlm@msf-law.com)**

**PEGNO, DAVID S - [dpegno@dpklaw.com](mailto:dpegno@dpklaw.com)**

**ROLFE, RONALD STUART - [rrolfe@cravath.com](mailto:rrolfe@cravath.com)**

**SIEGEL, KARA D - [ksiegel@dpklaw.com](mailto:ksiegel@dpklaw.com)**

**STOCKS, REMY J - [rjs@msf-law.com](mailto:rjs@msf-law.com)**

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Please retain this notification for your records.

**Case Caption: In re Empire State Realty Trust, Inc. Investor Litigation**

**Judge: O. Peter Sherwood**

<b>Doc #</b>	<b>Document Type</b>	<b>Description</b>	<b>Motion #</b>	<b>Received date/time</b>
162	<u>DECISION + ORDER ON MOTION</u>	re: motion no. 003. DECISION + ORDER ON MOTION entered in the office of the County Clerk on April 30, 2013	003	04/30/2013 01:23 PM

***Filing User Information***

<b>Filing User Name</b>	*** Court Employee ***	<b>Work Address</b>	
<b>Phone Number</b>			
<b>Fax Number</b>			
<b>E-mail Service Address</b>			

Please note that if the document referred to in this message is an order or judgment that was scanned into NYSCEF by the County Clerk or his or her designee, this message does not constitute notice of entry thereof by any party. A party must serve a copy of the order or judgment and notice of its entry (CPLR 5513). E-Filing Rules provide that such service may be made either by: (1) posting the documents to NYSCEF and thereby causing them automatically to be served via NYSCEF on all participating parties in the case, or (2) serving them in hard copy by any method authorized by the CPLR. In the latter case, proof of such hard copy service, clearly denominated as such, must be filed thereafter with the NYSCEF system.

**THIS E-MAIL IS INTENDED ONLY FOR THE USE OF THE NAMED ADDRESSEE(S) AND FOR THE PURPOSES OF THE ELECTRONIC FILING SYSTEM. IF YOU ARE NEITHER THE INTENDED RECIPIENT NOR A PERSON DESIGNATED TO RECEIVE MESSAGES ON BEHALF OF THE INTENDED RECIPIENT, PLEASE NOTIFY THE SENDER IMMEDIATELY. THANK YOU.**

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[CC]80-40476364[/CC]

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This message and any attachment are confidential and may be privileged or otherwise protected from disclosure.

If you are not the intended recipient, please telephone or email the sender and delete this message and any attachment from your system. If you are not the intended recipient you must not copy this message or attachment or disclose the contents to any other person.

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For further information about Clifford Chance please see our website at <http://www.cliffordchance.com> or refer to any Clifford Chance office.

Switchboard: +1 212 878 8000  
Fax: +1 212 878 8375

To contact any other office  
[http://www.cliffordchance.com/about\\_us/find\\_people\\_and\\_offices.html](http://www.cliffordchance.com/about_us/find_people_and_offices.html)



**From:** [b](6)  
**Sent:** Tuesday, April 30, 2013 2:55 PM  
**To:** Nallengara, Lona; Osheroﬀ, Mauri  
**Cc:** Orlic, David L.  
**Subject:** FW: NYSCEF: New York - Commercial Division 650607/2012 <DECISION + ORDER ON MOTION> (In re Empire State Realty Trust, Inc. Investor Litigation) Confirmation Of Eﬂiling

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

[b](6)

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**From:** Orlic, David L.  
**Sent:** Tuesday, April 30, 2013 2:18 PM  
**To:** Kluck, Thomas; McHale, Angela R.  
**Cc:** [b](6)  
**Subject:** FW: NYSCEF: New York - Commercial Division 650607/2012 <DECISION + ORDER ON MOTION> (In re Empire State Realty Trust, Inc. Investor Litigation) Confirmation Of Eﬂiling

[b](6); [b](6)

-David

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**From:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com) [mailto:Larry.Medvinsky@CliffordChance.com]  
**Sent:** Tuesday, April 30, 2013 1:59 PM  
**To:** Orlic, David L.; Kluck, Thomas  
**Subject:** FW: NYSCEF: New York - Commercial Division 650607/2012 <DECISION + ORDER ON MOTION> (In re Empire State Realty Trust, Inc. Investor Litigation) Confirmation Of Eﬂiling

Tom and David,

FYI. Best Regards,

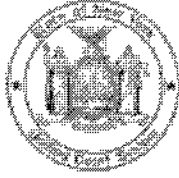
Larry

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**From:** [NewYorkEF@courts.state.ny.us](mailto:NewYorkEF@courts.state.ny.us) [mailto:NewYorkEF@courts.state.ny.us]  
**Sent:** Tuesday, April 30, 2013 1:24 PM  
**To:** [b](6)

[migross@pomlaw.com](mailto:migross@pomlaw.com); Thomas E.L. Dewey; [rlm@msf-law.com](mailto:rlm@msf-law.com); [gcheyne@cravath.com](mailto:gcheyne@cravath.com); David S. Pegno; [keaney@whafh.com](mailto:keaney@whafh.com); [rjs@msf-law.com](mailto:rjs@msf-law.com); [mao@cravath.com](mailto:mao@cravath.com)

**Subject:** NYSCEF: New York - Commercial Division 650607/2012 <DECISION + ORDER ON MOTION>  
(In re Empire State Realty Trust, Inc. Investor Litigation) Confirmation Of E filing



***New York County Supreme Court  
Notification - 04/30/2013***

This is an AUTOMATED response for Supreme Court / Court of Claims cases.  
The NYSCEF web site has received document(s) from the court filing user for case/claim  
number

**650607/2012**

E-mail Notifications Sent to:

**CHEYNE, GREGORY CAMERON - [gcheyne@cravath.com](mailto:gcheyne@cravath.com)**

**DEWEY, THOMAS E - [tdewey@dpklaw.com](mailto:tdewey@dpklaw.com)**

**GROSS, MARC IAN - [migross@pomlaw.com](mailto:migross@pomlaw.com)**

**KOLKER, LAWRENCE P. - [kolker@whafh.com](mailto:kolker@whafh.com)**

**KOVACS, ALAN LAWRENCE - [alankovacs@yahoo.com](mailto:alankovacs@yahoo.com)**

**Keaney, Lydia Ann - [keaney@whafh.com](mailto:keaney@whafh.com)**

**MAIDMAN, RANDI LANE - [rlm@msf-law.com](mailto:rlm@msf-law.com)**

**PEGNO, DAVID S - [dpegno@dpklaw.com](mailto:dpegno@dpklaw.com)**

**ROLFE, RONALD STUART - [rrolfe@cravath.com](mailto:rrolfe@cravath.com)**

**SIEGEL, KARA D - [ksiegel@dpklaw.com](mailto:ksiegel@dpklaw.com)**

**STOCKS, REMY J - [rjs@msf-law.com](mailto:rjs@msf-law.com)**

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**Please retain this notification for your records.**

<p><b>Case Caption: In re Empire State Realty Trust, Inc. Investor Litigation</b> <b>Judge: O. Peter Sherwood</b></p>
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Doc #	Document Type	Description	Motion #	Received date/time
162	DECISION + ORDER ON MOTION	re: motion no. 003. DECISION + ORDER ON MOTION entered in the office of the County Clerk on April 30, 2013	003	04/30/2013 01:23 PM

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[CC]80-40476364[/CC]

\*\*\*\*\*

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**From:** Kluck, Thomas  
**Sent:** Monday, January 28, 2013 11:55 PM  
**To:** (b)(6); Orlic, David L.; McHale, Angela R.; (b)(6)  
**Subject:** Fw: Reuters.com - Empire State Building investors go to court to stop deal

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

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**From:** Reuters\_News@reuters.com [mailto:Reuters\_News@reuters.com]  
**Sent:** Monday, January 28, 2013 11:52 PM  
**To:** Kluck, Thomas  
**Subject:** Reuters.com - Empire State Building investors go to court to stop deal

**Sameena (sam2xdc@yahoo.com) has sent you this article.**

Personal Message:

## Empire State Building investors go to court to stop deal

Tue Jan 29 04:09:46 UTC 2013

By Ilaina Jonas and Joseph Ax

NEW YORK, Jan 28 (Reuters) - A group of investors in the company that owns the Empire State Building filed a motion on Monday to block a proposed settlement of a lawsuit against a group looking to create a public company with the historic building as its centerpiece.

Several investors in Empire State Building Associates (ESBA), which owns the building, said their skyscraper and investment are vastly different than the other properties involved in the settlement. As such, they believe they should not be bound by the proposed settlement.

"The settlement is both grossly inadequate and unfairly apportioned," the filing in the New York State court said. "The ESBA investors must be treated as a separate class and must be independently represented."

Malkin Holdings LLC's plans to roll up more than 18 properties into the Empire State Realty Trust Inc, which would become publicly traded if the investors approve the roll-up.

Last year, investors in several of the properties sued to stop the plan, in part because they objected to the tax treatment they would face.

In October, Malkin Holdings and other defendants agreed to pay \$55 million payment to settle the suit. Under the proposed agreement, which must receive court approval, the class participants have agreed to support roll-up and the proposed initial public offering. The payment and the settlement are conditional upon the approval of the roll-up and the IPO.

But the investors who objected to the settlement on Monday say they have different interests than investors in the other properties and should not be grouped in with them, according to court documents. They said they are being forced to trade their bond-like, low-risk participation units for high-risk equity shares. They also said the roll-up would dilute the brand of the Empire State Building, one of the world's most recognized skyscrapers.

A representative from Malkin Holdings declined to comment.

Many of the 2,800 investors in the Empire State Building are the children or grandchildren of the original investors who paid \$10,000 apiece in 1961 to buy the lease on the property. The building was then subleased for 114 years to a joint venture between Lawrence Wein, a pioneer in real estate syndication ownership, and Harry Helmsley.

The Malkin Group is led by Peter Malkin, Wein's son-in-law, and Anthony Malkin, Wein's grandson. The Empire State Realty Trust was proposed after the Helmsley Trust said it needed to cash out its position.

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**From:** McHale, Angela R.  
**Sent:** Saturday, April 27, 2013 11:26 PM  
**To:** Kluck, Thomas; Orlic, David L.  
**Subject:** FW: Tax Treatment

FYI below.

---

**From:** McHale, Angela R.  
**Sent:** Saturday, April 27, 2013 11:25 PM  
**To:** [REDACTED]  
**Subject:** RE: Tax Treatment

Hi [REDACTED]

Thank you for your email. Because of our frequent contact over the past year, I do not always send you the stock response where we thank you for your tip/complaint and say that we cannot tell you what we do with the information. You have already heard that many times, and, as you know, we typically just call you whenever we have questions about any of the information you send us. I apologize if you thought I was trying to tune you out—that is most certainly not the case. As we have also told you numerous times, we very much appreciate all of the feedback and information you send to us, and we carefully consider what you tell us. In the future, I will respond to each email you send (maybe just say something like, "Received. Thanks."), just so you know that I have received it. Thank you for your most recent complaint, and please feel free to send us any other issues/concerns you may have in the future.

Thanks again,

Angela

---

**From:** [REDACTED] [mailto:[REDACTED]] **On Behalf Of** [REDACTED]  
**Sent:** Friday, April 26, 2013 8:18 PM  
**To:** [REDACTED]  
**Subject:** Tax Treatment

[REDACTED]

Since I don't hear back from you I have to assume you have heard quite enough from me and decided to tune out. Fair enough, but Malkin's most recent letter in which he attempts to refute legitimate concerns regarding the tax treatment of the proposed deal is to my mind very dangerously false.

Malkin described the structure as "unique" and "never used before." Now despite never getting a tax ruling from the IRS he writes that raising just raising the question as to whether the transaction will withstand scrutiny is misleading.

He then uses the emphatic term "very clear" when he states "there is an opportunity to defer tax 100%." No disclaimer as to possible risk. Complete certainty. Zero chance that the deal won't be challenged by the IRS and lose.

Absent a tax ruling no one can be sure that a structure will be tax deferred. I'd suggest the only truthful statement would be that they believe the structure to be tax deferred, but that any deal, but especially one that is new and never used before absent a ruling there is a risk that it might be deemed a taxable event.

No one more than I would like to see an in depth discussion of why they feel this is highly unlikely so that I could gauge the size of the risk but to allow the Malkin's to assert that the risk is zero as they plainly with the investors to believe particularly strikes me crossing the line.

We have hundreds if not thousands of pages of risk factors spelled out in this deal, some almost absurdly unlikely given the remote chances of them occurring. Yet here we have one that is people really ought to consider and Malkin's is saying flat out "ignore that guy who is suggesting there is a chance the deal might be taxable. This deal will defer 100% of you taxes."

The opposite of doubt is certainty. That isn't possible. That they are trying to convince the investors it is not only possible, but true is a deliberate attempt to falsely mislead the investors to ignore a known risk factor. If they believe the risk is small, they should say so and prove it. But what is written should not be permitted to stand.

Once again thank you for your kind attention. I hope all is well by you.

(b)(6)

<http://www.sec.gov/Archives/edgar/data/1541401/000119312513163398/d526163d425.htm>

Although Peter Malkin's 7/2/2012 letter highlights that the "new structure [whereby investors can elect to receive Operating Partnership units rather than Class A REIT shares or Class B REIT shares] that would give you the option to defer any tax that could be triggered by the proposed consolidation . . . is unique, was never used before, and was conceived by the Malkin Holdings team . . .," Malkin Holdings LLC's 4/18/2013 telephone scripts for use by itself and its proxy solicitation agent both recite, "We want to make sure you know that this tax deferral treatment is well established . . ."

To locate the above excerpts, compare the second paragraph of Peter Malkin's letter to Participants in Empire State Building Associates L.L.C. (reflected in the 7/2/2012 SEC filing of Empire State Realty Trust, Inc.) to the third bullet point of Malkin Holdings LLC's telephone script and the seventh bullet point of MacKenzie Partners, Inc.'s telephone script (both reflected in the 4/18/2013 SEC filing of Empire State Realty Trust, Inc.)

<http://www.sec.gov/Archives/edgar/data/1541401/000119312512292003/d376103d425.htm>



<http://www.sec.gov/Archives/edgar/data/1541401/000119312513160673/d522474d425.htm>

**From:** [b:(6)]  
**Sent:** Thursday, March 21, 2013 2:54 PM  
**To:** McHale, Angela R.  
**Cc:** Kluck, Thomas  
**Subject:** Fwd: Malkin Letters of 3-14-13  
**Attachments:** Malkin\_Letters\_of\_3-14-13.pdf

Angela,

Here is the email I received from the participant.

If you could please confirm you've received this that would be appreciated.

[b:(6)]

Begin forwarded message:

**From:** [b:(6)]  
**Subject: RE: Malkin Letters of 3-14-13**  
**Date:** March 19, 2013 6:12:44 AM PDT  
**To:** [b:(6)]

Good Morning [b:(6)]

May I state at the onset that I have been a listener on your conference calls and have found them to be interesting, informative and wish to express my appreciation for what you and others have done to present the many options that are available to shareholders of Empire State Realty Trust.

My Uncle, Alfred Mendlowitz, was an original shareholder in 1961. When he became stricken with Parkinsons that progressed to Parkinsons Dementia, I took over his affairs as POA. For reasons that I expressed to you privately in our conversation last evening we had planned to abstain and NOT to cast a vote.

Given the understanding that an abstention was the same as a "vote NO," and knowing that all mail from Malkin has been forwarded to my c/o address for years, I could not understand how they (Malkin) could claim to have received a letter of support. As the March 14, 2013 letter suggested, if I wished to make comment, I could contact their agent, MacKenzie Partners. Upon doing so, I asked them to produce a vote in favor of the proposal. They transferred my call to another member of their organization and I received a verbal apology as they could not document such a receipt. I further said that I would like to receive a written apology in the mail to which he also verbally said he would do. Let's see if I actually get one.

I felt that it was important for me to forward this letter to you so that appropriate action could be taken with Security Officials as other members of Empire State Realty Trust may have also received similar letters. Furthermore, as was brought up in discussion at your last conference call, "who is minding the store on the ballots"?

Also attached to this PDF file is a second letter, also dated March 14, 2013, indicating that over 90% of Empire State Realty Trust shareholders have already approved the proposal. I find this hard to believe given the vocal comments of other shareholders at your conference calls. Unless someone (not wanting to name names), is "cooking the books" to provide an outcome that may not be in the best interest of the ESRT shareholders.

You have my permission to bring this matter up to those that can ensure that a fair and honest outcome will prevail. Again, our family does not plan on casting a vote in support or against the REIT proposal. We would prefer to have the current status continue. If other shareholders that had planned to be away during the final days of this issue should receive a similar communique', perhaps you can bring this matter into the discussion at your next conference call. I plan to be listening.

Again, thank you and other members for keeping us informed.

(b)(6)

A rectangular box with a black border, indicating a redacted section of the document. The text "(b)(6)" is written in the top-left corner of the box.

**MALKIN**  
HOLDINGS

March 14, 2013

(b)(6)

Dear (b)(6)

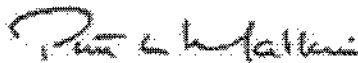
We have received your completed consent form and want to offer our sincerest thanks for your support. We think you have acted in your best interests and in those of all the members of our larger investor family who have the potential to benefit greatly from the approval of our proposals for consolidation and IPO.

With your vote received, unless you tell us otherwise, we intend not to send you the regular reminder mailings we will be making to those who have not yet submitted their consent form, and we will only send you occasional updates. If you would rather we continue to send these mailings to you, please let us know. Otherwise, you can stay current on all our updates by visiting [www.EmpireStateRealtyTrust.com](http://www.EmpireStateRealtyTrust.com). If you have any question or wish to make any further comment, please feel free to contact us directly at [inquiries@MalkinHoldings.com](mailto:inquiries@MalkinHoldings.com) or through our agent, MacKenzie Partners, Inc. at 888-410-7850.

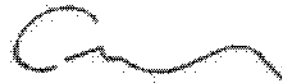
It has been and continues to be our privilege to serve you, our investor family. Our role as supervisor of your investment is a special trust of which we remind ourselves every day. We look forward to working for you in the years to come.

Sincerely,

MALKIN HOLDINGS LLC



Peter L. Malkin



Anthony E. Malkin

*We urge you to review the Registration Statement on Form S-4 and other related documents now filed or to be filed with the Securities and Exchange Commission ("SEC"), because they contain important information. You can obtain them without charge on the SEC's website at [www.sec.gov](http://www.sec.gov). You can also obtain without charge a copy of the prospectus/consent solicitation and the supplements relating to the individual entities by contacting Ned H. Cohen at 212-687-8700 at Malkin Holdings LLC.*

March 14, 2013

To Participants in Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C., and 250 West 57th St. Associates L.L.C.

Dear Fellow Participants:

We are writing to provide an update on the solicitation of consents for the proposed consolidation and initial public offering as of the close of business yesterday. In just the first 50 days of the solicitation, we have received a very strong level of support from participants for the proposed transaction.

Consent forms have been received from approximately two-thirds of the participants. Participants have voted more than 9 to 1 in favor of the proposed transaction:

Entity	% Voted in Favor
Empire State Building Associates	90%
60 East 42nd St. Associates	95%
250 West 57th St. Associates	97%

See below for more detail and important information.

We thank all those who have voted to date in favor of the transaction for their support and those whose votes are in the mail or who are planning to vote this weekend. This remarkable level of participation in such a short period has exceeded our hopes and reflects to us a tremendous enthusiasm for the proposed transaction among many participants.

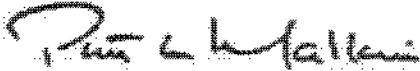
As we earlier advised, under SEC regulations, the earliest date under which we are allowed to conclude is March 25, 2013. We are working with thousands of participants to answer their questions and help them fill out their forms. We encourage the very small percentage of participants who have voted "against" any proposal to consider now changing their vote to be "FOR" all the proposals.

While we are permitted to keep this solicitation open well beyond March 25, 2013, and will do so as needed, the essential first step toward your receiving the transaction's many benefits, including limiting its costs to participants, is to fill out and return your consent form. The sooner the proposed transaction is approved, the sooner the expenses and disruption to all participants may be brought to an end, and the participants can receive reimbursement for the costs of the transaction, cash reserves, and the class action settlement proceeds.

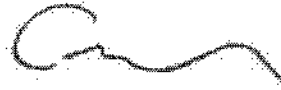
We firmly believe the proposed transaction offers you better advantages and opportunities than your current investment. We hope that you will contact us or our proxy solicitor, MacKenzie Partners, at 1-888-410-7850 if we can assist you in any way.

Sincerely,

MALKIN HOLDINGS LLC



Peter L. Malkin  
Chairman



Anthony E. Malkin  
President

### IMPORTANT DISCLOSURE:

The information in this letter should not be viewed as a prediction of the final outcome. Participants are permitted to change their votes while the solicitation remains open. Below are voting results by percentage of interest.

- Empire State Building Associates:
  - Of those voting to date, 89-92% in each group have approved
  - Consent forms received range from 62% to 66% in each group
- 60 East 42<sup>nd</sup> St. Associates:
  - Of those voting to date, 91-99% in each group have approved
  - Consent forms received range from 64% to 74% in each group
- 250 West 57<sup>th</sup> St. Associates:
  - Of those voting to date, 90-100% in each group have approved
  - Consent forms received range from 64% to 80% in each group

For more information, use your password and please visit [www.EmpireStateRealtyTrust.com](http://www.EmpireStateRealtyTrust.com), view the DVD which accompanied your package of disclosure/consent solicitation materials, send an e-mail to [inquiries@MalkinHoldings.com](mailto:inquiries@MalkinHoldings.com), or call MacKenzie Partners at 1-888-410-7850.

There are material risks and conflicts of interest associated with the consolidation, which are described in the prospectus/consent solicitation statement. This letter contains forward-looking statements and actual results could materially differ from our expectations, as described in more detail in the prospectus/consent solicitation statement.

Investors are urged to review the Registration Statement on Form S-4, the prospectus/consent solicitation statement, which you have received, and other material documents now filed or to be filed with the SEC because they contain important information. You can obtain them, without charge, on the SEC's website at [www.sec.gov](http://www.sec.gov). You can also obtain, without charge, a copy of the prospectus/consent solicitation statement and the supplements relating to the individual entities by contacting Ned H. Cohen at 212 687-5700 at Malkin Holdings LLC.

**From:** [b:(6)] > on behalf of [b:(6)]  
[b:(6)]  
**Sent:** Wednesday, April 03, 2013 11:29 AM  
**To:** McHale, Angela R.  
**Cc:** Kluck, Thomas  
**Subject:** Huh?  
**Attachments:** 04-03-13 Letter re Vote Status.pdf

Angela,

Isn't this exactly what I was told in our last phone call was prohibited?

I'm confused. Please clarify.

[b:(6)]

425 1 d515844d425.htm 425

Filed by Empire State Realty Trust, Inc.  
and Empire State Realty OP, L.P.  
Pursuant to Rule 425 under the Securities Act of 1933

Subject Companies: Empire State Realty Trust, Inc.  
Commission File No. for Registration Statement  
on Form S-4: 333-179486

Empire State Realty OP, L.P.  
Commission File No. for Registration Statement  
on Form S-4: 333-179486-01

The following are (i) forms of a letter providing updated voting results which are being sent to participants in Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C., and 250 West 57th St. Associates LLC (separate forms are attached for participants who have voted for the consolidation, participants who have voted against the consolidation and participants who have not voted) and (ii) an unsolicited letter received from a participant that will accompany the letter sent to participants in Empire State Building Associates L.L.C.:





[For participants who have voted For]

April 2, 2013

To Participants in Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C., and 250 West 57th St. Associates L.L.C.

Dear Fellow Participants:

This is an update of the consent to approve the consolidation and proceed with an IPO as a REIT on the New York Stock Exchange.

As of the close of business on April 2, we have received approximately 94 % of the votes for the proposal needed to approve the transaction from Empire State Building Associates ("ESBA"). As of April 2, approximately 87% of all interests had voted.

<u>Entity</u>	<u>Total Vote For Transaction</u>	<u>Required Vote</u>
Empire State Building Associates	75%	80% per group

In the same vote for 60 East 42<sup>nd</sup> St. Associates, we have received approximately 96% of the votes for the proposal needed to approve the transaction. As of April 2, approximately 90% of all interests had voted. In the same vote for 250 West 57<sup>th</sup> St. Associates, we have received more than the required total of votes.

<u>Entity</u>	<u>Total Vote For Transaction</u>	<u>Required Vote</u>
60 East 42nd St. Associates	86%	90% per group
250 West 57th St. Associates	85%	75% in eight out of ten groups

See below for more detail and important information regarding results for the consolidation proposal and the third party portfolio sale. Note: the consolidation and IPO and the third party portfolio sale proposals are independent of each other. **If we receive consents for the consolidation and IPO, we will proceed with the consolidation and IPO even if the third party portfolio sale is not approved.**

Our letter of March 21 said the solicitation is open until at least such time as the Court overseeing the class action settlement issues its decision on the LLC matter, which could come on or before May 2. While it was in all investors' interests for us to leave the vote open, it is in all investors' interests for us to have the necessary super-majority in hand as soon as possible, even if before the ruling of the Court. **The sooner we complete the solicitation process, the sooner the expenses and disruption to all participants may be brought to an end, and the benefits can be achieved.**

Malkin Holdings LLC One Grand Central Place 60 East 42nd Street New York, NY 10016 T (212) 687-6700 F (212) 956-7679 www.malkinholdings.com

We firmly believe the proposed transaction offers you better advantages and opportunities than your current investment, and we thank you for your support. We hope that you will contact us at 212-850-2660 or our proxy solicitor, MacKenzie Partners, at 1-888-410-7850 if we can assist you in any way.

Sincerely,

MALKIN HOLDINGS LLC

/s/ Peter L. Malkin  
Peter L. Malkin  
Chairman

/s/Anthony E. Malkin  
Anthony E. Malkin  
President

#### IMPORTANT DISCLOSURE

The information in this letter should not be viewed as a prediction of the final outcome. Participants are permitted to change their votes while the solicitation remains open.

Below are the voting results by percentage interest for each entity and the range for the participating groups in each entity with respect to the **consolidation proposal** as of close of business on April 2, 2013:

- Empire State Building Associates:
  - Of those voting, approximately 86% of the entity (86-87% in each group) have approved
  - Consent forms have been received from approximately 87% of the entity (86-87% in each group)
- 60 East 42<sup>nd</sup> St. Associates:
  - Of those voting, approximately 95% of the entity (91-98% in each group) have approved
  - Consent forms have been received from approximately 90% of the entity (86-94% in each group)
- 250 West 57<sup>th</sup> St. Associates:
  - Of those voting, approximately 95% of the entity (88-99% in each group) have approved
  - Consent forms have been received from approximately 90% of the entity (84-97% in each group)

Below are voting results by percentage of interest for each entity and the range for the participating groups in each entity with respect to the **third party portfolio sale proposal** as of close of business April 2, 2013. Note: the consolidation and IPO and the third party portfolio sale proposals are independent of each other. **If we receive consents for the consolidation and IPO, we will proceed with the consolidation and IPO even if the third party portfolio sale is not approved.**

- Empire State Building Associates:
  - Of those voting, approximately 79% of the entity (77-81% in each group) have approved
  - Consent forms have been received from approximately 87% of the entity (86-87% in each group)
- 60 East 42<sup>nd</sup> St. Associates:
  - Of those voting, approximately 86% of the entity (76-91% in each group) have approved
  - Consent forms have been received from approximately 90% of the entity (86-94% in each group)
- 250 West 57<sup>th</sup> St. Associates:
  - Of those voting, approximately 85% of the entity (79-93% in each group) have approved
  - Consent forms have been received from approximately 90% of the entity (84-97% in each group)

*For more information, use your password and please visit [www.EmpireStateRealtyTrust.com](http://www.EmpireStateRealtyTrust.com), view the DVD which accompanied your package of disclosure/consent solicitation materials, send an e-mail to [inquiries@MalkinHoldings.com](mailto:inquiries@MalkinHoldings.com) or call MacKenzie Partners at 1-888-410-7850.*

*There are material risks and conflicts of interest associated with the consolidation, which are described in the prospectus/consent solicitation statement. This letter contains forward-looking statements and actual results could materially differ from our expectations, as described in more detail in the prospectus/consent solicitation statement.*

*Investors are urged to review the Registration Statement on Form S-4, the prospectus/consent solicitation statement, which you have received, and other related documents now filed or to be filed with the SEC because they contain important information. You can obtain them, without charge, on the SEC's website at [www.sec.gov](http://www.sec.gov). You can also obtain, without charge, a copy of the prospectus/consent solicitation statement and the supplements relating to the individual entities by contacting Ned H. Cohen at 212 687-8700 at Malkin Holdings LLC.*



[For participants who have voted against]

April 2, 2013

To Participants in Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C., and 250 West 57th St. Associates L.L.C.

Dear Fellow Participants:

This is an update of the consent to approve the consolidation and proceed with an IPO as a REIT on the New York Stock Exchange.

As of the close of business on April 2, we have received approximately 94 % of the votes for the proposal needed to approve the transaction from Empire State Building Associates ("ESBA"). As of April 2, approximately 87% of all interests had voted.

<u>Entity</u>	<u>Total Vote For Transaction</u>	<u>Required Vote</u>
Empire State Building Associates	75%	80% per group

In the same vote for 60 East 42<sup>nd</sup> St. Associates, we have received approximately 96% of the votes for the proposal needed to approve the transaction. As of April 2, approximately 90% of all interests had voted. In the same vote for 250 West 57<sup>th</sup> St. Associates, we have received more than the required total of votes.

<u>Entity</u>	<u>Total Vote For Transaction</u>	<u>Required Vote</u>
60 East 42nd St. Associates	86%	90% per group
250 West 57th St. Associates	85%	75% in eight out of ten groups

See below for more detail and important information regarding results for the consolidation proposal and the third party portfolio sale. Note: the consolidation and IPO and the third party portfolio sale proposals are independent of each other. **If we receive consents for the consolidation and IPO, we will proceed with the consolidation and IPO even if the third party portfolio sale is not approved.**

Our letter of March 21 said the solicitation is open until at least such time as the Court overseeing the class action settlement issues its decision on the LLC matter, which could come on or before May 2. While it was in all investors' interests for us to leave the vote open, it is in all investors' interests for us to have the necessary super-majority in hand as soon as possible, even if before the ruling of the Court. **The sooner we complete the solicitation process, the sooner the expenses and disruption to all participants may be brought to an end, and the benefits can be achieved.**

Malkin Holdings LLC One Grand Central Place 60 East 42nd Street New York, NY 10016 T (212) 687-6700 F (212) 956-7679 [www.malkinholdings.com](http://www.malkinholdings.com)

If you have voted "against" the consolidation proposal, **we urge you to consider now changing your vote to be "FOR" all the proposals.** We have enclosed a new consent form for your convenience. We are on standby to answer any question you have, including on weekends.

We firmly believe the proposed transaction offers you better advantages and opportunities than your current investment, and we hope that you will change your recorded vote to be in favor of the proposed transaction as soon as possible.

[Contact Person] is available to assist you with any question you may have. You can reach him at [Phone Number]. We hope that you will contact us or our proxy solicitor, MacKenzie Partners, at 1-888-410-7850 if we can assist you in any way.

Sincerely,

MALKIN HOLDINGS LLC

/s/ Peter L. Malkin  
Peter L. Malkin  
Chairman

/s/Anthony E. Malkin  
Anthony E. Malkin  
President

#### IMPORTANT DISCLOSURE:

The information in this letter should not be viewed as a prediction of the final outcome. Participants are permitted to change their votes while the solicitation remains open.

Below are the voting results by percentage interest for each entity and the range for the participating groups in each entity with respect to the **consolidation proposal** as of close of business on April 2, 2013:

- Empire State Building Associates:
  - Of those voting, approximately 86% of the entity (86-87% in each group) have approved
  - Consent forms have been received from approximately 87% of the entity (86-87% in each group)
- 60 East 42<sup>nd</sup> St. Associates:
  - Of those voting, approximately 95% of the entity (91-98% in each group) have approved
  - Consent forms have been received from approximately 90% of the entity (86-94% in each group)
- 250 West 57<sup>th</sup> St. Associates:
  - Of those voting, approximately 95% of the entity (88-99% in each group) have approved
  - Consent forms have been received from approximately 90% of the entity (84-97% in each group)

Below are voting results by percentage of interest for each entity and the range for the participating groups in each entity with respect to the **third party portfolio sale proposal** as of close of business April 2, 2013. Note: the consolidation and IPO and the third party portfolio sale proposals are independent of each other. **If we receive consents for the consolidation and IPO, we will proceed with the consolidation and IPO even if the third party portfolio sale is not approved.**

- Empire State Building Associates:
  - Of those voting, approximately 79% of the entity (77-81% in each group) have approved
  - Consent forms have been received from approximately 87% of the entity (86-87% in each group)
- 60 East 42<sup>nd</sup> St. Associates:
  - Of those voting, approximately 86% of the entity (76-91% in each group) have approved
  - Consent forms have been received from approximately 90% of the entity (86-94% in each group)
- 250 West 57<sup>th</sup> St. Associates:
  - Of those voting, approximately 85% of the entity (79-93% in each group) have approved
  - Consent forms have been received from approximately 90% of the entity (84-97% in each group)

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*Investors are urged to review the Registration Statement on Form S-4, the prospectus/consent solicitation statement, which you have received, and other related documents now filed or to be filed with the SEC because they contain important information. You can obtain them, without charge, on the SEC's website at [www.sec.gov](http://www.sec.gov). You can also obtain, without charge, a copy of the prospectus/consent solicitation statement and the supplements relating to the individual entities by contacting Ned H. Cohen at 212 687-8700 at Malkin Holdings LLC.*



[For participants who have not voted]

April 2, 2013

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Dear Fellow Participants:

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MALKIN Holdings LLC One Grand Central Place 60 East 42nd Street New York, NY 10065 T (212) 687-8700 F (212) 256-7679 www.malkinholdings.com

If you have not yet voted, **we urge you now to vote "FOR" all the proposals**. We have enclosed a new consent form for your convenience. We are on standby to answer any question you have, including on weekends.

We firmly believe the proposed transaction offers you better advantages and opportunities than your current investment, and we hope that you will submit your vote in favor of the proposed transaction as soon as possible.

[Contact person] is available to assist you with any question you may have. You can reach him at [Phone number]. We hope that you will contact us or our proxy solicitor, MacKenzie Partners, at 1-888-410-7850 if we can assist you in any way.

Sincerely,

MALKIN HOLDINGS LLC

/s/ Peter L. Malkin  
Peter L. Malkin  
Chairman

/s/Anthony E. Malkin  
Anthony E. Malkin  
President

#### IMPORTANT DISCLOSURE:

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The following unsolicited letter from an investor with no business or family relationship with Malkin Holdings was sent to Peter Malkin via email on March 28, 2013 with permission to distribute to ESBA investors:

To fellow ESBA Participants:

My name is [b:(6)] I handle financial matters for my mother [b:(6)] who is also a Participant. Our family voted Yes to the Empire State Realty IPO for the following reasons (among others):

Market Realization of an Important Investment --- in the current arcane quasi-partnership format that Participants are in now, there is no organized market, and to my knowledge if we need to realize value or just know what it could be, we have to ask Malkin Properties to privately find a buyer. This is obviously a highly unsatisfactory method of price discovery, and could result in an enormous sacrifice in value depending on the real estate market environment, an investor's need for cash, and the individual situation with the Empire State Building (ESB). It is also quite frustrating to simply not know what our important investment is legitimately worth at any one time. Certainly we believe that bringing our investment public greatly satisfies the need for price discovery and our ability to monetize the investment if we need to do so.

Maintenance of Exposure to the ESB - In the proposed REIT, ESB is a very large proportion of the REIT's initial property pool, so those who are interested in ESBA (such as the [b:(6)]) in terms of the original investment's exposure to a marquis property, similarly participate in its future in the new structure.

We like the prospect of Pooling more properties - we take comfort in the added properties, as we believe diversification should offset the risk of a few properties not performing. ESB is a great building and has great long-term potential but we have obviously seen the partnership payments vary tremendously over the years. Should we newly get exposure to many properties across several markets, there is more potential for outperforming properties to offset the underperforming ones, thereby potentially lending more stability to our distributions. Moreover, if the REIT chooses to grow it can do so through purchasing/leasing new properties, and in turn potentially enhancing the diversification further.

Better Structure for Information Disclosure - as an organized public REIT there will be disclosure requirements mandated by the Securities and Exchange Commission in terms of their frequency and detail (financial and operational), and I would expect that we will get far better disclosure from the new REIT's operations in terms of their frequency and quality than we do now.

Like other Participants, we are not crazy about the 10% overrides, but 10% overrides were approved by the Participants years ago and from my reading of the old documents we think some Participants' arguments as to their inapplicability to the REIT deal are quite flimsy. And frankly, we would much rather have 90% of ESBA in a new strong REIT company than 100% of it in the old structure.

We appreciate the deal-Naysayers' past efforts to challenge the deal insofar as such efforts have produced some benefits. However, it appears that all they really wish to do at this point is to destroy the transaction, and we in turn do not find their efforts to be at all helpful.

[b:(6)]

**From:** Kluck, Thomas  
**Sent:** Monday, April 29, 2013 10:27 AM  
**To:** McHale, Angela R.  
**Subject:** RE: Empire - article

It would be a huge turn of events if he rules in favor of the plaintiffs.

---

**From:** McHale, Angela R.  
**Sent:** Monday, April 29, 2013 10:24 AM  
**To:** Kluck, Thomas  
**Subject:** RE: Empire - article

I'm so interested to see what the judge does with this.

---

**From:** Kluck, Thomas  
**Sent:** Monday, April 29, 2013 10:22 AM  
**To:** Orlic, David L.; McHale, Angela R.  
**Subject:** Empire - article

## Empire State Building IPO Opponents Seek to Block Buyout

Investors opposed to a deal to take New York's Empire State Building public asked a judge to block a plan by the family that controls the iconic skyscraper to buy them out for \$100 a share.

New York State Supreme Court Justice O. Peter Sherwood began hearing arguments from the objectors today in Manhattan. He has previously said he could throw out the votes the Malkin family has already received approving the plan if he determines the buyout provision is illegal.

The proposal for the second-biggest initial public offering of a U.S. real estate investment trust on record has faced challenges by investors, and both sides are fighting to bring the few remaining votes to their side.

Peter Malkin, Malkin Holdings LLC's chairman, and his son Anthony, its president, said on April 3 that shareholders representing about 75 percent of the skyscraper's 3,300 ownership units had voted in favor. They need 80 percent to move ahead and have been calling holdouts individually to urge their support.

The Malkins said last month they would leave voting open until Sherwood rules on the \$100-a-share buyout or until May 2, when the judge is set to hold a hearing on a \$55 million class-action settlement that's opposed by some of the tower's investors.

### \$1 Billion

Empire State Realty Trust Inc., as the new company would be called, is seeking to raise about \$1 billion for the REIT, which would include the 102-story tower and 20 other properties the Malkins supervise. Only the 2006 debut of Santa Monica, California-based Douglas Emmett Inc. (DEI) was bigger in the industry, at \$1.6 billion, according to data compiled by Bloomberg.

The dissidents say a conversion to a REIT would mean giving up a reliable income stream that should rise when renovations at the skyscraper are finished. The Malkins have said their plan would give unit-holders liquidity, regular dividends and greater growth opportunities. Some investors are also questioning more than \$300 million in shares the Malkins would potentially receive under the deal.

At the end of 2012, the skyscraper was about 69 percent occupied, with such tenants as LinkedIn Corp., the Federal Deposit Insurance Corp. and Coty Inc., according to the building's annual report.

Investors have claimed that the \$100 buyout provision coerces them to vote in favor of the REIT because their units are potentially worth more than \$300,000 each.

### 'Fair Value'

Holders are entitled under New York state law to the "fair value" of their shares, regardless of how they vote, Stephen Meister, an attorney representing opponents of the class-action settlement tied to the plan, said in a March 15 court filing. He said it's obvious "that \$100 is not the fair value of a participation worth thousands of times that nominal sum."

Opponents can avoid being bought out if they change their vote to "yes" within 10 days after receiving written notice that the 80 percent approval has been achieved, a time frame Meister called "impermissibly short."

In defending the proposal, Thomas E.L. Dewey, an attorney representing Malkin Holdings, said the dissenters “misrepresent essentially every relevant fact concerning the allegedly punitive buyout” and have provided no evidence that any unit- holder has been coerced. The provision is necessary to prevent small minorities from thwarting the wishes of most investors, according to Dewey. It was fully disclosed and agreed upon when the partnership was formed in the 1960s, he said.

The opponents are connected with a group who have “waged a campaign of distortion and misrepresentation against the transaction,” Dewey wrote in an April 8 court filing. “These individuals will do or say anything to stop, delay or complicate” the offering.

The case is Meyers v. Empire State Realty Trust Inc. (ESB), 650607/2012, New York State Supreme Court, New York County (Manhattan).

To contact the reporter on this story: Chris Dolmetsch in New York State Supreme Court at [cdolmetsch@bloomberg.net](mailto:cdolmetsch@bloomberg.net)

To contact the editor responsible for this story: Michael Hytha at [mhytha@bloomberg.net](mailto:mhytha@bloomberg.net)

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**Sent:** Monday, April 29, 2013 10:24 AM  
**To:** Kluck, Thomas  
**Subject:** RE: Empire - article

I'm so interested to see what the judge does with this.

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**Sent:** Monday, April 29, 2013 10:22 AM  
**To:** Orlic, David L.; McHale, Angela R.  
**Subject:** Empire - article

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To contact the reporter on this story: Chris Dolmetsch in New York State Supreme Court at [cdolmetsch@bloomberg.net](mailto:cdolmetsch@bloomberg.net)

To contact the editor responsible for this story: Michael Hytha at [mhytha@bloomberg.net](mailto:mhytha@bloomberg.net)



**From:** Orlic, David L.  
**Sent:** Friday, February 22, 2013 2:53 PM  
**To:** (b)(6); Kluck, Thomas; McHale, Angela R.  
**Cc:** (b)(6)  
**Subject:** RE: Empire - article

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

(b)(5);(b)(6)

David

No Right to Independent Appraisal, page 70

45. Please clarify your disclosure as to why participants who do not consent to the transaction will not have appraisal rights under the New York Limited Liability Company Law. Section 1002(e) of that act appears to provide for a right of appraisal in circumstances such as the consolidation, and the agents appear to be holding their membership interests in the subject LLCs as fiduciaries on behalf of the participants. Disclose any relevant case law that supports the position you are taking. If state law is unclear on this issue, please so state. See Item 18(a)(3) of Form S-4 and Item 3 of Schedule 14A.

We supplementally advise the Staff that the appraisal right under Section 1002(e) of the New York Limited Liability Company Law is not applicable to the proposed transaction. While the proposed transaction is described as a consolidation in the Form S-4 prospectus, this is a general description of the transaction and not a statement as to its legal form. The transaction is, in fact, an asset transfer to the operating partnership and not a statutory consolidation. Under Section 1001 of the New York Limited Liability Company Law, a consolidation means a procedure in which two or more limited liability companies or other business entities consolidate into a single limited liability company or other business entity that shall be a new limited liability company or other business entity to be formed pursuant to the consolidation, and Sections 1002-1004 set forth the procedures and effects of statutory mergers and consolidations. These procedures include filing a certificate to combine the entities legally, none of which apply to the current transaction. The proposed transaction is not being effected under these sections and therefore the appraisal right and other provisions of Article X are not applicable.

Furthermore, the participants are not members who can assert an appraisal right. Under Section 1002, if it were applicable, the appraisal right would not apply if a member voted in favor of the consolidation. However, for the consolidation to be acted on, the agents as members must vote in favor of the consolidation, which automatically withdraws any notice of dissent under Section 1002. While the agents owe fiduciary duties to the participants, we do not believe that any

fiduciary obligation would affect the actions of the agents with respect to appraisal rights. For the foregoing reasons, we do not believe that any additional disclosure is required.

---

**From:** (b)(6)  
**Sent:** Friday, February 22, 2013 1:05 PM  
**To:** Kluck, Thomas; Orlic, David L.; McHale, Angela R.  
**Cc:** (b)(6)  
**Subject:** RE: Empire - article

(b)(5);(b)(6)

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**From:** Kluck, Thomas  
**Sent:** Friday, February 22, 2013 12:57 PM  
**To:** Orlic, David L.; McHale, Angela R.  
**Cc:** (b)(6)  
**Subject:** Empire - article

(b)(5)

## THE WALL STREET JOURNAL.

### Global Finance: Empire State Building Sale Plan Gets Lift

By Craig Karmin

292 words

22 February 2013

The Wall Street Journal

J

C3

English

(Copyright (c) 2013, Dow Jones & Company, Inc.)

A New York judge gave a boost to the proposed public sale of the **Empire State Building**, ruling Thursday that a class-action settlement with the Malkin family could proceed.

But the judge left the door open for opponents of the proposed sale to challenge one provision in the plan, which could bog down the proceedings.

The Malkin family, which manages the landmark building, has proposed combining the **Empire State Building** and 18 other properties controlled by the family into a publicly traded company known as **Empire State Realty Trust**.

The Malkins need 80% of the shares held by the **Empire State Building's** 2,800 owners to approve the plan in a vote that could conclude as early as end of March.

Judge Peter Sherwood of New York County Supreme Court denied a motion to block a settlement reached late last year between the Malkins and a group of investors. That agreement would pay \$55 million to be distributed among owners of the building and the other properties. Another group of investors had said the payout was too low and that any sum should go to owners of the Empire State Building, and not be split among investors in other properties.

But the judge said the group could submit a challenge to a buy-out provision in the initial public offering plan. The proposal says that if the plan is approved, investors who voted against it would have 10 days to change their vote; if they don't, these investors could have their shares bought out by the Malkins for around \$100 each.

**From:** [b](6)  
**Sent:** Friday, February 22, 2013 1:05 PM  
**To:** Kluck, Thomas; Orlic, David L.; McHale, Angela R.  
**Cc:** [b](6)  
**Subject:** RE: Empire - article

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

[b](6)

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**From:** Kluck, Thomas  
**Sent:** Friday, February 22, 2013 12:57 PM  
**To:** Orlic, David L.; McHale, Angela R.  
**Cc:** [b](6)  
**Subject:** Empire - article

[b](6)

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But the judge left the door open for opponents of the proposed sale to challenge one provision in the plan, which could bog down the proceedings.

The Malkin family, which manages the landmark building, has proposed combining the **Empire State Building** and 18 other properties controlled by the family into a publicly traded company known as **Empire State Realty Trust**.

The Malkins need 80% of the shares held by the **Empire State Building's** 2,800 owners to approve the plan in a vote that could conclude as early as end of March.

Judge Peter Sherwood of New York County Supreme Court denied a motion to block a settlement reached late last year between the Matkins and a group of investors. That agreement would pay \$55 million to be distributed among owners of the building and the other properties. Another group of investors had said the payout was too low and that any sum should go to owners of the Empire State Building, and not be split among investors in other properties.

But the judge said the group could submit a challenge to a buyout provision in the initial public offering plan. The proposal says that if the plan is approved, investors who voted against it would have 10 days to change their vote; if they don't, these investors could have their shares bought out by the Matkins for around \$100 each.

**From:** [b:(6)]  
**Sent:** Monday, April 29, 2013 2:30 PM  
**To:** Orlic, David L.  
**Subject:** RE: Empire - article

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Thanks, David. You probably already know about it, but I just saw this:

## **N.Y. judge says he may allow Empire State Building REIT plan**

*By Ilaina Jonas | Reuters – 1 hr 40 mins ago*



[View Photo](#)

Reuters/Reuters - A full moon rises behind the Empire State Building in New York as seen from a park along the Hudson River in Hoboken, New Jersey, February 25, 2013. REUTERS/Gary Hershorn

By Ilaina Jonas

(Reuters) - A New York judge said on Monday he was leaning toward allowing a group that wants to roll the Empire State Building into a real estate investment trust to force any holdouts to surrender their holdings for a fraction of their value.

New York Supreme Court Justice O. Peter Sherwood said he would issue his written decision regarding Malkin Holdings' plan for the landmark building by the end of Tuesday at the latest.

Under the plan, the Empire State Building - owned by Empire State Building Associates LLC, an entity controlled by Malkin - would join at least 18 other properties in the REIT called Empire State Realty Trust Inc and launch an initial public stock offering.

The plan requires support from 80 percent of each of the three groups of investors who as early as 1961 put money in the entity that became the limited liability company. For four decades after its completion in 1931, the building ranked as the world's tallest building.

Last month Malkin filed regulatory documents that said it had garnered about 95 percent of the investor votes it needs to cross the 80 percent threshold.

Once Malkin reaches that threshold, it claims the right to force any remaining investors to sell back their stakes for \$100 each unless they drop their opposition. The units, now held by 2,824 investors, could be worth more than \$320,000 apiece if the REIT becomes publicly traded.

The decision under consideration by Justice Sherwood involves that provision. Opponents of the REIT plan contend that Malkin lost the right to force holdouts to sell their holdings in 2001, when he converted Empire State Building Associates into a limited liability company from a partnership.

A REIT is a property or mortgage company that is exempt from corporate income taxes if it distributes at least 90 percent of its taxable income to shareholders in the form of dividends.

(Reporting By Ilaina Jonas; Editing by Gerald E. McCormick and Andrew Hay)

(This story was refiled to change three-quarters to 95 percent in the In fifth paragraph)

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**From:** Orlic, David L.

**Sent:** Monday, April 29, 2013 9:33 AM

**To:** [REDACTED]

**Subject:** FW: Empire - article

Hi [REDACTED] welcome back. I hope you had a good vacation. This article is on the front page of today's NYT. It's easier to read online:

<http://www.nytimes.com/2013/04/29/business/empire-state-building-feud-nears-crucial-ruling.html?ref=todayspaper>

-David

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**From:** Kluck, Thomas  
**Sent:** Monday, April 29, 2013 9:18 AM  
**To:** McHale, Angela R.; Orlic, David L.  
**Cc:** [b:16]  
**Subject:** Empire - article

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# The New York Times

Business/Financial Desk: SECTA

## A Nasty, Epic Real Estate Battle With Stakes 102 Stories High

By CHARLES V. BAGLI and JULIE CRESWELL

1596 words

29 April 2013

The New York Times

NYTF

Late Edition - Final

1

English

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On the day it opened in 1931, the Empire State Building carved out a special place on the New York skyline, but it has also been at the center of a succession of battles for control by equally larger-than-life figures, including Donald J. Trump and Leonia Helmsley.

Now, the 102-story tower is the prize in yet another epic battle, which will play out in court starting on Monday.

On one side are the New York real estate barons Peter L. Malkin and his son Anthony E. Malkin, who control the landmark tower but are minority owners. They are within a whisker of landing the deal of a lifetime, valued at \$5.2 billion, that would offer to the public shares in 19 properties in the New York area that they oversee, including the crown jewel, the Empire State Building.

The offering would catapult the Malkin family into the elite of Manhattan real estate, valuing their stake at an estimated \$730 million and installing Anthony Malkin as chairman of a major new company, **Empire State Realty Trust**.

But standing in their way is an eclectic group of dissenters led by the California businessman Richard Edelman and Andrew S. Penson, a speculative investor who owns Grand Central Terminal. They argue that the deal may harm the value of the investors' shares and expose them to tax liabilities and the vagaries of the stock market, all while enriching the Malkins.

This week, the conflict will reach a critical juncture when the court will either upend the Malkins' plans altogether or disallow a legal challenge and remove a major roadblock.

For more than a year, the Malkins have painstakingly persuaded 75 percent of the building's roughly 3,000 stakeholders to vote in favor of going public, just shy of the required 80 percent.

As they have campaigned, the vote has turned into a public blood feud. Unlike the typical battle involving a dozen institutions that own the bulk of the stock, this one requires an investor-by-investor appeal. The hostility has shocked even longtime observers used to occasional bouts of mudslinging in the world of New York real estate.



"I'm amazed at the level of enmity," said Barry Vinocur, the editor at a trade publisher, REIT Zone Publications. "I can't recall ever seeing anything like it."

The Malkins argue that the new company would provide a modern corporate structure, allowing investors to more easily buy and sell their stakes and enhance value over time.

Anthony Malkin described those opposed to the deal as "a small group of big holders" who offered investors "only a dead end, with all of the many downsides of the current archaic structure."

In the heat of the battle, the Malkins have accused Mr. Edelman and his followers of lying and spreading misinformation, and their legal forces have fired off numerous cease-and-desist letters. The opposing investors have tried to rally opponents through a Web site and by holding periodic conference calls.

All of this back-and-forth has left some of the current Empire State Building stakeholders flummoxed.

Meyer Shlafnitz, 83, a retired steel salesman who lives in Queens, owns a single share in the building. He has changed his vote twice, most recently voting in favor of the offering.

"It's a he-said, she-said kind of thing," Mr. Shlafnitz said.

The foundation for the current dispute was laid in 1961 when Harry B. Helmsley, a storied figure in New York real estate, and his partner, Lawrence A. Wien, bought control of the Empire State Building from the billionaire industrialist Henry Crown. Peter Malkin, who was also involved in the deal, is the son-in-law of Mr. Wien; Anthony Malkin is Mr. Wien's grandson.

To help finance the deal, the group sold 3,300 units in the building priced at \$10,000 a unit.

For many of the original investors, some of whom bought more than one share, the Empire State Building embodies romance, a treasured investment and an echo of an era when New York's rising middle class nervously put all their meager savings into a tower that touched the sky.

Mr. Shlafnitz says he still remembers the day in 1961 that his father, a watch repairman, purchased a half-share in the Empire State Building for \$5,000, nearly all the money he had.

"His hands shook when he wrote out the check," he said. "He was very fearful that something would go wrong."

Mr. Edelman's grandfather Max Edelman was an escalator salesman for the Peelle Company in Brooklyn who routinely saved half of what he made every year. He ultimately bought 10 shares in the Empire State Building.

"There was a mystique to the Empire State Building in 1961," said Thelma Shafran, 82, who together with her mother bought two and a half shares. "We felt very daring to have invested in this."

The deal itself was complicated, bringing together parties who would later wage repeated battles over control of the property.

Soon after the Malkins gained control of the building in 2002, they embarked on an extensive renovation. Hundreds of millions of dollars were spent restoring the Art Deco lobby, upgrading office space and improving energy efficiency. Those efforts have attracted new tenants who are paying higher rents.

In 2011, the Helmsley estate made known its desire to sell its stake, which is valued at around \$1 billion. The Malkins, worried about the potential problems an outside buyer could bring, quickly put together plans to combine the building with others they owned or controlled in Manhattan and Connecticut.

Early last year, the Malkins proposed creating a real estate investment trust. They say they hope to raise about \$1 billion, much of which will go to buy the Helmsley stake and repay investors for the cost of the offering.

"The status quo is a fiction," Anthony Malkin said, "because regardless of the outcome of the vote, the Helmsley estate must sell its interests to a third party, with the risk of massive disruption if there is no I.P.O."

The Malkins' plan quickly rankled some of the building's stakeholders.

Some critics argued that the Empire State Building was far more valuable than the other buildings the Malkins had tossed into the mix. The Malkins' own projections show that the Empire State Building's net operating income is expected to more than double by 2015.

"We know that it's going to be fabulously profitable in the coming years according to their own documents," Mr. Edelman said. "Why should we sell it now?"

Others say the only clear winners they can see from the offer are the Malkins themselves.

"It's obviously a good deal for the Malkins and the Helmsley estate, but that doesn't mean it's a good deal for the investor," said Ken Woolfe, who inherited his single share from his father.

Anthony Malkin would become chairman of the company, with a \$500,000 salary. But the big money for the family would come from its stake in the deal, a source of particular ire for opponents. The value of that stake was calculated, in part, by converting the Malkins' future profits and fees into a bigger stake, worth nearly \$730 million.

"Tony Malkin gets the chance to go from being a millionaire to potentially being a billionaire," said Andrew Shact, a tax lawyer who holds two shares with his sister and opposes the deal. "For the Malkins, this is a chance of a lifetime."

Soon after the plan was proposed, handful of Empire State Building stakeholders led by Mr. Penson filed a lawsuit in State Supreme Court in Manhattan claiming that the vote should be halted because a clause in the agreement violates state law. Their suit is the subject of this week's court hearing.

Under the agreement, once the Malkins achieve the 80 percent approval, anyone who voted against it has 10 days to switch, or they could receive only \$100 for their share. The offering values the shares at about \$323,000 each.

Opponents argue that state law requires that the Malkins pay "fair value" for all shares.

"I think the whole consolidation is at stake," said Stephen B. Meister, the lawyer representing the dissenting stakeholders.

The Malkins, who dismissed the lawsuit as a "publicity stunt," contend that the provision prevents the "tyranny of the minority."

As the delays have mounted, many who favor of the deal have become increasingly annoyed.

One investor, Nancy Felton, along with her siblings, inherited about a half-dozen units from her father, who was a partner in Mr. Wien's law firm. She says she understands the attachment to the building.

"My dad was a poor kid from the East Side who made good," she said. "I care about that story. I've told it to my kids. It's part of the lore in my household. But I'm not sure why you lose that story because of this deal. You can still point to a brick and say, 'I own that brick.'"

(A1);

**From:** Kluck, Thomas  
**Sent:** Friday, February 15, 2013 9:59 AM  
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**Subject:** RE: Empire - new article  
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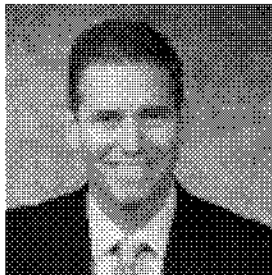
(b)(6)

He is a Forbes contributor – see below. Also, here is a link to the article:  
<http://www.forbes.com/sites/bradthomas/2013/02/15/empire-state-realty-trust-this-proposed-new-reit-makes-cents/>.

Brad Thomas, Contributor

I cover REIT investing.

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Brad Thomas has over 25 years of experience in the commercial real estate brokerage, development and investment sectors and the majority of his experience has been research and consulting. Over the years, Mr. Thomas has provided nationwide real estate brokerage, construction services, development services, and capital market solutions for a variety of clients, many of which are Fortune 500 clients. Mr. Thomas researches and writes on a variety of real estate based income alternatives including both publicly-traded and non-traded REITs. Given his background in sourcing and originating income producing assets, Mr. Thomas has broad experience and understanding in capital markets and evaluating the most intelligent REITs - with a keen on “distinguishing between an investment operation and speculative one.” Mr. Thomas received a Bachelor of Science degree in Business/Economics from Presbyterian College where he played basketball and he was member in ROTC.

The author is a Forbes contributor. The opinions expressed are those of the writer.

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**Subject:** Empire - new article

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# Empire State Realty Trust: This Proposed New REIT Makes Cents

Move up Move down



Peter Malkin and Brad Thomas

**Empire State Realty** Trust investors recently announced that it had commenced voting on the fate of the company's IPO. The proposed new Real Estate Investment Trust (REIT) consists of 12 office properties and is anchored by the world-famous office tower known as **The Empire State Building**. The portfolio, encompassing around 7.7 million rentable square feet is located in midtown Manhattan, Fairfield County (CN), and Wetschester County (NY).

The major stakeholder, **Malkin Holdings**, has owned the iconic office tower for over 50 years and by combining other Malkin Holding properties, the new REIT is aiming to create broader diversification and a substantially lower overall cost of capital. By becoming a REIT, listed on the New York Stock Exchange, investors can also benefit from full market liquidity where Manhattan property valuations are at record levels.

The current ownership group has around 2,800 shareholders and the voters have until March 26<sup>th</sup> to cast a vote – for and against – the new REIT proposal (must be approved by 80%). So with just around 40 days to decide, investors must determine whether a roll-up of the currently syndicated assets are more valuable as a “pure play” New York area REIT.

The last New York area publicly-listed company to list shares as a REIT was **S.L. Green** (SLG). Almost 16 years ago SLG went public and since that time the \$14.4 billion company has returned over 615% (while the S&P 500 returned 151%). SLG has a current market capitalization of \$7.5 billion and its dividend yield is 1.61%.

Also, **Vornado Realty** (VNO) – another New York-based REIT – listed (as REIT) in 1993 and since that time, the company has returned over 1,332% (compared with the S&P 500 of 406%). VNO has a current market capitalization of \$15.83 billion and its dividend yield is 3.43%.

**What Is The Value Proposition of Becoming a REIT?**

According to filings, the Malkin family have offered investors an array of options including: class A shares, operating partnership units, or a combination of OP units and class B shares. This includes tax deferred options that gives investors flexibility in tax deferral.

Earlier this week I stopped by the headquarters of Malkin Holdings and asked Anthony (Tony) and Peter Malkin a few questions regarding the proposed REIT conversion. It was clear to see that the father and son team are very passionate about the business and specifically the iconic portfolio that was assembled by the generations of investors.

I find it most ironic that the opposition group is upset because they believe that Malkin Holdings is forcing them into a new structure that is more risky and volatile. The controversy boils down to the argument that the upset stakeholders would prefer to own illiquid shares that they deem are “like bonds”.

Excuse me! When is the last time a multi-tenant office building was “like a bond”. And let’s face it, REIT shares today are soaring. Why would anyone not want to own shares in a landmark portfolio in perhaps the best market in the nation – and one of the best in the world.

But before deciding, let’s find out what the management team has to say. As noted, I met earlier this week with Anthony and Peter Malkin. According to LinkedIn, the Malkin family has been active in real estate for four generations. Anthony Malkin’s grandfather, Lawrence A. Wien started the family in the real estate business in 1929 and in 1934 created the concept of real estate syndication. Anthony Malkin is President and CEO of Malkin Holdings and Peter L. Malkin is Chairman.

**Thomas:** Why should investors vote in favor of this transaction?

**Anthony Malkin:** This unlocks investors from an archaic investment structure while giving them several good options and benefits, including the chance to trade into a portfolio of trophy pre-war, Manhattan-area assets on a 100% tax-deferred basis... these are benefits that they do not have now. By allowing investors to hold interests listed on the New York Stock exchange, this transaction offers a new found path to liquidity, so an investor can sell at an efficient market price. All sales to date have been at what we think are tremendous illiquidity discounts to value.

Those investors, like our family, who do not plan to sell and do remain investors, will continue to receive distributions. However, unlike the distributions they currently receive, which are unpredictable and determined by the decisions of the operating lessee over which they have no control, REIT distributions will be based on a portfolio of properties and must be at least 90% of the REIT’s taxable income. So, we believe distributions will be more consistent. We also believe there is greater potential as a REIT than in the current structure for increased distributions from improved property performance and growth opportunities. Additionally, if the transaction is approved, all investors will receive a one-time distribution of cash reserves and reimbursement of transaction expenses, as well as class action settlement funds.

The REIT offers investors the benefits of diversification, one of the core principles of sound investing. Investors will also benefit from better access to capital markets, a modern governance structure, with six of seven board members independent, and all the protections of Dodd-Frank, Sarbanes-Oxley, and the NYSE, and will escape the current structure's risks of disputes and damaging deadlocks.

**Thomas:** So Why IPO now?

**Anthony Malkin:** More than two years ago, when we began developing the original idea for this transaction, we felt that one of its benefits was that it addressed the fact that Leona Helmsley's estate must sell its interest in the operating lessee of the Empire State Building. This is not an option – it is a requirement under her will. The Helmsley Estate owns veto positions in several of these properties in which they are invested with the Malkin family, including a veto right with the Malkin family in the operating lessee of the Empire State Building.

After careful consideration, the Malkins suggested to the Helmsley Estate that contributing the properties to a REIT with a public offering provided numerous benefits and might provide a desirable result for this sale requirement, and the Helmsley Estate agreed. Without the agreement of the Malkins and the Helmsley Estate to move forward with the planned consolidation and IPO, these investor benefits would not be available, and we believe that investors would be stuck with illiquidity, reduced upside, a concentrated investment without diversity, archaic corporate structure, and greater uncertainty in their returns.

If the consolidation and IPO do not go forward, the Helmsley estate will choose another way to liquidate its real estate holdings, which may include sales of certain influence and blocking control positions (including its veto in the operation of the Empire State Building), and that may lead to disruptions and/ or reductions in distributions. Timing is everything. While one of the original factors was the Helmsley Estate sale, the transaction also provides a set of benefits for all investors which, instead of being driven by the Helmsley Estate, are made possible by the agreement of the Malkins and the Helmsley Estate.

**Thomas:** Who is the management team who will run the REIT?

**Anthony Malkin:** The same team that has shepherded these investments and turned around all the properties will be running the publicly traded REIT. The bulk of my team has worked on these assets for two decades. I will be the CEO of the REIT. I have been here more than 23 years and have worked diligently to build the management and marketing team which has renovated and repositioned these pre-war buildings to create award winning, trophy properties that attract the best tenants and the best brokers. In fact, the only recent addition to our senior management team is our Chief Financial Officer who has the necessary public company experience, and he has been with us for over a year. The management team will report to an independent Board of Directors made up of both industry experts and proven business people.

**Thomas:** What can these buildings do as a REIT that they can't do as standalone entities?

**Anthony Malkin:** As a publicly traded REIT, we will have access to capital currently unavailable to the individual properties. This capital can help fund renovations, thereby increasing our funds available to distribute to our investors, cash flow, and the potential for growth-generating acquisitions.

**Thomas:** What are the advantages of not forming a REIT?

**Anthony Malkin:** We are fiduciaries for our investors and feel responsible for ensuring that they have the information they need to make the right decision. We see less upside for our investors if this transaction does not proceed. We see no advantages to the status quo – in fact we see only potential disadvantage and risk. If this deal is not approved, our investors will lose the opportunity to realize the value resulting from the transaction, and will acquire the risk that comes with the potential sale of the Helmsley Estate's interest to an unknown third party which might cause deadlock.

**Thomas:** Did you even think of making the Empire State Building a REIT on its own?

**Anthony Malkin:** There is not any industry expert with whom we have spoken who can point to a success, or believes that there could be a success, from any single-asset REIT. We do not believe it is realistic or desirable. As any market participant can tell you, a single-asset REIT is not typical or preferable to potential REIT investors (the great majority of which are institutional investors). A stand-alone REIT would bear many of the same ongoing expenses of a REIT owning a portfolio of properties, but without the benefit of diversification which REIT investors want. We believe it would be far less attractive to investors and diminish everyone's value. Also, it's a non-starter – any ESB-only REIT would require the consent of the operating lessee which is controlled by the Malkin family and the Helmsley Estate, which have consented only to the consolidation and IPO as currently proposed.

## **Summing It Up**

**Empire State Realty Trust** is positioned to become an exceptional new REIT. The current management team, Malkin Holdings, has considerable experience in managing risk and the company's circle of competence is well-defined and a core part of the overall value proposition. There is no doubt that the combined portfolio will provide scale and diversification – a key differentiator for the New York area company. However, the true measure of success for Empire State Realty Trust will be the outstanding risk control that I found to be a uniquely identifiable feature for the four generations of owners. Simply said, Malkin Holdings has a well-defined leadership strategy that has sustained the course because of its exceptional **track record of honor and integrity.**

When you boil it all down, outstanding investors are distinguished for their ability to control risk AND generating returns. Malkin Holdings has deep knowledge of the Empire State Realty Trust portfolio and the new REIT's competitive advantages should provide meaningful returns for investors seeking high-quality exposure in one of the best markets in the world – including a trophy tower that's like no other!



*Brad Thomas has no ownership position in the stocks listed in this article.*

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**From:** [b](6)  
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*Brad Thomas has no ownership position in the stocks listed in this article.*

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**Sent:** Friday, February 15, 2013 9:46 AM  
**To:** Kluck, Thomas; Orlic, David L.; McHale, Angela R.; [b:(6)]  
**Cc:** [b:(6)]  
**Subject:** RE: Empire - new article

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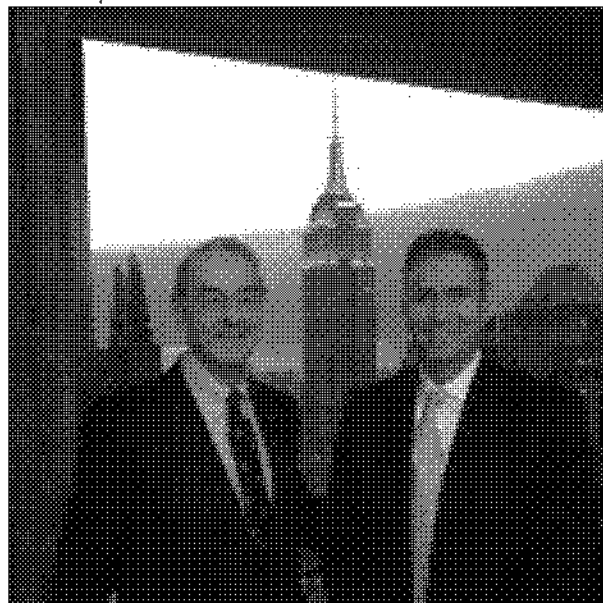
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**From:** Kluck, Thomas  
**Sent:** Friday, February 15, 2013 9:39 AM  
**To:** Orlic, David L.; McHale, Angela R.; [b:(6)]  
**Cc:** [b:(6)]  
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Move up Move down



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Those investors, like our family, who do not plan to sell and do remain investors, will continue to receive distributions. However, unlike the distributions they currently receive, which are unpredictable and determined by the decisions of the operating lessee over which they have no control, REIT distributions will be based on a portfolio of properties and must be at least 90% of the REIT's taxable income. So, we believe distributions will be more consistent. We also believe there is greater potential as a REIT than in the current structure for increased distributions from improved property performance and growth opportunities. Additionally, if the transaction is approved, all investors will receive a one-time distribution of cash reserves and reimbursement of transaction expenses, as well as class action settlement funds.

The REIT offers investors the benefits of diversification, one of the core principles of sound investing. Investors will also benefit from better access to capital markets, a modern governance structure, with six of seven board members independent, and all the protections of Dodd-Frank, Sarbanes-Oxley, and the NYSE, and will escape the current structure's risks of disputes and damaging deadlocks.

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**Sent:** Friday, February 15, 2013 10:45 AM  
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**Subject:** RE: Empire - new article

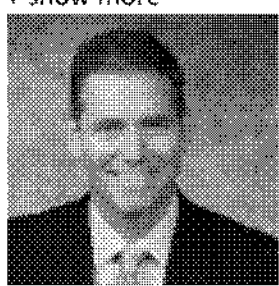
Mike,

He is a Forbes contributor -- see below. Also, here is a link to the article:  
<http://www.forbes.com/sites/bradthomas/2013/02/15/empire-state-realty-trust-this-proposed-new-reit-makes-cents/>.

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Brad Thomas has over 25 years of experience in the commercial real estate brokerage, development and investment sectors and the majority of his experience has been research and consulting. Over the years, Mr. Thomas has provided nationwide real estate brokerage, construction services, development services, and capital market solutions for a variety of clients, many of which are Fortune 500 clients. Mr. Thomas researches and writes on a variety of real estate based income alternatives including both publicly-traded and non-traded REITs. Given his background in sourcing and originating income producing assets, Mr. Thomas has broad

experience and understanding in capital markets and evaluating the most intelligent REITs - with a keen on “distinguishing between an investment operation and speculative one.” Mr. Thomas received a Bachelor of Science degree in Business/Economics from Presbyterian College where he played basketball and he was member in ROTC.

The author is a Forbes contributor. The opinions expressed are those of the writer.

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**To:** Orlic, David L.; McHale, Angela R.; Barberich, Jessica; McPhee, Eric  
**Cc:** McTiernan, Mike  
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**From:** Kluck, Thomas  
**Sent:** Friday, March 15, 2013 1:23 PM  
**To:** Orlic, David L.  
**Subject:** RE: Empire article

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Ok, let's meet around 4:00 pm.

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**From:** Orlic, David L.  
**Sent:** Friday, March 15, 2013 1:22 PM  
**To:** Kluck, Thomas  
**Subject:** RE: Empire article

(b)(5);(b)(6)

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**From:** Orlic, David L.  
**Sent:** Friday, March 15, 2013 1:19 PM  
**To:** Kluck, Thomas  
**Subject:** RE: Empire article

Okay. Let me know what time is good for you. -David

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**From:** Kluck, Thomas  
**Sent:** Friday, March 15, 2013 1:14 PM  
**To:** Orlic, David L.  
**Subject:** FW: Empire article

Hey David, if you have time, let's discuss later today (after 3:00). We also need to call Richard Edelman back on this topic. Thanks

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**From:** Kluck, Thomas  
**Sent:** Friday, March 15, 2013 11:10 AM  
**To:** McTiernan, Mike; McHale, Angela R.; Orlic, David L.; Barberich, Jessica; McPhee, Eric  
**Subject:** Empire article

## Some Empire State Building investors vote in favor of REIT plan

133 words  
15 March 2013  
10:27  
Reuters News  
LBA  
English  
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March 15 (Reuters) - The company that controls the **Empire State Building** said a majority of investors who have voted so far have approved its proposal to fold the iconic building into a new real estate investment trust (REIT) that will eventually be publicly traded.

Malkin Holdings LLC said 90 percent of the two-thirds of the investors who have voted to date favor its plan to make the building the centerpiece of more than 18 properties in the proposed REIT, **Empire State Realty Trust Inc.**, according to a filing with the U.S. Securities and Exchange Commission.

(Reporting by Tanya Agrawal in Bangalore; Editing by Saumyadeb Chakrabarty)

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**Sent:** Friday, March 15, 2013 1:14 PM  
**To:** Orlic, David L.  
**Subject:** FW: Empire article

Hey David, if you have time, let's discuss later today (after 3:00). We also need to call Richard Edelman back on this topic. Thanks

---

**From:** Kluck, Thomas  
**Sent:** Friday, March 15, 2013 11:10 AM  
**To:** (b)(6); McHale, Angela R.; Orlic, David L.; (b)(6)  
**Subject:** Empire article

## Some Empire State Building investors vote in favor of REIT plan

133 words  
15 March 2013  
10:27  
Reuters News  
LBA  
English  
(c) 2013 Reuters Limited

March 15 (Reuters) - The company that controls the **Empire State** Building said a majority of investors who have voted so far have approved its proposal to fold the iconic building into a new real estate investment trust (REIT) that will eventually be publicly traded.

Malkin Holdings LLC said 90 percent of the two-thirds of the investors who have voted to date favor its plan to make the building the centerpiece of more than 18 properties in the proposed REIT, Empire State Realty Trust Inc., according to a filing with the U.S. Securities and Exchange Commission.

(Reporting by Tanya Agrawal in Bangalore; Editing by Saumyadeb Chakrabarty)



**From:** Orlic, David L.  
**Sent:** Friday, March 15, 2013 1:19 PM  
**To:** Kluck, Thomas  
**Subject:** RE: Empire article

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Okay. Let me know what time is good for you. -David

---

**From:** Kluck, Thomas  
**Sent:** Friday, March 15, 2013 1:14 PM  
**To:** Orlic, David L.  
**Subject:** FW: Empire article

Hey David, if you have time, let's discuss later today (after 3:00). We also need to call Richard Edelman back on this topic. Thanks

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**From:** Kluck, Thomas  
**Sent:** Friday, March 15, 2013 11:10 AM  
**To:** [b:6] McHale, Angela R.; Orlic, David L.; [b:6]  
**Subject:** Empire article

## Some Empire State Building investors vote in favor of REIT plan

133 words  
15 March 2013  
10:27  
Reuters News  
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Malkin Holdings LLC said 90 percent of the two-thirds of the investors who have voted to date favor its plan to make the building the centerpiece of more than 18 properties in the proposed REIT, **Empire State Realty Trust Inc.**, according to a filing with the U.S. Securities and Exchange Commission.

(Reporting by Tanya Agrawal in Bangalore; Editing by Sauntyadeb Chakrabarty)

**From:** Orlic, David L.  
**Sent:** Monday, March 18, 2013 10:19 AM  
**To:** Kluck, Thomas  
**Subject:** RE: Empire article

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

(b)(5);(b)(6)

e

---

**From:** Orlic, David L.  
**Sent:** Friday, March 15, 2013 1:22 PM  
**To:** Kluck, Thomas  
**Subject:** RE: Empire article

(b)(5);(b)(6)

---

**From:** Orlic, David L.  
**Sent:** Friday, March 15, 2013 1:19 PM  
**To:** Kluck, Thomas  
**Subject:** RE: Empire article

Okay. Let me know what time is good for you. -David

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**Subject:** FW: Empire article

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**Sent:** Friday, March 15, 2013 11:10 AM  
**To:** (b)(6) McHale, Angela R.; Orlic, David L.; (b)(6)  
**Subject:** Empire article

## Some Empire State Building investors vote in favor of REIT plan

133 words  
15 March 2013  
10:27  
Reuters News  
LBA  
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(Reporting by Tanya Agrawal in Bangalore; Editing by Saumyadeb Chakrabarty)

**From:** Orlic, David L.  
**Sent:** Wednesday, January 30, 2013 12:26 PM  
**To:** (b)(6)  
**Subject:** RE: Empire State investors speaking to members of Congress

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

(b)(5);(b)(6)

---

**From:** (b)(6)  
**Sent:** Wednesday, January 30, 2013 12:15 PM  
**To:** Nallengara, Lona  
**Cc:** Osheroff, Mauri; Orlic, David L.  
**Subject:** Empire State investors speaking to members of Congress

Lona (b)(6) two recent instances where Empire State investors referred to their contacts in Congress when speaking to us about the proposed roll-up/IPO. Below is an email summarizing a call that David Orlic and Tom Kluck had yesterday with an investor that works for Senator Gillibrand.

(b)(5)

And last week, David joined people from AD 8 and OEL in a meeting with Richard Edelman, one of the two main activists against the Empire State deal. Apparently, Mr. Edelman was very complimentary of the work of the staff on the filing, and felt that the disclosure was greatly improved over the course of the review process. He also mentioned that he had been to his congressman to talk about the transaction, and said good things about the staff while he was there. His main concern seemed to be that, if there was no law prohibiting management from threatening to sue its shareholders, he thought there ought to be.

(b)(6)

---

**From:** Kluck, Thomas  
**Sent:** Tuesday, January 29, 2013 1:36 PM  
**To:** (b)(6)  
**Cc:** Orlic, David L.  
**Subject:** Empire State Realty Trust - investor call on 1-28-13

(b)(6)

(b)(5);(b)(6)

(b)(5);(b)(6)

Thanks,

Tom

**From:** Nallengara, Lona  
**Sent:** Friday, February 01, 2013 11:46 PM  
**To:** (b)(6)  
**Cc:** Osheroff, Mauri; Orlic, David L.  
**Subject:** Re: Empire State investors speaking to members of Congress

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

(b)(5);(b)(6)

Thanks for all your great work on this matter.

---

Lona Nallengara  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street N.E. | Washington D.C. 20549  
(b)(6) [E-nallengara@sec.gov](mailto:E-nallengara@sec.gov)

---

**From:** (b)(6)  
**Sent:** Wednesday, January 30, 2013 12:14 PM  
**To:** Nallengara, Lona  
**Cc:** Osheroff, Mauri; Orlic, David L.  
**Subject:** Empire State investors speaking to members of Congress

(b)(5);(b)(6)

---

**From:** Kluck, Thomas  
**Sent:** Tuesday, January 29, 2013 1:36 PM  
**To:** (b):(6)  
**Cc:** Orlic, David L.  
**Subject:** Empire State Realty Trust - investor call on 1-28-13

Mike,

As we discussed, late in the afternoon yesterday, David Orlic and I returned a call to an investor in ESBA named (b):(6). She had a complaint in regards to the unfairness of the buyout provision. During the call, (b):(6)

(b):(6)

We discussed with her that our review is mainly to determine compliance with the disclosure requirements under the federal securities laws and that we do not approve transactions based on the merits of the deal. She had concerns that the offering involves many elderly investors and that the 10 day period to allow investors who voted no to then change their vote to yes and not be subject to the buyout provision would not be enough time. She also thought that the buyout provision may cause investors to be afraid to vote no since they could be bought out at \$100 if for some reason they were unable to change their vote, e.g., were out of town, mailed to wrong address etc. She asked what could be done to change this and who is responsible?

She understood our limited authority under the statute and we suggested that she contact the company/supervisor with her concerns. She also stated that she may contact the Attorney General's Office in New York.

We wanted to bring this to your attention. Please let us know if you have any questions.

Thanks,

Tom

**From:** [b:(6)]  
**Sent:** Tuesday, April 23, 2013 7:49 PM  
**To:** McHale, Angela R.  
**Cc:** Kluck, Thomas  
**Subject:** RE: Empire State Realty Group - ES144026

[b:(5);(b):(6)]

Sorry.

---

**From:** McHale, Angela R.  
**Sent:** Tuesday, April 23, 2013 2:12 PM  
**To:** [b:(6);(b):(7);(C)]  
**Cc:** Kluck, Thomas  
**Subject:** FW: Empire State Realty Group - ES144026

Hi [b:(6)]

[b:(5);(b):(6)]

Further.

Thanks,

Angela

---

**From:** [b:(6)]  
**Sent:** Monday, April 22, 2013 10:47 AM  
**To:** [b:(6)]  
**Subject:** FW: Empire State Realty Group - ES144026

This being assigned to you both by Tamara.

---

**From:** [b:(6)]  
**Sent:** Monday, April 22, 2013 10:18 AM  
**To:** [b:(6)]  
**Subject:** FW: Empire State Realty Group - ES144026

Please send this to AD 8 and OMA.

---

**From:** [b:(6)]  
**Sent:** Friday, April 19, 2013 4:27 PM  
**To:** [b:(6)] Parratt, Shelley

**Cc:** CHAIRMANCORRES

**Subject:** Empire State Realty Group - ES144026

**Assigned To:** CF

The attached Chairman's Correspondence is assigned to your division/office for "*Action Required*".

Thank you in advance for your prompt response.

(b)(6);(b)(7)(C)

Office of the Chairman  
U.S. Securities & Exchange Commission  
Washington, D.C. 20549

(b)(6);(b)(7)(C)

**From:** McHale, Angela R.  
**Sent:** Tuesday, April 23, 2013 1:24 PM  
**To:** Kluck, Thomas  
**Subject:** RE: Empire State Realty Group - ES144026  
**Attachments:** ChairmanCorrespESRT.docx

Hi Tom,

Attached is the letter I prepared. Do you mind reviewing it? There is no physical address given in the complaint (it came in by email). I called [REDACTED] and emailed him this morning to try to get a physical address, but I did not reach him, and he has not returned my call. Also, the samples I looked at seem to be signed by all different people (not just the Chairman), and it looks like it was the person who was assigned the correspondence. In this case, that was Lona, which is why he is the signatory. But please let me know if that's not right. Thanks!

Angela

---

**From:** Kluck, Thomas  
**Sent:** Monday, April 22, 2013 11:53 AM  
**To:** McHale, Angela R.  
**Subject:** FW: Empire State Realty Group - ES144026

Hi Angela,

Could you please work on this? There is a section on the CF intranet that has samples. Also attached is a recent one that I did. We can discuss tomorrow. Please note the deadline on the attachment. Thanks!

Tom

---

**From:** [REDACTED]  
**Sent:** Monday, April 22, 2013 10:57 AM  
**To:** Kluck, Thomas  
**Cc:** [REDACTED]  
**Subject:** FW: Empire State Realty Group - ES144026

Can you or Angela take lead on this. Let me know if you need help finding suitable precedent to use as reference.

Thanks,

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Monday, April 22, 2013 10:47 AM



**To:** (b)(6)  
**Subject:** FW: Empire State Realty Group - ES144026

This being assigned to you both by (b)(6)

---

**From:** (b)(6)  
**Sent:** Monday, April 22, 2013 10:18 AM  
**To:** (b)(6)  
**Subject:** FW: Empire State Realty Group - ES144026

Please send this to AD 8 and OMA.

---

**From:** (b)(6)  
**Sent:** Friday, April 19, 2013 4:27 PM  
**To:** (b)(6) Parratt, Shelley  
**Cc:** CHAIRMANCORRES  
**Subject:** Empire State Realty Group - ES144026

**Assigned To:** CF

The attached Chairman's Correspondence is assigned to your division/office for "*Action Required*".

Thank you in advance for your prompt response.

(b)(6)  
Office of the Chairman  
U.S. Securities & Exchange Commission  
Washington, D.C. 20549

(b)(6)

(b)(6);(b)(7)(C)

Beneficiary of a participant in Empire State Building Associates LLC

(b)(6);(b)(7)(C)

Dear (b)(6);(b)(7)(C)

Thank you for your April 19, 2013 email in which you express several concerns regarding Empire State Realty Trust, Inc., including disclosures made in various SEC filings (i.e., letter from Peter Malkin dated 7/2/2012 and telephone script of Malkin Holdings LLC dated 4/18/2013), as well as phone calls received from the proxy solicitation firm and written correspondence from an affiliate of Malkin Holdings LLC.

Please be assured that the staff is carefully evaluating the information you provided and will consider it in light of our authority and responsibilities under the federal securities laws. As you know, any review or investigation that the staff may conduct based on this information is non-public unless the Commission takes any formal action.

Thank you again for your input. Please do not hesitate to contact (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) Division of Corporation Finance, at (b)(6);(b)(7)(C) should you have further questions or concerns with regard to filings made by Empire State Realty Trust, Inc.

Sincerely,

Lona Nallengara  
Acting Director  
Division of Corporation Finance

**From:** McHale, Angela R.  
**Sent:** Monday, April 22, 2013 11:57 AM  
**To:** Kluck, Thomas  
**Subject:** RE: Empire State Realty Group - ES144026

Yes, will do!

---

**From:** Kluck, Thomas  
**Sent:** Monday, April 22, 2013 11:53 AM  
**To:** McHale, Angela R.  
**Subject:** FW: Empire State Realty Group - ES144026

Hi Angela,

Could you please work on this? There is a section on the CF intranet that has samples. Also attached is a recent one that I did. We can discuss tomorrow. Please note the deadline on the attachment. Thanks!

Tom

---

**From:** [b:(6)]  
**Sent:** Monday, April 22, 2013 10:57 AM  
**To:** Kluck, Thomas  
**Cc:** [b:(6)]  
**Subject:** FW: Empire State Realty Group - ES144026

Can you or Angela take lead on this. Let me know if you need help finding suitable precedent to use as reference.

Thanks,

[b:(6)]

---

**From:** [b:(6)]  
**Sent:** Monday, April 22, 2013 10:47 AM  
**To:** [b:(6)]  
**Subject:** FW: Empire State Realty Group - ES144026

This being assigned to you both by [b:(6)]

---

**From:** [b:(6)]  
**Sent:** Monday, April 22, 2013 10:18 AM  
**To:** [b:(6)]  
**Subject:** FW: Empire State Realty Group - ES144026

Please send this to AD 8 and OMA.

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**From:** (b)(6)  
**Sent:** Friday, April 19, 2013 4:27 PM  
**To:** (b)(6) Parratt, Shelley  
**Cc:** CHAIRMANCORRES  
**Subject:** Empire State Realty Group - ES144026

**Assigned To:** CF

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Thank you in advance for your prompt response.

(b)(6)  
Office of the Chairman  
U.S. Securities & Exchange Commission  
Washington, D.C. 20549

(b)(6)

**From:** Kluck, Thomas  
**Sent:** Monday, April 22, 2013 11:57 AM  
**To:** Orlic, David L.  
**Cc:** McHale, Angela R.  
**Subject:** RE: Empire State Realty Group - ES144026

We'll take care of it

---

**From:** Orlic, David L.  
**Sent:** Monday, April 22, 2013 11:25 AM  
**To:** Kluck, Thomas  
**Cc:** McHale, Angela R.  
**Subject:** FW: Empire State Realty Group - ES144026

Tom, do I/we need to do anything about this? I have never had to process Chairman's correspondence, and [REDACTED] is out of the office this week. Thanks. -David

---

**From:** Booker, Velma  
**Sent:** Monday, April 22, 2013 11:11 AM  
**To:** Orlic, David L.  
**Cc:** [REDACTED]  
**Subject:** FW: Empire State Realty Group - ES144026

David,

I am sending this to you as I see that [REDACTED] is out of the office.

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Monday, April 22, 2013 10:47 AM  
**To:** [REDACTED]  
**Subject:** FW: Empire State Realty Group - ES144026

This being assigned to you both by [REDACTED].

---

**From:** [REDACTED]  
**Sent:** Monday, April 22, 2013 10:18 AM  
**To:** [REDACTED]  
**Subject:** FW: Empire State Realty Group - ES144026

Please send this to AD 8 and OMA.

---

**From:** [REDACTED]  
**Sent:** Friday, April 19, 2013 4:27 PM  
**To:** [REDACTED] Parratt, Shelley

**Cc:** CHAIRMANCORRES

**Subject:** Empire State Realty Group - ES144026

**Assigned To:** CF

The attached Chairman's Correspondence is assigned to your division/office for "*Action Required*".

Thank you in advance for your prompt response.

(b)(6)

Office of the Chairman  
U.S. Securities & Exchange Commission  
Washington, D.C. 20549

(b)(6)

**From:** Kluck, Thomas  
**Sent:** Monday, April 22, 2013 11:57 AM  
**To:** Orlic, David L.  
**Cc:** McHale, Angela R.  
**Subject:** RE: Empire State Realty Group - ES144026

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

We'll take care of it

---

**From:** Orlic, David L.  
**Sent:** Monday, April 22, 2013 11:25 AM  
**To:** Kluck, Thomas  
**Cc:** McHale, Angela R.  
**Subject:** FW: Empire State Realty Group - ES144026

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**Sent:** Monday, April 22, 2013 11:11 AM  
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**Cc:** [b:(6)]  
**Subject:** FW: Empire State Realty Group - ES144026

David,

I am sending this to you as I see that [b:(6)] is out of the office.

[b:(6)]

---

**From:** [b:(6)]  
**Sent:** Monday, April 22, 2013 10:47 AM  
**To:** [b:(6)]  
**Subject:** FW: Empire State Realty Group - ES144026

This being assigned to you both by [b:(6)].

---

**From:** [b:(6)]  
**Sent:** Monday, April 22, 2013 10:18 AM  
**To:** [b:(6)]  
**Subject:** FW: Empire State Realty Group - ES144026

Please send this to AD 8 and OMA.

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**Sent:** Friday, April 19, 2013 4:27 PM  
**To:** [REDACTED] Parratt, Shelley  
**Cc:** CHAIRMANCORRES  
**Subject:** Empire State Realty Group - ES144026

**Assigned To:** CF

The attached Chairman's Correspondence is assigned to your division/office for "*Action Required*".

Thank you in advance for your prompt response.

[REDACTED]  
Office of the Chairman  
U.S. Securities & Exchange Commission  
Washington, D.C. 20549

[REDACTED]



**From:** Orlic, David L.  
**Sent:** Wednesday, March 20, 2013 9:50 AM  
**To:** Kluck, Thomas  
**Subject:** RE: Empire State Realty Trust - FW: New dissident call

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

(b)(5)

---

**From:** Kluck, Thomas  
**Sent:** Wednesday, March 20, 2013 9:32 AM  
**To:** Orlic, David L.  
**Subject:** FW: Empire State Realty Trust - FW: New dissident call

Hey David,

(b)(5)

Let me know when you are available.

Thanks,

Tom

---

**From:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com) [<mailto:Larry.Medvinsky@CliffordChance.com>]  
**Sent:** Tuesday, March 19, 2013 6:34 PM  
**To:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com); Kluck, Thomas; Orlic, David L.; McHale, Angela R.  
**Subject:** RE: Empire State Realty Trust - FW: New dissident call

(b)(5)

---

**From:** Medvinsky, Larry (Capital Markets-NY)  
**Sent:** Tuesday, March 19, 2013 5:57 PM  
**To:** Kluck, Thomas; Orlic, David L.; ([McHaleA@SEC.GOV](mailto:McHaleA@SEC.GOV))  
**Cc:** Medvinsky, Larry (Capital Markets-NY)  
**Subject:** Empire State Realty Trust - FW: New dissident call  
**Importance:** High

Tom, David and Angela,

Attached please find a voice file forwarded to us by an ESBA participant. The caller, Arthur Jensen, the husband of an ESBA investor and the owner of interests in certain of the other entities, states he is calling on behalf of Empire State Building Investors. This is clearly wrong and a violation of Rule 14a-9.

This will be very confusing to many participants. Given that the referenced call is this Thursday, we think immediate corrective action is warranted. We would like to speak to you at your earliest convenience. Please let us know when you would be available. Best Regards.

Larry

\*\*\*\*\*  
\*\*\*\*

Peter and Tony,

Please find attached a new message from the dissidents regarding Thursday's call. I note that

(b)(6) identifies himself as calling on behalf of Empire State Building Associates. Caller ID (b)(6)

Regards,

(b)(6)

[CC]Office2[/CC]

\*\*\*\*\*

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To contact any other office

[http://www.cliffordchance.com/about\\_us/find\\_people\\_and\\_offices.html](http://www.cliffordchance.com/about_us/find_people_and_offices.html)

**From:** Larry.Medvinsky@CliffordChance.com  
**Sent:** Tuesday, March 19, 2013 6:34 PM  
**To:** Larry.Medvinsky@CliffordChance.com; Kluck, Thomas; Orlic, David L.;  
McHale, Angela R.  
**Subject:** RE: Empire State Realty Trust - FW: New dissident call

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

(b)(6)

---

**From:** Medvinsky, Larry (Capital Markets-NY)  
**Sent:** Tuesday, March 19, 2013 5:57 PM  
**To:** Kluck, Thomas; Orlic, David L.; (McHaleA@SEC.GOV)  
**Cc:** Medvinsky, Larry (Capital Markets-NY)  
**Subject:** Empire State Realty Trust - FW: New dissident call  
**Importance:** High

Tom, David and Angela,

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Larry

\*\*\*\*\*  
\*\*\*\*

Peter and Tony,

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Regards,

(b)(6)

[CC]Office2[/CC]

\*\*\*\*\*

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Fax: +1 212 878 8375

To contact any other office

[http://www.cliffordchance.com/about\\_us/find\\_people\\_and\\_offices.html](http://www.cliffordchance.com/about_us/find_people_and_offices.html)

**From:** Kluck, Thomas  
**Sent:** Wednesday, March 20, 2013 10:09 AM  
**To:** Orlic, David L.  
**Subject:** RE: Empire State Realty Trust - FW: New dissident call

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

I'll stop by.

---

**From:** Orlic, David L.  
**Sent:** Wednesday, March 20, 2013 9:50 AM  
**To:** Kluck, Thomas  
**Subject:** RE: Empire State Realty Trust - FW: New dissident call

[b]:(5);[b]:(6)

---

**From:** Kluck, Thomas  
**Sent:** Wednesday, March 20, 2013 9:32 AM  
**To:** Orlic, David L.  
**Subject:** FW: Empire State Realty Trust - FW: New dissident call

Hey David,

[b]:(5);[b]:(6)

Let me know when you are available.

Thanks,

[b]:(6)

---

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**Sent:** Tuesday, March 19, 2013 6:34 PM  
**To:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com); [b]:(6)  
**Subject:** RE: Empire State Realty Trust - FW: New dissident call

[b]:(5)

---

**From:** Medvinsky, Larry (Capital Markets-NY)  
**Sent:** Tuesday, March 19, 2013 5:57 PM  
**To:** Kluck, Thomas; Orlic, David L.; ([McHaleA@SEC.GOV](mailto:McHaleA@SEC.GOV))  
**Cc:** Medvinsky, Larry (Capital Markets-NY)

**Subject:** Empire State Realty Trust - FW: New dissident call  
**Importance:** High

Tom, David and Angela,

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Larry

\*\*\*\*\*  
\*\*\*\*

Peter and Tony,

Please find attached a new message from the dissidents regarding Thursday's call. I note that [REDACTED] identifies himself as calling on behalf of Empire State Building Associates. Caller ID [REDACTED]

Regards,

[REDACTED]

[CC]Office2[/CC]

\*\*\*\*\*

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**From:** Orlic, David L.  
**Sent:** Friday, March 01, 2013 3:27 PM  
**To:** Kluck, Thomas  
**Subject:** RE: Empire State Realty Trust, Inc.

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Tom, can we talk next week? I have to get a letter out on another matter. Thanks. -David

---

**From:** Kluck, Thomas  
**Sent:** Friday, March 01, 2013 3:20 PM  
**To:** Orlic, David L.  
**Subject:** FW: Empire State Realty Trust, Inc.

Hey David,

Do you have a minute to discuss?

Thanks,

Tom

---

**From:** Remy Stocks [<mailto:rjs@msf-law.com>]  
**Sent:** Friday, March 01, 2013 3:08 PM  
**To:** Kluck, Thomas; McHale, Angela R.; Orlic, David L.  
**Cc:** Stephen B. Meister; [tf@msf-law.com](mailto:tf@msf-law.com)  
**Subject:** Empire State Realty Trust, Inc.

At the request of Stephen Meister, please see the attached correspondence.

Remy Stocks, Esq.  
Meister Seelig & Fein LLP  
2 Grand Central Tower  
140 East 45th Street, 19th Floor  
New York, NY 10017  
Phone: 212-655-3511  
Fax: 646-539-3611

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**From:** McHale, Angela R.  
**Sent:** Monday, May 20, 2013 7:40 AM  
**To:** Orlic, David L.  
**Cc:** Kluck, Thomas  
**Subject:** RE: Empire State Realty Trust, Inc. - Consent solicitations

(b)(5);(b)(6)

---

**From:** McHale, Angela R.  
**Sent:** Monday, May 20, 2013 7:14 AM  
**To:** Orlic, David L.  
**Cc:** Kluck, Thomas  
**Subject:** FW: Empire State Realty Trust, Inc. - Consent solicitations

fyi

---

**From:** (b)(6)  
**Sent:** Monday, May 20, 2013 7:13 AM  
**To:** Kluck, Thomas; McHale, Angela R.  
**Subject:** Empire State Realty Trust, Inc. - Consent solicitations

Dear Mr. Kluck and Ms. McHale,

At this most crucial stage in the solicitation process, investors in Empire State Building Associates who have withheld consent, such as myself, are extremely disadvantaged by the prejudice of selective disclosures and by the consent forms that fail to distinguish the participant group or groups in which each investor holds interests.

It behooves the Commission urgently to intercede directly to

1. **provide adequate information** to all investors and particularly to those who have not consented (by requiring Malkin Holdings immediately to supplement its May 17th letter);
2. **invalidate** all consents received after May 17th that are submitted on the existing consent forms; and
3. **require a revision of the consent forms** so as to address the consequence of a buyout notice or the anticipation of a buyout notice

At this point, investors who react to the Malkin Holdings' letter dated May 17th, who hold their interests in the participant group in which the super-majority has been received as well as in one or both of the other

groups - which is a **very prevalent condition** - in anticipation of a buyout notice may choose now to submit a consent on the form in their possession. In doing so they will, unwittingly and unintentionally, tip the balance in the other two groups. This is an act that cannot be avoided because of the design of the "ballot"..

Let me explain.

#### **The prejudice of selective disclosures:**

On the three occasions that MH has disseminated information regarding votes - most recently on May 17th - it has skewed the information by reporting, selectively, the numbers it chooses that give the exaggerated impression that it favors, while failing to report the numbers that are most significant to the outcome of the solicitation and to the investors who have withheld consent.

In its letter dated May 17th, the figure highlighted is "approximately 79.6%". In fact, this number essentially is meaningless, misrepresents the picture, and suggests that MH requires only .4% to achieve its goal. The letter fails to state the actual percentages in each of the three participant groups, choosing only to report that approximately 80.4% has been reached in one of those groups. It is only by making a calculation that one can arrive at approximate numbers for the other two groups. It appears that 79.8% may have been reached in one and 78.6% in the other. For the present purposes, the most significant figure is **78.6%**, because only if that number and the percentage in the other group both reach 80% can the solicitation be declared effective.

I hold interests in participant groups 1 and 3:

EMA 001	(b)(6)
EMA 003	
EMA 001	

The above is reproduced from the ESBA investor list provided by MH. I have attached a copy of the entire investor list for your information. You will note that it is most common for individual investors (and family members residing at the same address) to hold interests in more than one participant group; in some cases in all three participant groups.

#### **The impropriety of the consent form:**

At the inception of the solicitation each investor was provided by MH with a "Document Return Guide" dated January 21, 2013 and only a single consent form (green) for the totality of his/her interests in ESBA. (Other color consent forms were provided for investments in the other two registered entities.) And MH continues to send the same form with its letters urging consent. Thus, an investor cannot elect to vote his/her interests in participating group 1, or group 3, but must use that one form which automatically will vote all ESBA interests in that investor's account.

Consequently, all or even a few of the 19.6% of the non-consenting investors in the super-majority group now receiving MH's May 17th letter may tender consent in anticipation of a buyout notice. In doing so they will be using the existing form. Those with interests in one or both of the other groups will be casting a vote against their desire that increases the percentage in those other groups, almost assuredly tipping the vote count into the super-majority category.

#### **That is a forced vote occasioned by use of an inappropriate form that expands the operation of the buyout provision beyond any scope that can be deemed legitimate.**

Accordingly, the Commission must now invalidate all votes received until all non-consenting investors are provided revised forms tailored to secure the consent only of such portion of an investor's interest that is in a group that has crossed the 80% threshold and such other group as the investor expressly elects.

The Commission should be aware that investors are completely in the dark as to the continued duration of the solicitation period, the circumstance when buyout notices will be given, and the issues described above. I would appreciate your advice as to the foregoing.

Very truly yours,

(b)(6)

w/attachment  
May 20, 2013

**From:** McHale, Angela R.  
**Sent:** Monday, May 20, 2013 7:40 AM  
**To:** Orlic, David L.  
**Cc:** Kluck, Thomas  
**Subject:** RE: Empire State Realty Trust, Inc. - Consent solicitations

**Follow Up Flag:** Follow up  
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(b)(6)

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**Sent:** Monday, May 20, 2013 7:14 AM  
**To:** Orlic, David L.  
**Cc:** Kluck, Thomas  
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Very truly yours,

(b)(6)

w/attachment  
May 20, 2013



**From:** Orlic, David L.  
**Sent:** Monday, May 06, 2013 2:47 PM  
**To:** McHale, Angela R.; Kluck, Thomas  
**Subject:** RE: Empire State Realty Trust, Inc.

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

(b)(5)

-David

---

**From:** McHale, Angela R.  
**Sent:** Monday, May 06, 2013 2:19 PM  
**To:** Kluck, Thomas; Orlic, David L.  
**Subject:** RE: Empire State Realty Trust, Inc.

(b)(5)

---

**From:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com) [mailto:[Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com)]  
**Sent:** Monday, May 06, 2013 1:59 PM  
**To:** Kluck, Thomas; Orlic, David L.; McHale, Angela R.  
**Cc:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com)  
**Subject:** Empire State Realty Trust, Inc.

David, Tom and Angela,

As discussed with David last week, attached please find a draft of a supplement we would anticipate mailing to participants this week for your review. Please let us know if you have any comments or questions on the attached. Best Regards.

Larry

\*\*\*\*\*

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**From:** McHale, Angela R.  
**Sent:** Monday, May 06, 2013 2:19 PM  
**To:** Kluck, Thomas; Orlic, David L.  
**Subject:** RE: Empire State Realty Trust, Inc.

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

[REDACTED]

---

**From:** [REDACTED]@CliffordChance.com [mailto:Larry.Medvinsky@CliffordChance.com]  
**Sent:** Monday, May 06, 2013 1:59 PM  
**To:** Kluck, Thomas; Orlic, David L.; McHale, Angela R.  
**Cc:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com)  
**Subject:** Empire State Realty Trust, Inc.

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<<supplement.doc>>

[CC]80-40476364[/CC]

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**From:** Orlic, David L.  
**Sent:** Tuesday, January 15, 2013 5:03 PM  
**To:** [b:(6)]  
**Subject:** RE: Empire State Realty Trust, Inc.

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

[b:(6)]

---

**From:** [b:(6)]  
**Sent:** Tuesday, January 15, 2013 5:02 PM  
**To:** Orlic, David L.  
**Subject:** RE: Empire State Realty Trust, Inc.

An interesting way to appeal to the investors. Can't say I've seen that tactic before.

---

**From:** Orlic, David L.  
**Sent:** Monday, January 14, 2013 3:11 PM  
**To:** [b:(6)]  
**Subject:** FW: Empire State Realty Trust, Inc.

Purely fyi. -David

---

**From:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com) [<mailto:Larry.Medvinsky@CliffordChance.com>]  
**Sent:** Monday, January 14, 2013 1:49 PM  
**To:** Kluck, Thomas; Orlic, David L.  
**Cc:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com)  
**Subject:** Empire State Realty Trust, Inc.

Tom and David,

Attached for your review, please find a letter to investors. Best Regards.

Larry

<<esba wall.doc>>

[CC]80-40476364[/CC]

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**From:** [b:(6)]  
**Sent:** Tuesday, January 15, 2013 5:02 PM  
**To:** Orlic, David L.  
**Subject:** RE: Empire State Realty Trust, Inc.

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**Sent:** Monday, January 14, 2013 3:11 PM  
**To:** [b:(6)]  
**Subject:** FW: Empire State Realty Trust, Inc.

Purely fyi. -David

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**From:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com) [<mailto:Larry.Medvinsky@CliffordChance.com>]  
**Sent:** Monday, January 14, 2013 1:49 PM  
**To:** Kluck, Thomas; Orlic, David L.  
**Cc:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com)  
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Attached for your review, please find a letter to investors. Best Regards.

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[CC]80-40476364[/CC]

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**From:** Kluck, Thomas  
**Sent:** Thursday, January 03, 2013 3:52 PM  
**To:** McHale, Angela R.  
**Cc:** Orlic, David L.  
**Subject:** RE: Empire State Realty Trust, Inc.

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

(b)(5);(b)(6)

---

**From:** McHale, Angela R.  
**Sent:** Thursday, January 03, 2013 3:35 PM  
**To:** Orlic, David L.; Kluck, Thomas  
**Subject:** RE: Empire State Realty Trust, Inc.

(b)(5)

**From:** Orlic, David L.  
**Sent:** Wednesday, January 02, 2013 12:18 PM  
**To:** Kluck, Thomas; McHale, Angela R.  
**Subject:** RE: Empire State Realty Trust, Inc.

(b)(5)

---

**From:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com) [mailto:Larry.Medvinsky@CliffordChance.com]  
**Sent:** Wednesday, January 02, 2013 10:28 AM  
**To:** Kluck, Thomas; Orlic, David L.  
**Cc:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com)  
**Subject:** Empire State Realty Trust, Inc.

Tom and David,

Happy New Year. I hope both of you had some time off. Attached please find a letter from Malkin Holdings to its investors for your review. They are quite anxious to send this out as soon as possible. Please let us know if you have any comments. Also attached is an email correspondence from [b:(6)] to Richard [b:(6)] Edelman. We think it is supportive of our view that they are working in concert with respect to the solicitation. Best Regards.

Larry

<<empire ltr..pdf>> <<empire.pdf>>

[CC]80-40476364[/CC]

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**From:** McHale, Angela R.  
**Sent:** Thursday, January 03, 2013 3:35 PM  
**To:** Orlic, David L.; Kluck, Thomas  
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(b)(5)

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**Sent:** Wednesday, January 02, 2013 12:18 PM  
**To:** (b)(6)  
**Subject:** RE: Empire State Realty Trust, Inc.

(b)(5);(b)(6)

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**From:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com) [mailto:[Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com)]  
**Sent:** Wednesday, January 02, 2013 10:28 AM  
**To:** Kluck, Thomas; Orlic, David L.  
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<<empire ltr..pdf>> <<empire.pdf>>

[CC]80-40476364[/CC]

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**Subject:** RE: Empire State Realty Trust, Inc.

**Follow Up Flag:** Follow up  
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(b)(5);(b)(6)

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**From:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com) [<mailto:Larry.Medvinsky@CliffordChance.com>]  
**Sent:** Wednesday, January 02, 2013 10:28 AM  
**To:** Kluck, Thomas; Orlic, David L.  
**Cc:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com)  
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Larry

<<empire ltr..pdf>> <<empire.pdf>>

[CC]80-40476364[/CC]

\*\*\*\*\*

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message or attachment  
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Fax: +1 212 878 8375

To contact any other office  
[http://www.cliffordchance.com/about\\_us/find\\_people\\_and\\_offices.html](http://www.cliffordchance.com/about_us/find_people_and_offices.html)

**From:** Orlic, David L.  
**Sent:** Wednesday, April 10, 2013 12:02 PM  
**To:** Kluck, Thomas  
**Cc:** McHale, Angela R.  
**Subject:** RE: Empire State Realty Trust, Inc "Is Not a..Consolidation"

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

(b)(5);(b)(6)

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**From:** Kluck, Thomas  
**Sent:** Wednesday, April 10, 2013 11:46 AM  
**To:** Orlic, David L.; McHale, Angela R.  
**Subject:** FW: Empire State Realty Trust, Inc "Is Not a..Consolidation"

Let's discuss when you have a minute. Thanks

---

**From:** richard edelman [<mailto:richardedelman@hotmail.com>]  
**Sent:** Wednesday, April 10, 2013 11:36 AM  
**To:** Kluck, Thomas; (b)(6)  
**Subject:** Empire State Realty Trust, Inc "Is Not a..Consolidation"

Empire State Realty Trust, Inc.  
CIK#: 0001541401

April 10, 2013

**BY E-MAIL**

Tom Kluck  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street N.E.  
Washington, DC 20549

cc: (b)(6)

(b)(6)



Re: Is this a "Consolidation"?

Dear Mr. Kluck,

On April 8, 2013 Malkin Holdings LLC filed an answer to a lawsuit in the Supreme Court of the State of New York.

*"B. The Transaction Is Not a Statutory Merger or Consolidation" page 14"*

<https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentId=2nPMP4BxlojpoY0p4kfoiQ==&system=prod>

On December 21, 2012 Empire State Realty Trust, Inc. filed their S-4 with the SEC.

**"Consolidation"** appears **over 2,000 times**.

So if Malkin Holdings has now decided the transaction is not a "Consolidation" then shouldn't the S-4 be amended to reflect that?

Does the SEC have any responsibility to point this conflict out to the NY Court?

Is the argument that the word "Consolidation" has different meanings in New York courtrooms versus Washington D.C. SEC filings?

Thank you for your time and consideration.

Richie Edelman

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Washington, DC 20549

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**From:** McHale, Angela R.  
**Sent:** Monday, May 06, 2013 2:54 PM  
**To:** Orlic, David L.; Kluck, Thomas  
**Subject:** RE: Empire State Realty Trust, Inc.

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

(b)(5)

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**From:** Orlic, David L.  
**Sent:** Monday, May 06, 2013 2:47 PM  
**To:** McHale, Angela R.; Kluck, Thomas  
**Subject:** RE: Empire State Realty Trust, Inc.

(b)(5)

-David

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**From:** McHale, Angela R.  
**Sent:** Monday, May 06, 2013 2:19 PM  
**To:** Kluck, Thomas; Orlic, David L.  
**Subject:** RE: Empire State Realty Trust, Inc.

(b)(5)

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**From:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com) [mailto:[Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com)]  
**Sent:** Monday, May 06, 2013 1:59 PM  
**To:** Kluck, Thomas; Orlic, David L.; McHale, Angela R.  
**Cc:** [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com)  
**Subject:** Empire State Realty Trust, Inc.

David, Tom and Angela,

As discussed with David last week, attached please find a draft of a supplement we would anticipate mailing to participants this week for your review. Please let us know if you have any comments or questions on the attached. Best Regards.

Larry

\*\*\*\*\*

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[http://www.cliffordchance.com/about\\_us/find\\_people\\_and\\_offices.html](http://www.cliffordchance.com/about_us/find_people_and_offices.html)

**From:** McHale, Angela R.  
**Sent:** Monday, February 11, 2013 9:52 AM  
**To:** Kluck, Thomas  
**Cc:** Orlic, David L.  
**Subject:** RE: Empire State Realty Trust, Inc Solicitation new "buy-out" disclosure

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

(b)(5)

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**From:** Kluck, Thomas  
**Sent:** Monday, February 11, 2013 9:17 AM  
**To:** McHale, Angela R.; Orlic, David L.  
**Subject:** RE: Empire State Realty Trust, Inc Solicitation new "buy-out" disclosure

(b)(5)

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**From:** McHale, Angela R.  
**Sent:** Monday, February 11, 2013 8:21 AM  
**To:** Orlic, David L.; Kluck, Thomas  
**Subject:** RE: Empire State Realty Trust, Inc Solicitation new "buy-out" disclosure

(b)(5)



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**Sent:** Monday, February 11, 2013 8:16 AM  
**To:** Kluck, Thomas  
**Cc:** McHale, Angela R.  
**Subject:** RE: Empire State Realty Trust, Inc Solicitation new "buy-out" disclosure

(b)(5)

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**From:** Kluck, Thomas  
**Sent:** Sunday, February 10, 2013 4:16 PM  
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**Cc:** McHale, Angela R.  
**Subject:** RE: Empire State Realty Trust, Inc Solicitation new "buy-out" disclosure

(b)(5)

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**From:** Kluck, Thomas  
**Sent:** Sunday, February 10, 2013 3:36 PM  
**To:** Orlic, David L.  
**Cc:** (b)(5) McHale, Angela R.  
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(b)(5)

Tom

---

**From:** richard edelman [mailto:richardedelman@hotmail.com]  
**Sent:** Saturday, February 09, 2013 11:34 AM  
**To:** Kluck, Thomas; [b:(6)]  
**Subject:** Empire State Realty Trust, Inc Solicitation new "buy-out" disclosure

February 9, 2012

**BY E-MAIL**

Tom Kluck  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street N.E.  
Washington, DC 20549

cc: [b:(6)]

Re: 2/8/13 Court disclosure by Malkin Holdings "...(*no investor-none was subject to the buyout in votes at the Private entities*)"

Dear Mr. Kluck and [b:(6)]

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**From:** McHale, Angela R.  
**Sent:** Monday, February 11, 2013 8:21 AM  
**To:** Orlic, David L.; Kluck, Thomas  
**Subject:** RE: Empire State Realty Trust, Inc Solicitation new "buy-out" disclosure

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(b)(5)

Tom

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U.S. Securities and Exchange Commission  
100 F Street N.E.  
Washington, DC 20549

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<https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentid=qKIJzXlr7uNL2O2rz2e4WQ==&system=prod>

page 3

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I can guarantee you ESBA investors are going to come forward now, publicly, who will say if they knew this they would have voted differently.

I'm thrilled the SEC has been so responsive to prior requests. Please be the institution that brings this information to light. Reporters shouldn't be. And investors, at times, need to look to the SEC for leadership. This is one of those times.

I apologize if I never forwarded to the SEC the right question to solicit this disclosure. I, we, screwed up big time, if when the comment letters come out the question of whether there were any buyout's in the past was never asked.

Thank you for your attention to this.

Richie Edelman



**From:** Kluck, Thomas  
**Sent:** Sunday, February 10, 2013 4:16 PM  
**To:** Orlic, David L.  
**Cc:** McHale, Angela R.  
**Subject:** RE: Empire State Realty Trust, Inc Solicitation new "buy-out" disclosure

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

(b)(5)

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**From:** Kluck, Thomas  
**Sent:** Sunday, February 10, 2013 3:36 PM  
**To:** Orlic, David L.  
**Cc:** (b)(6) McHale, Angela R.  
**Subject:** FW: Empire State Realty Trust, Inc Solicitation new "buy-out" disclosure

Fyi -- please see below.

I found the following relevant disclosures in the Form S-4:

- While the supervisor believes that it would be more beneficial to participants if all of the subject LLCs participate in the consolidation, the supervisor believes that, through a combination of the properties of the private entities, for which necessary approvals have been obtained, and the property interests of Empire State Building Associates L.L.C. (page 70)
- The supervisor commenced solicitation of consents of the participants in the private entities in November 2011. The solicitation was completed in January 2012, and contribution of the assets of each of the private entities to the company pursuant to the consolidation was approved by the required consent, if any, of participants in each of the private entities. (page 166)

(b)(5)

Tom

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**From:** richard edelman [mailto:richardedelman@hotmail.com]  
**Sent:** Saturday, February 09, 2013 11:34 AM  
**To:** Kluck, Thomas; (b)(6)  
**Subject:** Empire State Realty Trust, Inc Solicitation new "buy-out" disclosure

February 9, 2012

**BY E-MAIL**

Tom Kluck  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street N.E.  
Washington, DC 20549

cc: [REDACTED]

Re: 2/8/13 Court disclosure by Malkin Holdings "*...(no investor-none was subject to the buyout in votes at the Private entities)*"

Dear Mr. Kluck and [REDACTED]

Participant Investors in ESBA are being told in nearly every phone call by Malkin Holdings and their solicitation firm MacKenzie Partners that if they vote No there is substantial risk of having their investment suffering a "buy-out" for a \$100.

This message has been repeated in numerous written communications to ESBA investors.

The SEC and reporters for the NY Times, Bloomberg, Reuters, WSJ, Times of London and newsletter REITzone have spoken to ESBA investors who are repeating stories of calls by Malkin Holdings representatives where this "buy-out" is being framed as a huge risk if an investor votes No.

Many ESBA investors have been told a Yes vote is the only "safe" way to ensure no risk of the "buy-out".

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Thank you for your attention to this.

Richie Edelman

**From:** Kluck, Thomas  
**Sent:** Monday, February 11, 2013 10:06 AM  
**To:** McHale, Angela R.  
**Cc:** Orlic, David L.  
**Subject:** RE: Empire State Realty Trust, Inc Solicitation new "buy-out" disclosure

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Thanks, Angela. Exactly my thoughts on it.

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**From:** McHale, Angela R.  
**Sent:** Monday, February 11, 2013 9:52 AM  
**To:** Kluck, Thomas  
**Cc:** Orlic, David L.  
**Subject:** RE: Empire State Realty Trust, Inc Solicitation new "buy-out" disclosure

(b)(5)



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**From:** Kluck, Thomas  
**Sent:** Monday, February 11, 2013 9:17 AM  
**To:** McHale, Angela R.; Orlic, David L.  
**Subject:** RE: Empire State Realty Trust, Inc Solicitation new "buy-out" disclosure

(b)(5)



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**From:** McHale, Angela R.  
**Sent:** Monday, February 11, 2013 8:21 AM  
**To:** Orlic, David L.; Kluck, Thomas  
**Subject:** RE: Empire State Realty Trust, Inc Solicitation new "buy-out" disclosure

(b)(5)

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**From:** Orlic, David L.  
**Sent:** Monday, February 11, 2013 8:16 AM  
**To:** Kluck, Thomas  
**Cc:** McHale, Angela R.  
**Subject:** RE: Empire State Realty Trust, Inc Solicitation new "buy-out" disclosure

(b)(5)

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**Cc:** McHale, Angela R.  
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**Cc:** (b)(5); McHale, Angela R.  
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Tom

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U.S. Securities and Exchange Commission  
100 F Street N.E.  
Washington, DC 20549

cc: (b)(6)  
Office of Enforcement Liaison

Re: 2/8/13 Court disclosure by Malkin Holdings "...(*no investor-none-was subject to the buyout in votes at the Private entities*)"

Dear Mr. Kluck and (b)(6)

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the comment letters come out the question of whether there were any buyout's in the past was never asked.

Thank you for your attention to this.

Richie Edelman



**From:** [b](6)  
**Sent:** Wednesday, April 17, 2013 5:52 PM  
**To:** Kluck, Thomas  
**Cc:** Orlic, David L.; McHale, Angela R.  
**Subject:** RE: Empire State Realty Trust - investor complaint

[b](6)

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**From:** Kluck, Thomas  
**Sent:** Wednesday, April 17, 2013 5:50 PM  
**To:** [b](6)  
**Cc:** Orlic, David L.; McHale, Angela R.  
**Subject:** Empire State Realty Trust - investor complaint

Hi [b](6)

On April 16, 2013, David Orlic, Angela McHale and I had a telephone conversation with [b](6) and [b](6). During the conversation, they told us that when discussing the terms of the proposed transaction with McKenzie Partners (solicitor) on or about February 4 or 5, 2013, an employee at McKenzie named Tim Fallon told them the following: If a participant votes "no" on both proposals and a supermajority is received with respect to only one of the proposals, the participant would have to change his or her vote at that time to "yes" for both proposals in order to avoid the buyout. This is even if the other proposal never receives a supermajority. Following this conversation, on February 5, 2013, [b](6) [b](6) called Peter Malkin and asked him if the statement by the solicitor was true. Mr. Malkin informed them that it was his belief that this was not true and that the disclosure states that an investor would only have change his or her vote for the one proposal that received a supermajority in order to avoid the buyout.

We called Larry Medvinsky yesterday and he confirmed that such an investor would only need to change the one vote. We asked Larry whether he was aware of any of these incorrect representations being made by the solicitor. He said that he was not aware of any but would look into it. We spoke with Larry again today and he said that he and the company were not aware of these statements being made and assured us that they take precautions to avoid such statements. We did not mention to him the phone call that the investors had with Peter Malkin.

We have not received any other complaints in regards to this representation by the solicitor, but we wanted to bring it to your attention. Please let us know if you have any questions.

Thanks,

Tom

[b](6)



**From:** McHale, Angela R.  
**Sent:** Thursday, May 16, 2013 9:15 AM  
**To:** Orlic, David L.  
**Subject:** RE: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Thanks so much for this. I am going to catch up on emails, etc. from yesterday, and then is it okay if I swing by to discuss this and other Empire matters? Tom told me that he will be unavailable all morning (has a meeting w/ T&M he needs to prep for), so he asked me to handle any outstanding Empire matters with you.

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**From:** Orlic, David L.  
**Sent:** Wednesday, May 15, 2013 6:19 PM  
**To:** McHale, Angela R.  
**Cc:** Kluck, Thomas  
**Subject:** RE: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

(b)(5)

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**From:** McHale, Angela R.  
**Sent:** Wednesday, May 15, 2013 5:39 PM  
**To:** Orlic, David L.; Kluck, Thomas  
**Subject:** FW: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

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**From:** (b)(6) **On Behalf Of** (b)(6)  
**Sent:** Wednesday, May 15, 2013 4:15 PM  
**To:** McHale, Angela R.  
**Subject:** Fwd: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

Angela,

Please excuse the flurry of emails from me but things are going to move very quickly once Malkin declares the 10 period is running and I have absolutely no idea how my stepmother is going to vote with the information we have now. John states...

Koppel recognizes that, under New York law, "a party will not be held liable for self-dealing where he secures the 'informed consent' of those to whom he owes a duty of utmost good faith." Koppel v. 4987 Corp., Fed. Sec. L. Rep. P 91,306 at 6. The vote in favor "has the effect of 'exonerating' the defendants." Id. Koppel found that Malkin, under facts similar to those presented here, had obtained 'informed consent' from those who voted in favor of his proposal in order to avoid a buyout provision.

It seem to if there is even the slightest ambiguity about whether or deciding to reverse would result in anything less than the full rights we opted to preserve by opting out of the settlement my stepmother has a right to have that clarified.

It also seems to me that the language of the S-4 and Malkin's assertions which he successfully argued and won go way beyond there being "the slightest ambiguity." What is in the S-4 leads me to believe there is not good reason to believe but a not unreasonable presumption that reversing one loses those rights. At a minimum they are endangered.

So what the settlement giveth the S-4 taketh away. However not wanting to reveal that this is the true state of affairs, Malkin simply refuses to be pinned down. Don't let him get away with this. Investors have a right know the full consequences of their vote.

The settlement says by opting out we preserved certain rights. I only ask that Malkin go on record as to whether this is in fact the case. The settlement and the public filing ought not to conflict, apparently conflict, or even be vague enough on such a key point as whether you have to give up your entire investment or not in order to retain the right to sue. If there is one thing in this entire deal that ought to be clear at this point, this is it.

I'm only asking that Malkin tell us what the deal is. Do we have to reverse or not to retain our rights?

I'm not stupid. I've spend a year and half on this and I can't tell from the documents. How can the SEC expect anyone to? How can they expect anyone to make a decision without knowing?

Steve

Begin forwarded message:

**From:** [REDACTED]  
**Subject: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out**  
**Date:** May 15, 2013 12:53:15 PM PDT

To: <mchalea@sec.gov>, <kluckt@sec.gov>

Cc:

(b)(6)

#### MEMORANDUM

SUBJECT: Empire State Realty Trust Solicitation: The Opt-Out Provision of the Class Action Settlement

In our view, the Class Action Settlement failed to provide an effective opt-out because the price of opting out is not limited to foregoing a share of the Settlement funds, but also requires giving up the right to convert a no vote to a yes vote when the Buyout notice is received. Nowhere in the Settlement or in the S-4 is this price of opting out disclosed. Thus, investors had no way to validly exercise the right to opt out of the Settlement.

The S-4 describes the Class Action Settlement in detail. Pages 47 to 48 of the S-4 describe the class action, state that a stipulation and settlement was filed on September 28, 2012, and provide an overview of the Settlement. Each investor's share of settlement proceeds is identified on page 59. A much more detailed description of the class action litigation and Settlement appears on pages 453-454. The claims in the complaints are there stated to include breaches of fiduciary duty, unjust enrichment, and failure to make adequate disclosures in the S-4 prospectus. On page 454, the Settlement is characterized as stating that concerns raised in the complaints have been satisfied by adequate access to relevant information, amendments to the S-4, and modifications to the transaction. It also states: "Members of the putative class have the right to opt out of the monetary portion of the settlement, but not the portion providing for equitable relief." There is no statement that an opting out class member would lose his right to sue if he would later be forced to vote in favor of the REIT proposal in order to avoid the Buyout.

At the same time, the S-4 makes it clear that a vote to approve the transaction constitutes a waiver of all equitable claims against the Malkins for the conflicts of interest, indemnifications, and self-dealing revealed in the S-4. This actually comes in several parts. First, the S-4 reveals in explicit detail numerous instances of conflict of interest and self-dealing. See, e.g., S-4 at 55-58, 279-284. Second, Malkin strongly recommends approval of the proposed transaction, and claims that he recommends this, notwithstanding the conflicts of interest, because of the transaction's overall fairness to the investors. S-4 at 75-82. This is repeated at pages 190-196, and includes the statement: "While the supervisor has conflicts of interest which are described under 'Conflicts of Interest' (pp. 279-284), the supervisor does not believe that these conflicts of interests affect its fairness determination." S-4 at 192.

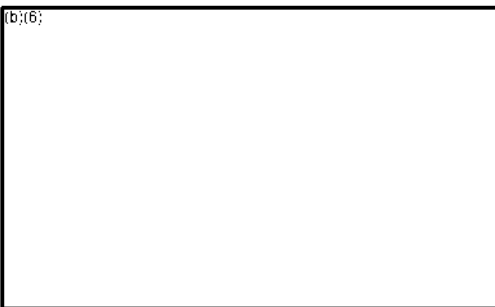
Third, the S-4 contains an acknowledgement that: "The agent of each participating group is a fiduciary for the participants in its participating group and owes such participant a duty of loyalty and a duty of due care. In connection with these duties, the agent is required to exercise good faith and fair dealing in conducting the affairs of the subject LLC on behalf of its participating group." S-4 at 518. Notwithstanding this acknowledgement, the S-4 provides an indemnification and a disclaimer. "The company's duties, as the general partner, to the operating partnership and its partners, therefore, may come into conflict with the duties of the company's directors and officers to the company and its stockholders. The company will be under no obligation to give priority to the separate interests of the limited partners of the operating partnership or the company's stockholders in deciding whether to cause the operating partnership to take or decline to take any actions. The limited partners of the operating partnership have agreed that in the event of a conflict of the duties owed by the company's directors and officers to the company and the its [sic] stockholders and the fiduciary duties owed by the company, in its capacity as general partner of the operating partnership, to such limited partners, **the company will fulfill its**

**fiduciary duties to such limited partners by acting in the best interests of the company's stockholders. The limited partners of the operating partnership expressly acknowledged that the company is acting for the benefit of the operating partnership, the limited partners and the company's stockholders collectively." S-4 at 518.**

Finally, this acknowledgement concludes with a disclaimer: "Insofar as the foregoing provisions permit indemnification for liability arising under the Securities Act, the company has been informed that, in the opinion of the SEC, this indemnification is against public policy as expressed in the Securities Act and therefore unenforceable." S-4 at 518. It is clear, though, that this is the view of the SEC and not of the Malkins. So, if one votes in favor of the REIT, one does so on the basis all of these disclosures and approves the indemnification on page 518. Thereafter, Malkin will certainly argue that, as in Koppel, a vote to approve the REIT, even if made to avoid the Buyout, exonerates Malkin for all conflicts of interest disclosed in the S-4.

Koppel recognizes that, under New York law, "a party will not be held liable for self-dealing where he secures the 'informed consent' of those to whom he owes a duty of utmost good faith." Koppel v. 4987 Corp., Fed. Sec. L. Rep. P 91,306 at 6. The vote in favor "has the effect of 'exonerating' the defendants." Id. Koppel found that Malkin, under facts similar to those presented here, had obtained 'informed consent' from those who voted in favor of his proposal in order to avoid a buyout provision. Of course, Koppel distinguished Delano v. Kitch, 542 F.2d 550 (10<sup>th</sup> Cir. 1976), on the issue of informed consent, and so the question here is whether the instant facts are closer to Delano than to Koppel. In Delano, shareholders had only 10 days to decide to agree to a proposed sale or reject it, and the court found that the tight time constraint coerced the shareholders into voting to approve. Here the investors also have only 10 days to agree to change a no vote to an approval. However, the investors here have also had since January 25 to consider the proposal, as outlined in the S-4.

However, this digresses from the issue of how the Settlement was unfair because it provided no effective opt-out. The Settlement is unfair because neither it nor the S-4 informs the class members that, if they opt-out, they will also need to take a second action to preserve the right to sue that they seek to preserve by opting out, i.e., forfeiture of their shares for a token \$100 when presented with the Buyout. This arises when a supermajority in an investor's group is reached, and the investor is then presented with a notice to change his no vote to yes or suffer to forced purchase of his unit for a mere \$100. As illustrated above, the S-4 indicates that a vote in favor of the REIT constitutes a waiver of the right to sue, but fails to disclose that, by converting a no vote to yes, an opting out class member will lose the right to sue that he sought to preserve by opting out.



This message and any attachments are confidential and are intended only for the recipient(s) named above. If you are not a named recipient or an employee or agent of a named recipient, please understand that any use, distribution or copying of this message is strictly prohibited. If you received this transmission in error, please notify me immediately by email or telephone and delete the message from your email system. Thank you.

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by IRS regulations, we inform you that, unless specifically indicated otherwise, any tax advice contained in this communication (including any attachment) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matter addressed herein.

**From:** Orlic, David L.  
**Sent:** Wednesday, May 15, 2013 6:19 PM  
**To:** McHale, Angela R.  
**Cc:** Kluck, Thomas  
**Subject:** RE: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

**Follow Up Flag:** Follow up  
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**Subject:** FW: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

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**To:** <mchalea@sec.gov>, <kluckt@sec.gov>  
**Cc:** (b)(6)

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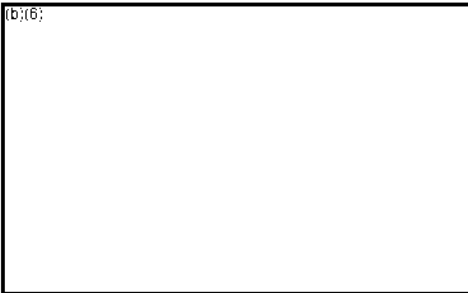
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Third, the S-4 contains an acknowledgement that: "The agent of each participating group is a fiduciary for the participants in its participating group and owes such participant a duty of loyalty and a duty of due care. In connection with these duties, the agent is required to exercise good faith and fair dealing in conducting the affairs of the subject LLC on behalf of its participating group." S-4 at 518. Notwithstanding this acknowledgement, the S-4 provides an indemnification and a disclaimer. "The company's duties, as the general partner, to the operating partnership and its partners, therefore, may come into conflict with the duties of the company's directors and officers to the company and its stockholders. The company will be under no obligation to give priority to the separate interests of the limited partners of the operating partnership or the company's stockholders in deciding whether to cause the operating partnership to take or decline to take any actions. The limited partners of the operating partnership have agreed that in the event of a conflict of the duties owed by the company's directors and officers to the company and the its [sic] stockholders and the fiduciary duties owed by the company, in its capacity as general partner of the operating partnership, to such limited partners, **the company will fulfill its fiduciary duties to such limited partners by acting in the best interests of the company's stockholders. The limited partners of the operating partnership expressly acknowledged that the company is acting for the benefit of the operating partnership, the limited partners and the company's stockholders collectively.**" S-4 at 518.

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Koppel recognizes that, under New York law, "a party will not be held liable for self-dealing where he secures the 'informed consent' of those to whom he owes a duty of utmost good faith." Koppel v. 4987 Corp., Fed. Sec. L. Rep. P 91,306 at 6. The vote in favor "has the effect of 'exonerating' the defendants." Id. Koppel found that Malkin, under facts similar to those presented here, had obtained 'informed consent' from those who voted in favor of his proposal in order to avoid a buyout provision. Of course, Koppel distinguished Delano v. Kitch, 542 F.2d 550 (10<sup>th</sup> Cir. 1976), on the issue of informed consent, and so the question here is whether the instant facts are closer to Delano than to Koppel. In Delano, shareholders had only 10 days to decide to agree to a proposed sale or reject it, and the court found that the tight time constraint coerced the shareholders into voting to approve. Here the investors also have only 10 days to agree to change a no vote to an approval. However, the investors here have also had since January 25 to consider the proposal, as outlined in the S-4.

However, this digresses from the issue of how the Settlement was unfair because it provided no effective opt-out. The Settlement is unfair because neither it nor the S-4 informs the class members that, if they opt-out, they will also need to take a second action to preserve the right to sue that they seek to preserve by opting out, i.e., forfeiture of their shares for a token \$100 when presented with the Buyout. This arises when a supermajority in an investor's group is reached, and the investor is then presented with a notice to change his no vote to yes or suffer to forced purchase of his unit for a mere \$100. As illustrated above, the S-4 indicates that a vote in favor of the REIT constitutes a waiver of the right to sue, but fails to disclose that, by converting a no vote to yes, an opting out class member will lose the right to sue that he sought to preserve by opting out.



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**From:** Orlic, David L.  
**Sent:** Wednesday, May 15, 2013 4:30 PM  
**To:** Kluck, Thomas  
**Cc:** McHale, Angela R.  
**Subject:** RE: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Maybe we can talk about this again at our meeting tomorrow.

---

**From:** Kluck, Thomas  
**Sent:** Wednesday, May 15, 2013 3:54 PM  
**To:** Orlic, David L.  
**Cc:** McHale, Angela R.  
**Subject:** FW: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

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**From:** [b:76]  
**Sent:** Wednesday, May 15, 2013 3:53 PM  
**To:** McHale, Angela R.; Kluck, Thomas  
**Cc:** [b:76]  
**Subject:** Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

#### MEMORANDUM

**SUBJECT:** Empire State Realty Trust Solicitation: The Opt-Out Provision of the Class Action Settlement

In our view, the Class Action Settlement failed to provide an effective opt-out because the price of opting out is not limited to foregoing a share of the Settlement funds, but also requires giving up the right to convert a no vote to a yes vote when the Buyout notice is received. Nowhere in the Settlement or in the S-4 is this price of opting out disclosed. Thus, investors had no way to validly exercise the right to opt out of the Settlement.

The S-4 describes the Class Action Settlement in detail. Pages 47 to 48 of the S-4 describe the class action, state that a stipulation and settlement was filed on September 28, 2012, and provide an overview of the Settlement. Each investor's share of settlement proceeds is identified on page 59. A much more detailed description of the class action litigation and Settlement appears on pages 453-454. The claims in the complaints are there stated to include breaches of fiduciary duty, unjust enrichment, and failure to make adequate disclosures in the S-4 prospectus. On page 454, the Settlement is characterized as stating that concerns raised in the complaints have been satisfied by adequate access to relevant information, amendments to the S-4, and modifications to the transaction. It also states: "Members of the putative class have the right to opt out of the monetary portion of the settlement, but not the portion providing for equitable relief." There is no statement that an opting out class member would lose his right to sue if he would later be forced to vote in favor of the REIT proposal in order to avoid the Buyout.

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and self-dealing revealed in the S-4. This actually comes in several parts. First, the S-4 reveals in explicit detail numerous instances of conflict of interest and self-dealing. See, e.g., S-4 at 55-58, 279-284. Second, Malkin strongly recommends approval of the proposed transaction, and claims that he recommends this, notwithstanding the conflicts of interest, because of the transaction's overall fairness to the investors. S-4 at 75-82. This is repeated at pages 190-196, and includes the statement: "While the supervisor has conflicts of interest which are described under 'Conflicts of Interest' (pp. 279-284), the supervisor does not believe that these conflicts of interests affect its fairness determination." S-4 at 192.

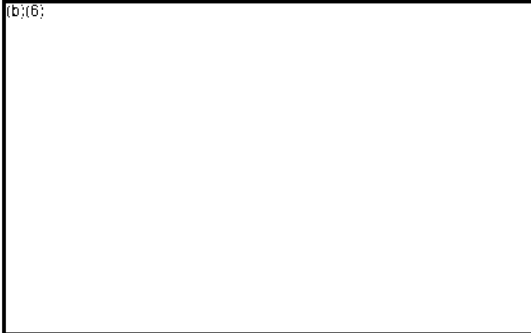
Third, the S-4 contains an acknowledgement that: "The agent of each participating group is a fiduciary for the participants in its participating group and owes such participant a duty of loyalty and a duty of due care. In connection with these duties, the agent is required to exercise good faith and fair dealing in conducting the affairs of the subject LLC on behalf of its participating group." S-4 at 518. Notwithstanding this acknowledgement, the S-4 provides an indemnification and a disclaimer. "The company's duties, as the general partner, to the operating partnership and its partners, therefore, may come into conflict with the duties of the company's directors and officers to the company and its stockholders. The company will be under no obligation to give priority to the separate interests of the limited partners of the operating partnership or the company's stockholders in deciding whether to cause the operating partnership to take or decline to take any actions. The limited partners of the operating partnership have agreed that in the event of a conflict of the duties owed by the company's directors and officers to the company and the its [sic] stockholders and the fiduciary duties owed by the company, in its capacity as general partner of the operating partnership, to such limited partners, **the company will fulfill its fiduciary duties to such limited partners by acting in the best interests of the company's stockholders. The limited partners of the operating partnership expressly acknowledged that the company is acting for the benefit of the operating partnership, the limited partners and the company's stockholders collectively.**" S-4 at 518.

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Koppel recognizes that, under New York law, "a party will not be held liable for self-dealing where he secures the 'informed consent' of those to whom he owes a duty of utmost good faith." Koppel v. 4987 Corp., Fed. Sec. L. Rep. P 91,306 at 6. The vote in favor "has the effect of 'exonerating' the defendants." Id. Koppel found that Malkin, under facts similar to those presented here, had obtained 'informed consent' from those who voted in favor of his proposal in order to avoid a buyout provision. Of course, Koppel distinguished Delano v. Kitch, 542 F.2d 550 (10<sup>th</sup> Cir. 1976), on the issue of informed consent, and so the question here is whether the instant facts are closer to Delano than to Koppel. In Delano, shareholders had only 10 days to decide to agree to a proposed sale or reject it, and the court found that the tight time constraint coerced the shareholders into voting to approve. Here the investors also have only 10 days to agree to change a no vote to an approval. However, the investors here have also had since January 25 to consider the proposal, as outlined in the S-4.

However, this digresses from the issue of how the Settlement was unfair because it provided no effective opt-out. The Settlement is unfair because neither it nor the S-4 informs the class members that, if they opt-out, they will also need to take a second action to preserve the right to sue that they seek to preserve by opting out, i.e., forfeiture of their shares for a token \$100 when presented with the Buyout. This arises when a supermajority in an investor's group is

reached, and the investor is then presented with a notice to change his no vote to yes or suffer to forced purchase of his unit for a mere \$100. As illustrated above, the S-4 indicates that a vote in favor of the REIT constitutes a waiver of the right to sue, but fails to disclose that, by converting a no vote to yes, an opting out class member will lose the right to sue that he sought to preserve by opting out.



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**From:** McHale, Angela R.  
**Sent:** Thursday, May 16, 2013 9:15 AM  
**To:** Orlic, David L.  
**Subject:** RE: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

Thanks so much for this. I am going to catch up on emails, etc. from yesterday, and then is it okay if I swing by to discuss this and other Empire matters? Tom told me that he will be unavailable all morning (has a meeting w/ T&M he needs to prep for), so he asked me to handle any outstanding Empire matters with you.

---

**From:** Orlic, David L.  
**Sent:** Wednesday, May 15, 2013 6:19 PM  
**To:** McHale, Angela R.  
**Cc:** Kluck, Thomas  
**Subject:** RE: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

[REDACTED]

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**From:** McHale, Angela R.  
**Sent:** Wednesday, May 15, 2013 5:39 PM  
**To:** Orlic, David L.; Kluck, Thomas  
**Subject:** FW: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

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**From:** [REDACTED] **On Behalf Of** [REDACTED]  
**Sent:** Wednesday, May 15, 2013 4:15 PM  
**To:** McHale, Angela R.  
**Subject:** Fwd: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

Angela,

Please excuse the flurry of emails from me but things are going to move very quickly once Malkin declares the 10 period is running and I have absolutely no idea how my stepmother is going to vote with the information we have now. John states...

Koppel recognizes that, under New York law, "a party will not be held liable for self-dealing where he secures the 'informed consent' of those to whom he owes a duty of utmost good faith." Koppel v. 4987 Corp., Fed. Sec. L. Rep. P 91,306 at 6. The vote in favor "has the effect of 'exonerating' the defendants." id. Koppel found that Malkin, under facts similar to those presented here, had obtained 'informed consent' from those who voted in favor of his proposal in order to avoid a buyout provision.

It seem to if there is even the slightest ambiguity about whether or deciding to reverse would result in anything less than the full rights we opted to preserve by opting out of the settlement my stepmother has a right to have that clarified.

It also seems to me that the language of the S-4 and Malkin's assertions which he successfully argued and won go way beyond there being "the slightest ambiguity." What is in the S-4 leads me to believe there is not good reason to believe but a not unreasonable presumption that reversing one loses those rights. At a minimum they are endangered.

So what the settlement giveth the S-4 taketh away. However not wanting to reveal that this is the true state of affairs. Malkin simply refuses to be pinned down. Don't let him get away with this. Investors have a right know the full consequences of their vote.

The settlement says by opting out we preserved certain rights. I only ask that Malkin go on record as to whether this is in fact the case. The settlement and the public filing ought not to conflict, apparently conflict, or even be vague enough on such a key point as whether you have to give up your entire investment or not in order to retain the right to sue. If there is one thing in this entire deal that ought to be clear at this point, this is it.

I'm only asking that Malkin tell us what the deal is. Do we have to reverse or not to retain our rights?

I'm not stupid. I've spend a year and half on this and I can't tell from the documents. How can the SEC expect anyone to? How can they expect anyone to make a decision without knowing?

[b:6]

Begin forwarded message:

**From:** [b:6]  
**Subject:** Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out  
**Date:** May 15, 2013 12:53:15 PM PDT  
**To:** <mchalea@sec.gov>, <kluckt@sec.gov>  
**Cc:** [b:6]



## MEMORANDUM

SUBJECT: Empire State Realty Trust Solicitation: The Opt-Out Provision of the Class Action Settlement

In our view, the Class Action Settlement failed to provide an effective opt-out because the price of opting out is not limited to foregoing a share of the Settlement funds, but also requires giving up the right to convert a no vote to a yes vote when the Buyout notice is received. Nowhere in the Settlement or in the S-4 is this price of opting out disclosed. Thus, investors had no way to validly exercise the right to opt out of the Settlement.

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At the same time, the S-4 makes it clear that a vote to approve the transaction constitutes a waiver of all equitable claims against the Malkins for the conflicts of interest, indemnifications, and self-dealing revealed in the S-4. This actually comes in several parts. First, the S-4 reveals in explicit detail numerous instances of conflict of interest and self-dealing. See, e.g., S-4 at 55-58, 279-284. Second, Malkin strongly recommends approval of the proposed transaction, and claims that he recommends this, notwithstanding the conflicts of interest, because of the transaction's overall fairness to the investors. S-4 at 75-82. This is repeated at pages 190-196, and includes the statement: "While the supervisor has conflicts of interest which are described under 'Conflicts of Interest' (pp. 279-284), the supervisor does not believe that these conflicts of interests affect its fairness determination." S-4 at 192.

Third, the S-4 contains an acknowledgement that: "The agent of each participating group is a fiduciary for the participants in its participating group and owes such participant a duty of loyalty and a duty of due care. In connection with these duties, the agent is required to exercise good faith and fair dealing in conducting the affairs of the subject LLC on behalf of its participating group." S-4 at 518. Notwithstanding this acknowledgement, the S-4 provides an indemnification and a disclaimer. "The company's duties, as the general partner, to the operating partnership and its partners, therefore, may come into conflict with the duties of the company's directors and officers to the company and its stockholders. The company will be under no obligation to give priority to the separate interests of the limited partners of the operating partnership or the company's stockholders in deciding whether to cause the operating partnership to take or decline to take any actions. The limited partners of the operating partnership have agreed that in the event of a conflict of the duties owed by the company's directors and officers to the company and the its [sic] stockholders and the fiduciary duties owed by the company, in its capacity as general partner of the operating partnership, to such limited partners, **the company will fulfill its fiduciary duties to such limited partners by acting in the best interests of the company's stockholders. The limited partners of the operating partnership expressly acknowledged**

**that the company is acting for the benefit of the operating partnership, the limited partners and the company's stockholders collectively."** S-4 at 518.

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**From:** Orlic, David L.  
**Sent:** Wednesday, May 15, 2013 6:19 PM  
**To:** McHale, Angela R.  
**Cc:** Kluck, Thomas  
**Subject:** RE: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

(b)(5)

---

**From:** McHale, Angela R.  
**Sent:** Wednesday, May 15, 2013 5:39 PM  
**To:** Orlic, David L.; Kluck, Thomas  
**Subject:** FW: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

---

**From:** (b)(6) **On Behalf Of** (b)(6)  
**Sent:** Wednesday, May 15, 2013 4:15 PM  
**To:** McHale, Angela R.  
**Subject:** Fwd: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

Angela,

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(b)(6)

Begin forwarded message:

**From:** (b)(6)  
**Subject: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out**  
**Date:** May 15, 2013 12:53:15 PM PDT  
**To:** <mchalea@sec.gov>, <kluckt@sec.gov>  
**Cc:** (b)(6)

MEMORANDUM

**SUBJECT:** Empire State Realty Trust Solicitation: The Opt-Out Provision of the Class Action Settlement

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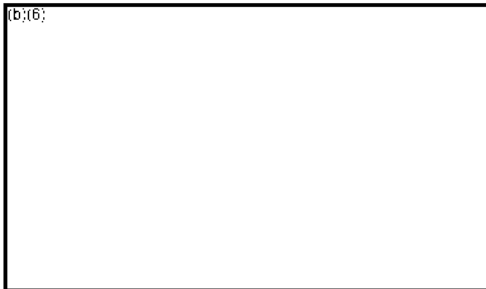
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Finally, this acknowledgement concludes with a disclaimer: "Insofar as the foregoing provisions permit indemnification for liability arising under the Securities Act, the company has been informed that, in the opinion of the SEC, this indemnification is against public policy as expressed in the Securities Act and therefore unenforceable." S-4 at 518. It is clear, though, that this is the view of the SEC and not of the Malkins. So, if one votes in favor of the REIT, one does so on the basis all of these disclosures and approves the indemnification on page 518. Thereafter, Malkin will certainly argue that, as in Koppel, a vote to approve the REIT, even if made to avoid the Buyout, exonerates Malkin for all conflicts of interest disclosed in the S-4.

Koppel recognizes that, under New York law, "a party will not be held liable for self-dealing where he secures the 'informed consent' of those to whom he owes a duty of utmost good faith." Koppel v. 4987 Corp., Fed. Sec. L. Rep. P 91,306 at 6. The vote in favor "has the effect of 'exonerating' the defendants." Id. Koppel found that Malkin, under facts similar to those presented here, had obtained 'informed consent' from those who voted in favor of his proposal in order to avoid a buyout provision. Of course, Koppel distinguished Delano v. Kitch, 542 F.2d 550 (10<sup>th</sup> Cir. 1976), on the issue of informed consent, and so the question here is whether the instant facts are closer to Delano than to Koppel. In Delano, shareholders had only 10 days to decide to agree to a proposed sale or reject it, and the court found that the tight time constraint coerced the shareholders into voting to approve. Here the investors also have only 10 days to agree to change a no vote to an approval. However, the investors here have also had since January 25 to consider the proposal, as outlined in the S-4.

However, this digresses from the issue of how the Settlement was unfair because it provided no effective opt-out. The Settlement is unfair because neither it nor the S-4 informs the class members that, if they opt-out, they will also need to take a second action to preserve the right to sue that they seek to preserve by opting out, i.e., forfeiture of their shares for a token \$100 when presented with the Buyout. This arises when a supermajority in an investor's group is reached, and the investor is then presented with a notice to change his no vote to yes or suffer to forced purchase of his unit for a mere \$100. As illustrated above, the S-4 indicates that a vote in favor of the REIT constitutes a waiver of the right to sue, but fails to disclose that, by converting a no vote to yes, an opting out class member will lose the right to sue that he sought to preserve by opting out.



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**From:** Orlic, David L.  
**Sent:** Wednesday, May 15, 2013 4:30 PM  
**To:** Kluck, Thomas  
**Cc:** McHale, Angela R.  
**Subject:** RE: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

Maybe we can talk about this again at our meeting tomorrow.

---

**From:** Kluck, Thomas  
**Sent:** Wednesday, May 15, 2013 3:54 PM  
**To:** Orlic, David L.  
**Cc:** McHale, Angela R.  
**Subject:** FW: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

---

**From:** [REDACTED]  
**Sent:** Wednesday, May 15, 2013 3:53 PM  
**To:** McHale, Angela R.; Kluck, Thomas  
**Cc:** [REDACTED]  
**Subject:** Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

#### MEMORANDUM

**SUBJECT:** Empire State Realty Trust Solicitation: The Opt-Out Provision of the Class Action Settlement

In our view, the Class Action Settlement failed to provide an effective opt-out because the price of opting out is not limited to foregoing a share of the Settlement funds, but also requires giving up the right to convert a no vote to a yes vote when the Buyout notice is received. Nowhere in the Settlement or in the S-4 is this price of opting out disclosed. Thus, investors had no way to validly exercise the right to opt out of the Settlement.

The S-4 describes the Class Action Settlement in detail. Pages 47 to 48 of the S-4 describe the class action, state that a stipulation and settlement was filed on September 28, 2012, and provide an overview of the Settlement. Each investor's share of settlement proceeds is identified on page 59. A much more detailed description of the class action litigation and Settlement appears on pages 453-454. The claims in the complaints are there stated to include breaches of fiduciary duty, unjust enrichment, and failure to make adequate disclosures in the S-4 prospectus. On page 454, the Settlement is characterized as stating that concerns raised in the complaints have been satisfied by adequate access to relevant information, amendments to the S-4, and modifications to the transaction. It also states: "Members of the putative class have the right to opt out of the monetary portion of the settlement, but not the portion providing for equitable relief." There is no statement that an opting out class member would lose his right to sue if he would later be forced to vote in favor of the REIT proposal in order to avoid the Buyout.

At the same time, the S-4 makes it clear that a vote to approve the transaction constitutes a waiver of all equitable claims against the Malkins for the conflicts of interest, indemnifications, and self-dealing revealed in the S-4. This actually comes in several parts. First, the S-4 reveals in explicit detail numerous instances of conflict of interest and self-dealing. See, e.g., S-4 at 55-58, 279-284. Second, Malkin strongly recommends approval of the proposed transaction, and claims that he recommends this, notwithstanding the conflicts of



interest, because of the transaction's overall fairness to the investors. S-4 at 75-82. This is repeated at pages 190-196, and includes the statement: "While the supervisor has conflicts of interest which are described under 'Conflicts of Interest' (pp. 279-284), the supervisor does not believe that these conflicts of interests affect its fairness determination." S-4 at 192.

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Koppel recognizes that, under New York law, "a party will not be held liable for self-dealing where he secures the 'informed consent' of those to whom he owes a duty of utmost good faith." Koppel v. 4987 Corp., Fed. Sec. L. Rep. P 91,306 at 6. The vote in favor "has the effect of 'exonerating' the defendants." Id. Koppel found that Malkin, under facts similar to those presented here, had obtained 'informed consent' from those who voted in favor of his proposal in order to avoid a buyout provision. Of course, Koppel distinguished Delano v. Kitch, 542 F.2d 550 (10<sup>th</sup> Cir. 1976), on the issue of informed consent, and so the question here is whether the instant facts are closer to Delano than to Koppel. In Delano, shareholders had only 10 days to decide to agree to a proposed sale or reject it, and the court found that the tight time constraint coerced the shareholders into voting to approve. Here the investors also have only 10 days to agree to change a no vote to an approval. However, the investors here have also had since January 25 to consider the proposal, as outlined in the S-4.

However, this digresses from the issue of how the Settlement was unfair because it provided no effective opt-out. The Settlement is unfair because neither it nor the S-4 informs the class members that, if they opt-out, they will also need to take a second action to preserve the right to sue that they seek to preserve by opting out, i.e., forfeiture of their shares for a token \$100 when presented with the Buyout. This arises when a supermajority in an investor's group is reached, and the investor is then presented with a notice to change his no vote to yes or suffer to forced purchase of his unit for a mere \$100. As illustrated above, the S-4 indicates that a vote in favor of the REIT constitutes a waiver of the right to sue, but fails to disclose that, by converting a

no vote to yes, an opting out class member will lose the right to sue that he sought to preserve by opting out.



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**From:** Orlic, David L.  
**Sent:** Thursday, May 16, 2013 9:19 AM  
**To:** McHale, Angela R.  
**Subject:** RE: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Of course. I'm free this morning. -David

---

**From:** McHale, Angela R.  
**Sent:** Thursday, May 16, 2013 9:15 AM  
**To:** Orlic, David L.  
**Subject:** RE: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

Thanks so much for this. I am going to catch up on emails, etc. from yesterday, and then is it okay if I swing by to discuss this and other Empire matters? Tom told me that he will be unavailable all morning (has a meeting w/ T&M he needs to prep for), so he asked me to handle any outstanding Empire matters with you.

---

**From:** Orlic, David L.  
**Sent:** Wednesday, May 15, 2013 6:19 PM  
**To:** McHale, Angela R.  
**Cc:** Kluck, Thomas  
**Subject:** RE: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

(b)(6)



---

**From:** McHale, Angela R.  
**Sent:** Wednesday, May 15, 2013 5:39 PM  
**To:** Orlic, David L.; Kluck, Thomas  
**Subject:** FW: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

---

**From:** [b](6) [mailto:[b](6)] **On Behalf Of** [b](6)  
**Sent:** Wednesday, May 15, 2013 4:15 PM  
**To:** McHale, Angela R.  
**Subject:** Fwd: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out

Angela,

Please excuse the flurry of emails from me but things are going to move very quickly once Malkin declares the 10 period is running and I have absolutely no idea how my stepmother is going to vote with the information we have now. [b](6) states...

Koppel recognizes that, under New York law, "a party will not be held liable for self-dealing where he secures the 'informed consent' of those to whom he owes a duty of utmost good faith." Koppel v. 4987 Corp., Fed. Sec. L. Rep. P 91,306 at 6. The vote in favor "has the effect of 'exonerating' the defendants." Id. Koppel found that Malkin, under facts similar to those presented here, had obtained 'informed consent' from those who voted in favor of his proposal in order to avoid a buyout provision.

It seem to if there is even the slightest ambiguity about whether or deciding to reverse would result in anything less than the full rights we opted to preserve by opting out of the settlement my stepmother has a right to have that clarified.

It also seems to me that the language of the S-4 and Malkin's assertions which he successfully argued and won go way beyond there being "the slightest ambiguity." What is in the S-4 leads me to believe there is not good reason to believe but a not unreasonable presumption that reversing one loses those rights. At a minimum they are endangered.

So what the settlement giveth the S-4 taketh away. However not wanting to reveal that this is the true state of affairs, Malkin simply refuses to be pinned down. Don't let him get away with this. Investors have a right know the full consequences of their vote.

The settlement says by opting out we preserved certain rights. I only ask that Malkin go on record as to whether this is in fact the case. The settlement and the public filing ought not to conflict, apparently conflict, or even be vague enough on such a key point as whether you have to give up your entire investment or not in order to retain the right to sue. If there is one thing in this entire deal that ought to be clear at this point, this is it.

I'm only asking that Malkin tell us what the deal is. Do we have to reverse or not to retain our rights?

I'm not stupid. I've spend a year and half on this and I can't tell from the documents. How can the SEC expect anyone to? How can they expect anyone to make a decision without knowing?

[b](6)

Begin forwarded message:

**From:** [b:(6)]  
**Subject: Empire State Realty Trust: S-4 Disclosure of Settlement Opt-Out**  
**Date:** May 15, 2013 12:53:15 PM PDT  
**To:** <mchalea@sec.gov>, <kluckt@sec.gov>  
**Cc:** [b:(6)]

MEMORANDUM

**SUBJECT:** Empire State Realty Trust Solicitation: The Opt-Out Provision of the Class Action Settlement

In our view, the Class Action Settlement failed to provide an effective opt-out because the price of opting out is not limited to foregoing a share of the Settlement funds, but also requires giving up the right to convert a no vote to a yes vote when the Buyout notice is received. Nowhere in the Settlement or in the S-4 is this price of opting out disclosed. Thus, investors had no way to validly exercise the right to opt out of the Settlement.

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**From:** Orlic, David L.  
**Sent:** Thursday, March 07, 2013 10:06 AM  
**To:** McHale, Angela R.  
**Subject:** RE: Empire State Realty Trust

(b)(5)

---

**From:** McHale, Angela R.  
**Sent:** Thursday, March 07, 2013 10:03 AM  
**To:** Orlic, David L.; Kluck, Thomas  
**Subject:** RE: Empire State Realty Trust

I'll be on the calls with you. We have training from 2-3pm, but I'm free other than that.

---

**From:** Orlic, David L.  
**Sent:** Thursday, March 07, 2013 9:39 AM  
**To:** Kluck, Thomas; McHale, Angela R.  
**Subject:** RE: Empire State Realty Trust

Okay, which of you wants to be involved, if either? Is there a time that's good this afternoon? - David

---

**From:** Kluck, Thomas  
**Sent:** Thursday, March 07, 2013 9:03 AM  
**To:** Orlic, David L.; McHale, Angela R.  
**Subject:** RE: Empire State Realty Trust

Yes, we should give them a call today, especially if they have a conference call tonight.

---

**From:** Orlic, David L.  
**Sent:** Wednesday, March 06, 2013 5:55 PM  
**To:** Kluck, Thomas; McHale, Angela R.  
**Subject:** FW: Empire State Realty Trust

Tom and Angela, I had this call with them, and I think maybe it might be worth a quick call to each Edelman just to alert them to the fact that 14a-9 prohibits claims made prior to a meeting regarding the results of the solicitation. Counsel alleged that on some of these calls, proponents were stating "we expect to win" and statements like that.

(b)(5)

-David

---

**From:** Medvinsky, Larry (Capital Markets-NY) [mailto:Larry.Medvinsky@CliffordChance.com]  
**Sent:** Wednesday, March 06, 2013 4:46 PM  
**To:** Orlic, David L.



**Cc:** Kluck, Thomas; McHale, Angela R.  
**Subject:** Re: Empire State Realty Trust

David,

Can i call you at 5 in your office?

Larry

Sent from my iPhone

On Mar 6, 2013, at 3:49 PM, "Orlic, David L." <[OrlicD@SEC.GOV](mailto:OrlicD@SEC.GOV)> wrote:

Larry, the SEC is closed today but I will be here for several more hours if you want to call. Tomorrow I will be in meetings most of the morning, so it will be hard to reach me then. I am not sure if Tom or Angela are available this afternoon, but this really is an OMA issue and I can take the call by myself if you want to talk..

David L. Orlic  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
Washington, D.C. 20549  
202-551-3503

-----Original Message-----

From: Medvinsky, Larry (Capital Markets-NY) [<mailto:Larry.Medvinsky@CliffordChance.com>]  
Sent: Wednesday, March 06, 2013 3:29 PM  
To: Kluck, Thomas; Orlic, David L.; McHale, Angela R.  
Cc: Medvinsky Larry  
Subject: Empire State Realty Trust

Tom, David and Angela,

Thanks for speaking with us yesterday. It was helpful. We have reflected on our conversation and believe we need to discuss it further. Given the Edelmans have an additional conference call tomorrow we would like speak this afternoon or early tomorrow morning. Please let us know your availability. Thanks and best regards.

Larry

Sent from my iPhone

\*\*\*\*\*

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To contact any other office

[http://www.cliffordchance.com/about\\_us/find\\_people\\_and\\_offices.html](http://www.cliffordchance.com/about_us/find_people_and_offices.html)

**From:** McHale, Angela R.  
**Sent:** Thursday, March 07, 2013 10:03 AM  
**To:** Orlic, David L.; Kluck, Thomas  
**Subject:** RE: Empire State Realty Trust

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(b)(5)

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**Cc:** Kluck, Thomas; McHale, Angela R.  
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Can i call you at 5 in your office?

Larry

Sent from my iPhone

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David L. Orlic  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
Washington, D.C. 20549  
202-551-3503

-----Original Message-----

From: Medvinsky, Larry (Capital Markets-NY) [<mailto:Larry.Medvinsky@CliffordChance.com>]  
Sent: Wednesday, March 06, 2013 3:29 PM  
To: Kluck, Thomas; Orlic, David L.; McHale, Angela R.  
Cc: Medvinsky Larry  
Subject: Empire State Realty Trust

Tom, David and Angela,

Thanks for speaking with us yesterday. It was helpful. We have reflected on our conversation and believe we need to discuss it further. Given the Edelmans have an additional conference call tomorrow we would like speak this afternoon or early tomorrow morning. Please let us know your availability. Thanks and best regards.

Larry

Sent from my iPhone

\*\*\*\*\*

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**From:** Orlic, David L.  
**Sent:** Thursday, March 07, 2013 9:39 AM  
**To:** Kluck, Thomas; McHale, Angela R.  
**Subject:** RE: Empire State Realty Trust

Okay, which of you wants to be involved, if either? Is there a time that's good this afternoon? - David

---

**From:** Kluck, Thomas  
**Sent:** Thursday, March 07, 2013 9:03 AM  
**To:** Orlic, David L.; McHale, Angela R.  
**Subject:** RE: Empire State Realty Trust

Yes, we should give them a call today, especially if they have a conference call tonight.

---

**From:** Orlic, David L.  
**Sent:** Wednesday, March 06, 2013 5:55 PM  
**To:** Kluck, Thomas; McHale, Angela R.  
**Subject:** FW: Empire State Realty Trust

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(b)(5)

-David

---

**From:** Medvinsky, Larry (Capital Markets-NY) [<mailto:Larry.Medvinsky@CliffordChance.com>]  
**Sent:** Wednesday, March 06, 2013 4:46 PM  
**To:** Orlic, David L.  
**Cc:** Kluck, Thomas; McHale, Angela R.  
**Subject:** Re: Empire State Realty Trust

David,

Can i call you at 5 in your office?

Larry

Sent from my iPhone

On Mar 6, 2013, at 3:49 PM, "Orlic, David L." <[OrlicD@SEC.GOV](mailto:OrlicD@SEC.GOV)> wrote:

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the call by myself if you want to talk..

David L. Orlic  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
Washington, D.C. 20549  
202-551-3503

-----Original Message-----

From: Medvinsky, Larry (Capital Markets-NY) [<mailto:Larry.Medvinsky@CliffordChance.com>]  
Sent: Wednesday, March 06, 2013 3:29 PM  
To: Kluck, Thomas; Orlic, David L.; McHale, Angela R.  
Cc: Medvinsky Larry  
Subject: Empire State Realty Trust

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(b)(5)

-David

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David L. Orlic  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
Washington, D.C. 20549  
202-551-3503

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Sent: Wednesday, March 06, 2013 3:29 PM  
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**From:** McHale, Angela R.  
**Sent:** Friday, May 10, 2013 12:14 PM  
**To:** Kluck, Thomas  
**Subject:** RE: Empire State Realty Trust Open-ended Solicitation

I just emailed them the standard response. Thanks, and have a great weekend!!

---

**From:** Kluck, Thomas  
**Sent:** Friday, May 10, 2013 9:22 AM  
**To:** McHale, Angela R.  
**Subject:** FW: Empire State Realty Trust Open-ended Solicitation

Hi Angela,

[REDACTED]

Thanks,

Tom

---

**From:** [REDACTED]  
**Sent:** Thursday, May 09, 2013 11:01 AM  
**To:** Kluck, Thomas; McHale, Angela R.  
**Cc:** [REDACTED]; Richard Edelman; [RMachleder@aol.com](mailto:RMachleder@aol.com); [REDACTED]  
**Subject:** Empire State Realty Trust Open-ended Solicitation

Dear Mr. Kluck, Ms. McHale & Mr. Orlick:

We spoke to you on April 1, 2013, and again on April 17, 2013, regarding our concerns about the Empire State Realty Trust solicitation that is presently underway. As you know, the solicitation commenced on or about January 21, 2013, and was scheduled to expire 60 days later on March 25, 2013. It was recently extended for an indefinite period, however, by Malkin Holdings. In a letter to investors dated March 21, 2013, it was stated that the solicitation will remain "open until at least such time as the Court overseeing the class action settlement issues its decision on the LLC matter". The court on April 30, 2013, decided the LLC issue, upholding what is often referred to as the Buyout provision. However, no new termination date for the solicitation of consents has been set.

The registration statement (S-4) for the current solicitation states repeatedly that consents will be solicited for sixty days, and that the solicitation will end at the expiration of that 60-day period. See S-4 at pages 20, 90-92, 317-318. Although the S-4 indicates that the supervisor may extend the expiration date of the solicitation period, it does not state that the solicitation can be extended indefinitely. Furthermore, the S-4 states that application of the Buyout procedures will not occur until after a participant who has voted against the proposal is given notice that a supermajority in his group has been attained and has been provided an opportunity to change his vote in order to avoid the Buyout. The S-4 states explicitly that this will not happen "before the expiration of the 60-day solicitation period as the same may be extended." S-4 at page 318. This is reinforced by the hypothetical timeline provided on page 20 of the S-4, which posits a supermajority achieved on day 46, and the notice triggering the Buyout being sent out on day 61.

Malkin Holdings' failure to set a new termination date for the solicitation period is clearly at odds with the S-4 and grossly unfair to the investors whose consents are being solicited. So far, Malkin Holdings has been unable to attain the consents of the required supermajority in any of the participating groups. Using this as an excuse to create an open-ended solicitation subjects investors to the fear that they could be subject to a forced Buyout without an opportunity to change their votes. This could result if an investor were out of town for ten or more days and the investor therefore did not receive the notice and opportunity to change his vote. With nonnotice of when the solicitation period will conclude, investors have no way to anticipate receipt of a notice. If the Buyout were applied in their absence, they would essentially forfeit for a token \$100 an investment valued at over \$300,000 per unit.

In reliance on the S-4, investors were able to anticipate an end to the solicitation period, and for those who chose not to provide their consent, an end to the danger of missing the notice and opportunity to change their vote to avoid the Buyout. Now, they do not know when a notice and opportunity to change will arrive. Without that knowledge, and facing the need to schedule out-of-town events, investors who voted "no" will feel compelled to change their votes to "yes" just to avoid the chance that they might miss the notice and thereby forfeit their investment. Further, the lack of a new, reasonable expiration date creates the fear among investors that there will be no end to the letters, repeated telephone calls, and other forms of persuasion undertaken by the Malkins to obtain consents to the transaction. This results in another form of undue pressure on the investors to consent to the solicitations in an attempt to achieve some closure and an end to the prospect of unreasonable, prolonged pressure from the Malkins.

In our view, the current uncertainty is inconsistent with the disclosures in the S-4 and constitutes a deceptive practice in violation of Section 10(b) of the Securities Act of 1934 and Rule 10b-5.

Please contact us with any comments or questions you may have.

(b)(6)



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IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by IRS regulations, we inform you that, unless specifically indicated otherwise, any tax advice contained in this communication (including any attachment) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue

Code or (ii) promoting, marketing or recommending to another party any tax-related matter addressed herein.

**From:** McHale, Angela R.  
**Sent:** Thursday, March 07, 2013 10:25 AM  
**To:** Orlic, David L.  
**Subject:** RE: Empire State Realty Trust

Sure. I'll call you when I'm done, and then we can patch in the others.

---

**From:** Orlic, David L.  
**Sent:** Thursday, March 07, 2013 10:06 AM  
**To:** McHale, Angela R.  
**Subject:** RE: Empire State Realty Trust

(b)(5);(b)(6)

---

**From:** McHale, Angela R.  
**Sent:** Thursday, March 07, 2013 10:03 AM  
**To:** Orlic, David L.; Kluck, Thomas  
**Subject:** RE: Empire State Realty Trust

I'll be on the calls with you. We have training from 2-3pm, but I'm free other than that.

---

**From:** Orlic, David L.  
**Sent:** Thursday, March 07, 2013 9:39 AM  
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(b)(6)

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(b)(6)

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-----Original Message-----

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**Sent:** Wednesday, March 06, 2013 3:29 PM  
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**Cc:** Medvinsky Larry  
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**From:** McHale, Angela R.  
**Sent:** Monday, April 22, 2013 8:51 AM  
**To:** Orlic, David L.  
**Subject:** RE: SEC Comment Letter: Empire State Realty Trust Form 425 2013-04-18 Letter

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

(b)(5)

---

**From:** Orlic, David L.  
**Sent:** Thursday, April 18, 2013 6:42 PM  
**To:** [tmalkin@malkinholdings.com](mailto:tmalkin@malkinholdings.com)  
**Cc:** [ajacobs@proskauer.com](mailto:ajacobs@proskauer.com); [Larry.Medvinsky@CliffordChance.com](mailto:Larry.Medvinsky@CliffordChance.com)  
**Subject:** SEC Comment Letter: Empire State Realty Trust Form 425 2013-04-18 Letter

Please find attached a letter relating to the filing referenced therein. Do not respond to this electronic communication unless you have received it incorrectly. If you have any questions, please contact the person(s) identified at the end of the attached letter.

Division of Corporation Finance  
U.S. Securities & Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549  
[www.sec.gov](http://www.sec.gov)

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**From:** [b:(6)]  
**Sent:** Thursday, January 10, 2013 11:25 AM  
**To:** Kluck, Thomas; [b:(6)] McHale, Angela R.; Orlic, David L.  
**Cc:** [b:(6)]  
**Subject:** RE: Supplement: Empire State Building Associates LLC SEC filing 1/4/13

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

[b:(6)]

---

**From:** Kluck, Thomas  
**Sent:** Thursday, January 10, 2013 10:35 AM  
**To:** [b:(6)] McHale, Angela R.; Orlic, David L.  
**Cc:** [b:(6)]  
**Subject:** FW: Supplement: Empire State Building Associates LLC SEC filing 1/4/13

[b:(6)]

Can you take a look at this?

Thanks,

Tom

---

**From:** richard edelman [<mailto:richardedelman@hotmail.com>]  
**Sent:** Thursday, January 10, 2013 10:28 AM  
**To:** Kluck, Thomas  
**Cc:** [b:(6)]  
**Subject:** Supplement: Empire State Building Associates LLC SEC filing 1/4/13

Empire State Building Associates L.L.C.  
CIK#: 0000032776

January 10, 2013

**BY E-MAIL**

Tom Kluck  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street N.E.  
Washington, DC 20549

cc [REDACTED]

Dear Mr. Kluck and [REDACTED]

The 1/4/13 DEFA14A filed by Empire State Building Associates LLC contained a revised 2011 Statement of Income and Expenses.

A. The revised number for 2011 ESBA **Overage rent** does not match the 2011 ESBA Overage rent amount given in the S-4 filed by Empire State Realty Trust, Inc. on 12/21/12.

B. **Payroll and Related expenses** for 2011 are 80% higher than those of the five prior years.

**A. Overage rent**

The 12/21/12 Empire State Realty Trust, Inc. S-4 lists ESBA 2011 **Overage rent of \$0** on page S1-48  
<http://www.sec.gov/Archives/edgar/data/1541401/000119312512512349/d283359ds4a.htm>

The 1/4/13 Empire State Building Associates LLC DEFA14A lists ESBA 2011 **Overage rent of \$28,780,449.**  
<http://www.sec.gov/Archives/edgar/data/32776/000119312513003622/d462328ddefa14a.htm>

More information below.

**B. Payroll and Related expenses (from 10K's for prior years)**

	Payroll and related expenses	Labor Costs
--	------------------------------	-------------

2011:	\$ 38,645,277	
2010:	\$ 21,116,346	

2009: \$ 21,528,386  
 2008: \$ 21,866,938  
 2007 \$22,069,483  
 2006 \$20,399,594

**Such an extraordinary increase in Payroll expenses should require a written and detailed explanation to ESBA investors.**

12/21/12 Empire State Realty Trust, Inc. S-4

<http://www.sec.gov/Archives/edgar/data/1541401/000119312512512349/d283359ds4a.htm>

	Nine Months ended					
	September 30, 2012	2011	2010	2009	2008	2007
Empire State Building Associates L.L.C.						
Distributions out of basic rent	\$ 884	\$ 1,179	\$ 1,179	\$ 1,179	\$ 1,179	\$ 1,179
Distributions out of overage rent						
Overage rent distributions attributable to borrowing <sup>(1)</sup>	\$ 5,255	\$ —	\$ 679	\$ —	\$ —	\$ —
Overage rent distributions attributable to operations	\$ —	\$ —	\$ 339	\$ —	\$ 4,051	\$ 4,589
<b>Total distributions out of overage rent</b>	<b>\$ 5,255</b>	<b>\$ —</b>	<b>\$ 1,018</b>	<b>\$ —</b>	<b>\$ 4,051</b>	<b>\$ 4,589</b>
<b>Total distributions</b>	<b>\$ 6,139</b>	<b>\$ 1,179</b>	<b>\$ 2,197</b>	<b>\$ 1,179</b>	<b>\$ 5,230</b>	<b>\$ 5,768</b>

(1) The distributions attributable to borrowings resulted from borrowings used to fund capital expenditures which would otherwise have been funded from operations and reduced overage rent.

S1-48

1/4/12 Empire State Building Associates LLC DEFA14A

<http://www.sec.gov/Archives/edgar/data/32776/000119312513003622/d462328ddefa14a.htm>

**EMPIRE STATE BUILDING COMPANY L.L.C.**

**STATEMENT OF INCOME AND EXPENSE**

Year Ended  
December 31, 2011

<b>Total Revenue</b>	<u>188,806,583</u>
<b>Operating Expenses:</b>	
Basic rent expense	8,439,772
Real estate taxes	30,009,907
<b>Payroll and related costs</b>	<b>38,645,277</b>
Tenants' and building alterations, repairs and maintenance	13,144,674
Utilities	12,557,405
Supervisory fees	583,368
Professional fees and leasing costs	8,900,932
Insurance	7,422,948
Advertising	4,703,117
Cleaning	2,881,196
Administrative	2,957,089
<b>Total Operating Expenses</b>	<u>130,245,685</u>
<b>Net Operating Profit</b>	<u>\$ 58,560,898</u>
<b>Overage Rent, 50% of Net Operating Profit in Excess of \$1,000,000</b>	<u><u>\$ 28,780,449</u></u>

Thank you for your tireless attention to all things ESB.

Richie Edelman

---

From: [richardedelman@hotmail.com](mailto:richardedelman@hotmail.com)  
To: [kluckt@sec.gov](mailto:kluckt@sec.gov); [kosterlitzm@sec.gov](mailto:kosterlitzm@sec.gov)  
Subject: Empire State Building Associates LLC SEC filing 1/4/13  
Date: Mon, 7 Jan 2013 12:49:01 -0800

Empire State Building Associates L.L.C.  
CIK#: 0000032776

January 7, 2013

**BY E-MAIL**

Tom Kluck  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street N.E.  
Washington, DC 20549

cc: [b](6)

Dear Mr. Kluck and [b](6)

On 1/4/13 Empire State Building Associates filed a DEFA14A with the SEC which was mailed to participant investors.

<http://www.sec.gov/Archives/edgar/data/32776/000119312513003622/d462328ddefa14a.htm>

It stated:

*"From the additional rent of \$28,780,449 for 2011, \$10,330,449 was set-aside for i) debt service on the portion of the mortgage attributable to the purchase of the fee position in 2002...."*

All ESBA "debt service" is paid out of basic rent, not "additional rent".

In addition the *"debt service on the portion of the mortgage attributable to the purchase of the fee position in 2002"* is roughly equal to the annual rent paid by ESBA to the prior fee title owners.

That is why ESBA's fee title purchase in 2002 did not require an increase in basic rent paid by the Sublessee.

In fact, "debt service" for any and all other bank borrowings are paid out of basic rent, not "additional rent".

I've included supporting information and a link to a SEC filing about this below.

This 1/4/13 SEC filing contains a 2011 income statement for the Empire State Building that was originally sent to ESBA participant investors in April 2012.

The 1/4/13 version has material changes in financial information including restated Operating Expenses.

The actual "Total Operating Expense" were \$130,245,685. In April 2012 ESBA investors were sent SEC filed Financials that listed "Total Operating Expenses" of \$166,993,698.

The original overstatement of "Total Operating Expenses" is \$36,748,013 or 28%.

It seems this is some sort of restatement of prior year financial information, yet there is no such language informing investors of that.

I'd be remiss if I didn't point out this statement in the 1/4/13 SEC filing:

*"However, the operating lessee has yet to authorize borrowing above the current debt level. If the consolidation and IPO are not concluded, it is possible that the operating lessee may not approve additional borrowings under the mortgage, in which case the operating lessee may use cash flow for expenditures to improve the building and conclude leases, resulting in immediate and sustained reductions or cessation of overage rent, or may either defer or not make such expenditures."*

This is a threat.

So if I understand this properly.

ESBA investors receive a SEC filed letter with a threat, an unidentified admission of a 28% overcharge of operating expenses and a major material misstatement of fact.

Lovely.

Thank you, as always, for your attention to these matters.

Richie Edelman  
608 N. Rios Ave  
Solana Beach, Ca 92075  
858-922-9680

<http://www.sec.gov/Archives/edgar/data/32776/000003277610000010/esba10kdoc.htm>

"The annual rent payable by Registrant to its subsidiary under the Master Lease is \$1,970,000 from January 5, 1992 through January 5, 2013 and \$1,723,750 annually during the term of each renewal period thereafter. These amounts are eliminated in consolidation."

(b)

The Lease and Sublease

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**From:** Kluck, Thomas  
**Sent:** Thursday, January 10, 2013 11:27 AM  
**To:** (b)(6) McHale, Angela R.; Orlic, David L.  
**Cc:**  
**Subject:** RE: Supplement: Empire State Building Associates LLC SEC filing 1/4/13

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Thanks, (b)(6)

---

**From:** McPhee, Eric  
**Sent:** Thursday, January 10, 2013 11:25 AM  
**To:** Kluck, Thomas; (b)(6) McHale, Angela R.; Orlic, David L.  
**Cc:** (b)(6)  
**Subject:** RE: Supplement: Empire State Building Associates LLC SEC filing 1/4/13

- A. (b)(6)
- B.

---

**From:** Kluck, Thomas  
**Sent:** Thursday, January 10, 2013 10:35 AM  
**To:** (b)(6) McHale, Angela R.; Orlic, David L.  
**Cc:**  
**Subject:** FW: Supplement: Empire State Building Associates LLC SEC filing 1/4/13

(b)(6)

Can you take a look at this?

Thanks,

Tom

---

**From:** richard edelman [mailto:richardedelman@hotmail.com]  
**Sent:** Thursday, January 10, 2013 10:28 AM



**To:** Kluck, Thomas

**Cc:** (b)(6)

**Subject:** Supplement: Empire State Building Associates LLC SEC filing 1/4/13

Empire State Building Associates L.L.C.

CIK#: 0000032776

January 10, 2013

**BY E-MAIL**

Tom Kluck

Division of Corporation Finance

U.S. Securities and Exchange Commission

100 F Street N.E.

Washington, DC 20549

cc: (b)(6)

Dear Mr. Kluck and (b)(6)

The 1/4/13 DEFA14A filed by Empire State Building Associates LLC contained a revised 2011 Statement of Income and Expenses.

A. The revised number for 2011 ESBA **Overage rent** does not match the 2011 ESBA Overage rent amount given in the S-4 filed by Empire State Realty Trust, Inc. on 12/21/12.

B. **Payroll and Related expenses** for 2011 are 80% higher than those of the five prior years.

**A. Overage rent**

The 12/21/12 Empire State Realty Trust, Inc. S-4 lists ESBA 2011 **Overage rent of \$0** on page S1-48

<http://www.sec.gov/Archives/edgar/data/1541401/000119312512512349/d283359ds4a.htm>

The 1/4/13 Empire State Building Associates LLC DEFA14A lists ESBA 2011 **Overage rent of \$28,780,449.**

<http://www.sec.gov/Archives/edgar/data/32776/000119312513003622/d462328ddefa14a.htm>

More information below.

**B. Payroll and Related expenses (from 10K's for prior years)**

Payroll and related Labor Costs  
expenses

2011:	\$ 38,645,277
2010:	\$ 21,116,346
2009:	\$ 21,528,386
2008:	\$ 21,866,938
2007	\$22,069,483
2006	\$20,399,594

Such an extraordinary increase in Payroll expenses should require a written and detailed explanation to ESBA investors.

12/21/12 Empire State Realty Trust, Inc. S-4

<http://www.sec.gov/Archives/edgar/data/1541401/000119312512512349/d283359ds4a.htm>

	Nine Months ended					
	<u>September 30, 2012</u>	<u>2011</u>	<u>2010</u>	<u>2009</u>	<u>2008</u>	<u>2007</u>
Empire State Building Associates L.L.C.						
Distributions out of basic rent	\$ 884	\$ 1,179	\$ 1,179	\$ 1,179	\$ 1,179	\$ 1,179
Distributions out of overage rent						
Overage rent						
distributions attributable						
to borrowing <sup>(1)</sup>	\$ 5,255	\$ —	\$ 679	\$ —	\$ —	\$ —
Overage rent distributions						
attributable to operations	\$ —	\$ —	\$ 339	\$ —	\$ 4,051	\$ 4,589
<b>Total distributions out of overage rent</b>	<b>\$ 5,255</b>	<b>\$ —</b>	<b>\$ 1,018</b>	<b>\$ —</b>	<b>\$ 4,051</b>	<b>\$ 4,589</b>
<b>Total distributions</b>	<b>\$ 6,139</b>	<b>\$ 1,179</b>	<b>\$ 2,197</b>	<b>\$ 1,179</b>	<b>\$ 5,230</b>	<b>\$ 5,768</b>

(1) The distributions attributable to borrowings resulted from borrowings used to fund capital expenditures which would otherwise have been funded from operations and reduced overage rent.

S1-48

1/4/12 Empire State Building Associates LLC DEFA14A

<http://www.sec.gov/Archives/edgar/data/32776/000119312513003622/d462328ddefa14a.htm>

EMPIRE STATE BUILDING COMPANY L.L.C.

## STATEMENT OF INCOME AND EXPENSE

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	Year Ended December 31, 2011
<b>Total Revenue</b>	<u>188,806,583</u>
<b>Operating Expenses:</b>	
Basic rent expense	8,439,772
Real estate taxes	30,009,907
<b>Payroll and related costs</b>	<b>38,645,277</b>
Tenants' and building alterations, repairs and maintenance	13,144,674
Utilities	12,557,405
Supervisory fees	583,368
Professional fees and leasing costs	8,900,932
Insurance	7,422,948
Advertising	4,703,117
Cleaning	2,881,196
Administrative	2,957,089
<b>Total Operating Expenses</b>	<u>130,245,685</u>
<b>Net Operating Profit</b>	<u>\$ 58,560,898</u>
<b>Overage Rent, 50% of Net Operating Profit in Excess of \$1,000,000</b>	<u><b>\$ 28,780,449</b></u>

Thank you for your tireless attention to all things ESB.

Richie Edelman

---

From: [richardedelman@hotmail.com](mailto:richardedelman@hotmail.com)  
To: [kluckt@sec.gov](mailto:kluckt@sec.gov); [kosterlitzm@sec.gov](mailto:kosterlitzm@sec.gov)  
Subject: Empire State Building Associates LLC SEC filing 1/4/13  
Date: Mon, 7 Jan 2013 12:49:01 -0800

Empire State Building Associates L.L.C.  
CIK#: 0000032776

January 7, 2013

**BY E-MAIL**

Tom Kluck  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street N.E.  
Washington, DC 20549

cc: [REDACTED]

Dear Mr. Kluck and [REDACTED]

On 1/4/13 Empire State Building Associates filed a DEFA14A with the SEC which was mailed to participant investors.

<http://www.sec.gov/Archives/edgar/data/32776/000119312513003622/d462328ddefa14a.htm>

It stated:

*"From the additional rent of \$28,780,449 for 2011, \$10,330,449 was set-aside for i) debt service on the portion of the mortgage attributable to the purchase of the fee position in 2002...."*

All ESBA "debt service" is paid out of basic rent, not "additional rent".

In addition the *"debt service on the portion of the mortgage attributable to the purchase of the fee position in 2002"* is roughly equal to the annual rent paid by ESBA to the prior fee title owners.

That is why ESBA's fee title purchase in 2002 did not require an increase in basic rent paid by the Sublessee.

In fact, "debt service" for any and all other bank borrowings are paid out of basic rent, not "additional rent".

I've included supporting information and a link to a SEC filing about this below.

This 1/4/13 SEC filing contains a 2011 income statement for the Empire State Building that was originally sent to ESBA participant investors in April 2012.

The 1/4/13 version has material changes in financial information including restated Operating Expenses.

The actual "Total Operating Expense" were \$130,245,685. In April 2012 ESBA investors were sent SEC filed

Financials that listed "Total Operating Expenses" of \$166,993,698.

The original overstatement of "Total Operating Expenses" is \$36,748,013 or 28%.

It seems this is some sort of restatement of prior year financial information. yet there is no such language informing investors of that.

I'd be remiss if I didn't point out this statement in the 1/4/13 SEC filing;

*"However, the operating lessee has yet to authorize borrowing above the current debt level. If the consolidation and IPO are not concluded, it is possible that the operating lessee may not approve additional borrowings under the mortgage, in which case the operating lessee may use cash flow for expenditures to improve the building and conclude leases, resulting in immediate and sustained reductions or cessation of overage rent, or may either defer or not make such expenditures."*

This is a threat.

So if I understand this properly.

ESBA investors receive a SEC filed letter with a threat, an unidentified admission of a 28% overcharge of operating expenses and a major material misstatement of fact.

Lovely.

Thank you, as always, for your attention to these matters.

Richie Edelman  
608 N. Rios Ave  
Solana Beach, Ca 92075  
858-922-9680

<http://www.sec.gov/Archives/edgar/data/32776/000003277610000010/esba10kdoc.htm>

"The annual rent payable by Registrant to its subsidiary under the Master Lease is \$1,970,000 from January 5, 1992 through January 5, 2013 and \$1,723,750 annually during the term of each renewal period thereafter. These amounts are eliminated in consolidation."

(b)

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**From:** Orlic, David L.  
**Sent:** Tuesday, January 29, 2013 6:37 PM  
**To:** Kluck, Thomas; McHale, Angela R.  
**Subject:** RE: T. Malkin on Bloomberg today

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

(b)(5)

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**From:** Kluck, Thomas  
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**Subject:** RE: T. Malkin on Bloomberg today

(b)(5)

---

**From:** Orlic, David L.  
**Sent:** Tuesday, January 29, 2013 1:54 PM  
**To:** Kluck, Thomas; McHale, Angela R.; Anderson, (b)(5)

(b)(5)

**Subject:** T. Malkin on Bloomberg today

<http://www.bloomberg.com/video/malkin-on-empire-state-realty-ipo-outlook-OgxsXu1uTVO5SKrV2UFAsw.html>

**From:** Kluck, Thomas  
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**From:** Orlic, David L.  
**Sent:** Tuesday, January 29, 2013 1:54 PM  
**To:** Kluck, Thomas; McHale, Angela R.; [b:(6)]

[b:(6)]

**Subject:** T. Malkin on Bloomberg today

<http://www.bloomberg.com/video/malkin-on-empire-state-realty-ipo-outlook-OgxsXuIuTVO5SKrV2UFAsw.html>



**From:** Kluck, Thomas  
**Sent:** Tuesday, January 29, 2013 7:03 PM  
**To:** Orlic, David L.  
**Subject:** RE: T. Malkin on Bloomberg today

**Follow Up Flag:** Follow up  
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(b)(5) Thanks

---

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**Sent:** Tuesday, January 29, 2013 6:37 PM  
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**From:** Orlic, David L.  
**Sent:** Sunday, April 28, 2013 4:01 PM  
**To:** McHale, Angela R.  
**Subject:** RE: Tax Treatment

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

We will make it through this.



---

**From:** McHale, Angela R.  
**Sent:** Sunday, April 28, 2013 3:59 PM  
**To:** Orlic, David L.  
**Subject:** RE: Tax Treatment

Non Responsive

[Redacted]

Non Responsive

[Redacted]

---

**From:** [Redacted]  
**Sent:** Sunday, April 28, 2013 3:53 PM  
**To:** [Redacted]  
**Subject:** RE: Tax Treatment

[Redacted]

Not such a great weekend. I hope yours is better. -David

---

**From:** McHale, Angela R.  
**Sent:** Sunday, April 28, 2013 3:52 PM  
**To:** Orlic, David L.  
**Subject:** RE: Tax Treatment

[Redacted]

---

**From:** Orlic, David L.  
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**Subject:** RE: Tax Treatment

Thanks Angela.

---

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**Sent:** Saturday, April 27, 2013 11:26 PM  
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**Subject:** FW: Tax Treatment

FYI below.

---

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**Sent:** Saturday, April 27, 2013 11:25 PM  
**To:** [REDACTED]  
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Thanks again,

Angela

---

**From:** [REDACTED] **On Behalf Of** [REDACTED]  
**Sent:** Friday, April 26, 2013 8:18 PM  
**To:** McHale, Angela R.  
**Subject:** Tax Treatment

Angela,

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He then uses the emphatic term "very clear" he when he states "there is an opportunity to defer tax 100%." No disclaimer as to possible risk. Complete certainty. Zero chance that the deal won't be challenged by the IRS and lose.

Absent a tax ruling no one can be sure that a structure will be tax deferred. I'd suggest the only truthful statement would be that they believe the structure to be tax deferred, but that any deal, but especially one that is new and never used before absent a ruling there is a risk that it might be deemed a taxable event.

No one more than I would like to see an in depth discussion of why they feel this is highly unlikely so that I could gauge the size of the risk but to allow the Malkin's to assert that the risk is zero as they plainly with the investors to believe particularly strikes me crossing the line.

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Once again thank you for your kind attention. I hope all is well by you.

(b)(6)

<http://www.sec.gov/Archives/edgar/data/1541401/000119312513163398/d526163d425.htm>

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<http://www.sec.gov/Archives/edgar/data/1541401/000119312512292003/d376103d425.htm>

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**From:** McHale, Angela R.  
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**To:** Orlic, David L.  
**Subject:** RE: Tax Treatment

**Follow Up Flag:** Follow up  
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(b)(6)

<http://www.sec.gov/Archives/edgar/data/1541401/000119312513163398/d526163d425.htm>

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<http://www.sec.gov/Archives/edgar/data/1541401/000119312513160673/d522474d425.htm>

**From:** McHale, Angela R.  
**Sent:** Sunday, April 28, 2013 3:52 PM  
**To:** Orlic, David L.  
**Subject:** RE: Tax Treatment

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

(b)(6)

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**From:** Orlic, David L.  
**Sent:** Sunday, April 28, 2013 2:33 PM  
**To:** McHale, Angela R.  
**Subject:** RE: Tax Treatment

Thanks Angela.

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**From:** McHale, Angela R.  
**Sent:** Saturday, April 27, 2013 11:26 PM  
**To:** Kluck, Thomas; Orlic, David L.  
**Subject:** FW: Tax Treatment

FYI below.

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**From:** McHale, Angela R.  
**Sent:** Saturday, April 27, 2013 11:25 PM  
**To:** (b)(6)  
**Subject:** RE: Tax Treatment

Hi (b)(6)

Thank you for your email. Because of our frequent contact over the past year, I do not always send you the stock response where we thank you for your tip/complaint and say that we cannot tell you what we do with the information. You have already heard that many times, and, as you know, we typically just call you whenever we have questions about any of the information you send us. I apologize if you thought I was trying to tune you out—that is most certainly not the case. As we have also told you numerous times, we very much appreciate all of the feedback and information you send to us, and we carefully consider what you tell us. In the future, I will respond to each email you send (maybe just say something like, "Received. Thanks."), just so you know that I have received it. Thank you for your most recent complaint, and please feel free to send us any other issues/concerns you may have in the future.

Thanks again,

Angela

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**From:** (b)(6) **On Behalf Of** (b)(6)  
**Sent:** Friday, April 26, 2013 8:18 PM  
**To:** McHale, Angela R.  
**Subject:** Tax Treatment

Angela,

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**To:** [b:(6)]  
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<http://www.sec.gov/Archives/edgar/data/1541401/000119312513160673/d522474d425.htm>



**From:** Orlic, David L.  
**Sent:** Tuesday, January 29, 2013 1:54 PM  
**To:** Kluck, Thomas; McHale, Angela R.; [b:(6)]

**Subject:** T. Malkin on Bloomberg today

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**Flag Status:** Flagged

<http://www.bloomberg.com/video/malkin-on-empire-state-realty-ipo-outlook-OgxsXu1uTVO5SKrV2UFAsw.html>

**From:** Kluck, Thomas  
**Sent:** Wednesday, February 20, 2013 11:40 AM  
**To:** Orlic, David L.; McHale, Angela R.  
**Cc:** [b:(6)]  
**Subject:** WestlawNext - Empire State Building investors cool to MacKenzie Capital offer  
**Attachments:** Empire State Building investors cool to MacKenzie Capital offer.pdf; ATT00001.htm  
  
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Empire article.



## NewsRoom

2/20/13 Reuters News 02:00:59

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February 20, 2013

**Empire State Building investors cool** to MacKenzie Capital offer

Ilaina Jonas

Prudence Crowther

NEW YORK, Feb 19 (Reuters) - An offer by MacKenzie Capital Management LLC to buy 170 units from the owners of the Empire State Building has largely fizzled, according to regulatory documents filed on Tuesday.

MacKenzie made the offer of \$110,000 per unit to investors in Empire State Building Associates LLC in December. By the Feb. 8 deadline, MacKenzie had acquired only 13.83 units, according to the filing. There are 3,300 units in total.

The offer came as Malkin Holdings LLC, which manages the building and its investors, continued trying to persuade them to back its plan to make the skyscraper the centerpiece in a publicly traded real estate investment trust. The proposed REIT, to be called Empire State Realty Trust Inc <ESB.N>, would contain more than 18 other properties, with most located in Manhattan. MacKenzie has said it would cast its votes in favor of the REIT proposal.

The plan requires the approval of holders of at least 80 percent of each of three groups owning 1,100 units. Malkin Holdings has estimated that in an initial public offering, each unit would be worth about \$324,000, according to SEC filings. Those units originally sold in 1961 to small investors for \$10,000.

MacKenzie, based in Moraga, California, offered to buy the units on behalf of funds it manages. The company specializes in buying illiquid real estate-backed securities, such as non-traded REIT shares, limited partnership units and private real estate notes.

(Reporting by Ilaina Jonas, editing by Prudence Crowther)

((ilaina.jonas@thomsonreuters.com)(1 646 223 6193)(Reuters Messaging: ilaina.jonas.thomsonreuters.com@reuters.net))

### ---- Index References ----

Company: MACKENZIE; MALKIN HLDGS; EMPIRE STATE REALTY TRUST INC

News Subject: (Initial Public Offerings (IPOs) (IIN65); Investment Banking (IIN86); Real Estate Investments (IRE04); Corporate Funding (IXO17); Business Management (IBU42); Fund Instruments (IFU72); Investment Trusts (IIV44); Commercial REITs (ICM45); Equity Instruments (IEQ90); Funding Instruments (IFU41); Stock Offerings (IST44); Real Estate Investment Trusts (REITs) (IRE39); Finance Management (IFI66); Corporate Events (ICR05))

Industry: (Real Estate (1RE57); Securities Investment (1SE57); Investment Management (1IN34); Commercial Real Estate (1CO51); Financial Services (1FI37))

Region: (Americas (1AM92); New York (1NE72); USA (1US73); North America (1NO39); U.S. Mid-Atlantic Region (1MI18))

Language: EN

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Word Count: 250

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