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Transaction ID 63068496
Case No. 2018-0917-KSJM

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ROBERT GARFIELD, Plaintiff, v. BLACKROCK MORTGAGE VENTURES, LLC, BLACKROCK, INC.; HC PARTNERS, LLC, STANFORD L. KURLAND, DAVID A. SPECTOR; ANNE D. MCCALLION, MATTHEW BOTEIN, FARHAD NANJI, MARK WIEDMAN, JOSEPH MAZELLA, and ANDREW S. CHANG, Defendants, PENNYMAC FINANCIAL SERVICES, INC., Nominal Defendant.	:	C.A. No. 2018-0917-KSJM **Original Filed: March 11, 2019** **Public Version Filed: March 14, 2019**

VERIFIED AMENDED CLASS
ACTION AND DERIVATIVE COMPLAINT

Plaintiff, Robert Garfield ("Garfield" or "Plaintiff"), brings suit against Defendants BlackRock Mortgage Ventures, LLC, BlackRock, Inc.,[1] HC Partners, LLC ("Highfields"), Stanford L. Kurland, David A. Spector, Anne D. McCallion, Matthew Botein, Farhad Nanji, Mark Wiedman, Joseph Mazella,[2] and Andrew S.

[1] BlackRock Mortgage Ventures, LLC and Black Rock, Inc. are, collectively, "Black Rock" or the "Black Rock Entities."

[2] Kurland, Spector, McCallion, Botein, Nanji, Wiedman, and Mazella are,

Chang. Plaintiff brings suit individually and on behalf of a class of similarly situated stockholders and, in the alternative, derivatively on behalf of Nominal Defendant PennyMac Financial Services, Inc. ("New HoldCo" or the "Company").[3] Plaintiff asserts claims against all Defendants for breaches of fiduciary duty.

NATURE OF THE ACTION

1. In March 2008, BlackRock, Highfields, and Kurland (the former Chief Operating Officer of Countrywide Financial Corporation) formed a private company called Private National Mortgage Acceptance Company, LLC ("OpCo").[4] OpCo's stated purpose was to acquire and restructure distressed residential mortgages.

2. In 2013, BlackRock, Highfields, and Kurland took PennyMac public in a so-called Up-C structure, which created a new publicly traded holding company—Old HoldCo—above OpCo. Old HoldCo became the sole managing member of OpCo. Public stockholders received Class A Common Stock in Old HoldCo. BlackRock, Highfields, Kurland, and the other existing owners of OpCo (the

collectively, the "Director Defendants." With Chang, they are the "Individual Defendants."

[3] Including all derivative claims belonging to PNMAC Holdings, Inc., formerly known as PennyMac Financial Services, Inc. ("Old HoldCo"), which is referred to in some diagrams as "Existing PennyMac or "Old PennyMac." References to "PennyMac" generally are to the overall corporate structure.

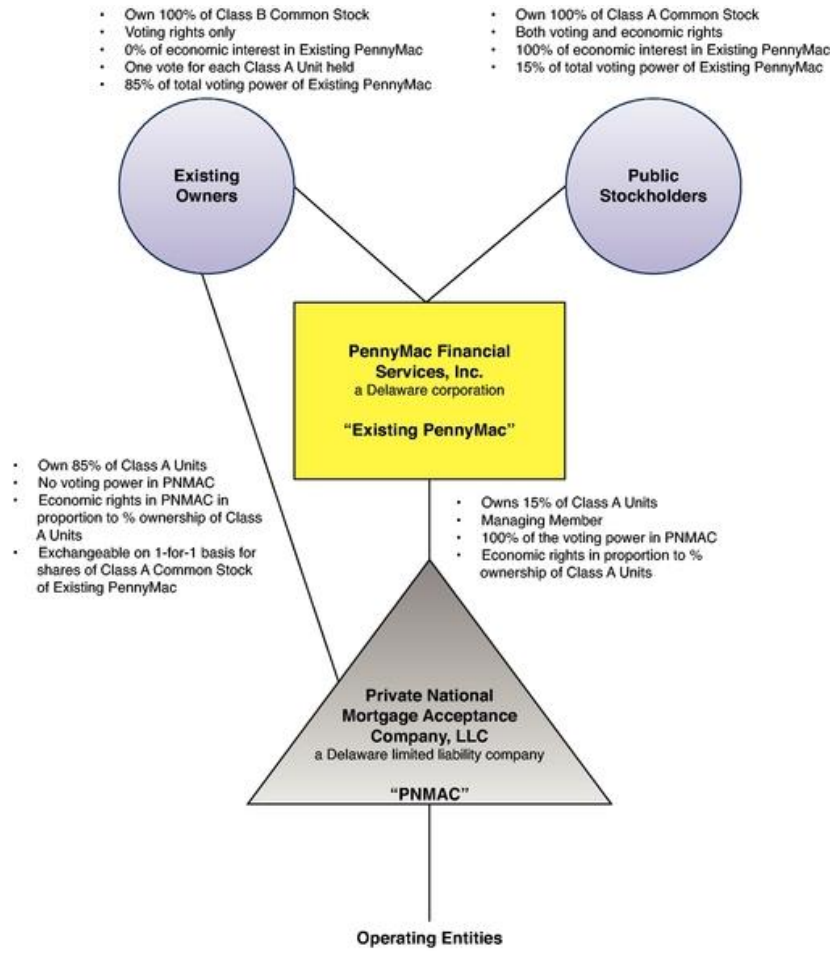
[4] Also referred to as "PNMAC."

"Existing Owners") were issued Class A Units in OpCo ("OpCo Units"), plus one share each of Class B Common Stock in Old HoldCo.

3. OpCo Units had 100% of the economic rights in OpCo but no voting rights (as Old HoldCo was the sole managing member). OpCo Units were exchangeable on a one-for-one basis with Class A Common Stock in Old HoldCo. The Class B Common Stock issued to OpCo Unitholders had no economic rights in Old HoldCo but carried one vote for each OpCo Unit owned.

4. Following the IPO, BlackRock, Highfields, and Kurland were a control group that, at all relevant times, controlled a majority of the voting power in Old HoldCo.

5. After the IPO, PennyMac's structure looked like this:



6. The Up-C structure was driven by tax considerations. Because the Existing Owners' only economic interest was in OpCo—an LLC—they would receive pass-through tax treatment on its income and avoid the double taxation inherent in the corporate form. When Existing Owners exchanged their OpCo Units for Class A Common Stock in Old HoldCo, Old HoldCo would receive a stepped-up basis in a proportional part of OpCo's assets. This stepped-up basis would reduce Old HoldCo's future taxable income, if any, and thus its tax liability. Pursuant to a

tax receivable agreement ("TRA"), the Existing Owners were to receive 85% of the resulting tax benefit and Old HoldCo would retain 15%.

7. Following the IPO, however, OpCo's business operations changed in a way that resulted in less taxable income than had been expected at the time of the IPO. Indeed, by 2018, [redacted] This would mean that the tax benefits to OpCo Unitholders of an Up-C structure were essentially eliminated. (There is no need to avoid double taxation if you do not have taxable income and no tax benefits would be created by exchanges if there was no taxable income to reduce). But the Up-C structure still posed a significant obstacle to OpCo Unitholders who wished to liquidate their stake by converting to Class A Common Stock and selling: the exchange of OpCo Units for Class A Common Stock was treated as a taxable event for the unitholder and their gain was taxed at the (higher) ordinary-income rate rather than the (lower) capital gains rate.

8. This was a problem for BlackRock, Highfields, Kurland and the other holders of OpCo Units (a group that included a majority of the Board of Directors). So Kurland—with the support of BlackRock and Highfields—pushed through the "Reorganization," a transaction that created New HoldCo, merged Old HoldCo into

New HoldCo,[5] and converted both OpCo Units and Class A Common Stock of Old HoldCo into Class A Common Stock of New HoldCo on a one-for-one basis. In effect, the Reorganization allowed all of the OpCo Unitholders to exchange their OpCo Units for Class A Common Stock in a tax-free exchange *and* receive long-term capital gains treatment (a lower rate than the rate for ordinary income) on future sales of the Class A Common Stock as long as those shares were held for more than one year.

9. This was a conflicted transaction that created a massive tax benefit for the insiders who held the OpCo Units. Yet none of those benefits were shared with Plaintiffs or other holders of Class A Common Stock. This action follows.

PARTIES

10. Plaintiff Robert Garfield is a beneficial owner of common stock of New HoldCo. He was continuously a stockholder of Old HoldCo from December 10, 2015 to the closing of the Reorganization on November 1, 2018, at which time he received shares of New HoldCo in exchange for his shares of Old HoldCo.[6] He has

[5] Technically, Old HoldCo was merged into New PennyMac Merger Sub, LLC, a Delaware limited liability company and a direct, wholly-owned subsidiary of New HoldCo.

[6] *See Arkansas Teacher Ret. Sys. v. Caiafa*, 996 A.2d 321, 322–23 (Del. 2010) ("Other than in instances of fraud or reorganization, a plaintiff loses standing to maintain a derivative suit where the corporation, in which the plaintiff holds stock, merges with another company."); *Kramer v. W. Pac. Indus., Inc.*, 546 A.2d 348, 354

continuously held those shares of New HoldCo from the time of the closing of the Reorganization through the present.

11. Defendant BlackRock Mortgage Ventures, LLC is a Delaware limited liability company and a wholly owned subsidiary of BlackRock, Inc. Where the Complaint makes reference to OpCo Units owned by BlackRock, those Units are or were directly owned by BlackRock Mortgage Ventures, LLC.

12. Defendant BlackRock, Inc. is a Delaware corporation headquartered in New York, New York that is publicly traded on the New York Stock Exchange under the ticker symbol "BLK."

13. Defendant HC Partners, LLC, formerly known as Highfields Capital Investments, LLC is a Delaware limited liability company.

14. Defendant Stanford L. Kurland is a director and the Executive Chairman of New HoldCo and has been since the Reorganization. He was a director and Executive Chairman of Old HoldCo from January 2017 to the close of the Reorganization. From February 2013 through December 2016, Kurland was Old HoldCo's Chairman and Chief Executive Officer. Kurland was the Chairman and CEO of OpCo from January 2008 through May 2013. He stepped down as Chairman

(Del. 1988) (recognizing that continuous-ownership rule does not deprive stockholder of derivative standing where, as here, "the merger is in reality merely a reorganization…").

of OpCo in May 2013 but remained as the CEO of OpCo through December 2016. Kurland has been the executive chairman of the Public REIT (defined below), since January 2017 and, prior thereto, had been the Chairman of the Board and Chief Executive Officer of the Public REIT from its formation in May 2009 through December 2016. He has also served as the Chairman of the REIT Manager (defined below), since its formation in March 2008.

15. Defendant David A. Spector is a director and the President and CEO of New HoldCo and has been since the Reorganization. He was a director and the President and CEO of Old HoldCo from January 2017 to the close of the Reorganization. He served on the board of Old HoldCo since its inception in January 2008. Spector is the President and CEO of the Public REIT and has been a director of the Public REIT since its formation in 2009.

16. Defendant Anne D. McCallion is a director of New HoldCo and has been since the Reorganization. She was a director of Old HoldCo from February 2018 to the close of the Reorganization. She has been the Senior Managing Director and Chief Enterprise Operations Officer for Old HoldCo (and then, after the Reorganization, New HoldCo) since January 2017. Prior thereto, she served as Old HoldCo's Senior Managing Director and Chief Financial Officer from February 2016 through December 2016 and as its Chief Financial Officer from January 2013

to February 2016. McCallion also has served in a variety of similar executive positions at OpCo since May 2009.

17. Defendant Matthew Botein is a director of New HoldCo and has been since the Reorganization. He was a director of Old HoldCo since its formation in 2012 through the close of the Reorganization. Botein was a managing director of BlackRock from November 2009 through January 2017. Since 2017, Botein has been employed as a consultant to BlackRock. Botein was a managing director of Highfields from April 2003 to June 2009. Botein was nominated to the Board pursuant to a stockholders' agreement with BlackRock which gives BlackRock the right to nominate two directors.

18. Defendant Farhad Nanji is a director of New HoldCo and has been since the Reorganization. He was a director of Old HoldCo since its formation in 2012 through the close of the Reorganization. Nanji was a managing director of Highfields from 2006 through December 2015.

19. Defendant Mark Wiedman is a director of New HoldCo and has been since the Reorganization. He was a director of Old HoldCo since its formation in 2012 through the close of the Reorganization. Wiedman has been the global head of BlackRock's iShares business since September 2011 and is a member of BlackRock's global operating committee. Previously, Wiedman was the head of

corporate strategy for BlackRock. Wiedman joined BlackRock in 2004. Wiedman was nominated to the Board pursuant to a stockholders' agreement with BlackRock which gives BlackRock the right to nominate two directors.

20. Defendant Joseph Mazella is a director of New HoldCo and has been since the Reorganization. He was a director of Old HoldCo since its formation in 2012 through the close of the Reorganization. Mazella was a managing director and the general counsel of Highfields from 2002 through March 2017. Mazella was nominated to the Board pursuant to a stockholders' agreement with Highfields which gives Highfields the right to nominate two directors.[7]

21. Defendant Andrew S. Chang is an officer of New HoldCo and was an officer of Old HoldCo at all relevant times. Chang has been the Senior Managing Director and Chief Financial Officer of Old HoldCo (and then, after the Reorganization, New HoldCo) since January 2017. Prior thereto, he served as Old HoldCo's senior managing director and chief business development officer from February 2016 through December 2016 and as its chief business development officer from February 2013 to February 2016. Chang also has served in a variety of similar executive positions at OpCo since May 2008. From June 2005 to May 2008, Chang

[7] Although Highfields has chosen not to exercise its right to nominate a second director, it reserves the right to do so in any and all future elections of directors as provided in the Highfields stockholder agreement.

was employed at BlackRock and was a senior member in its advisory services practice.

22. Nominal Defendant PennyMac Financial Services, Inc. formerly known as New PennyMac Financial Services, Inc. (New HoldCo) is a Delaware corporation, headquartered in Westlake Village, California. The Company is publicly traded on the New York Stock Exchange under the ticker symbol "PFSI."

OTHER BOARD MEMBERS AND OTHER OFFICERS

23. At the time of the Reorganization, the Board of Old HoldCo consisted of the Director Defendants identified above, plus James Hunt, Patrick Kinsella, Theodore Tozer, and Emily Youssouf. The Board of New HoldCo consists of the same people today.

24. Hunt joined the board of Old HoldCo in April 2013.

25. Kinsella joined the board of Old HoldCo in July 2014.

26. Tozer joined the board of Old HoldCo in August 2017.

27. Yousoff joined the board of Old HoldCo in November 2013.

28. Vandad Fartaj is an officer of New HoldCo and was an officer of Old HoldCo at all relevant times. Fartaj has been the Senior Managing Director and Chief Capital Markets Officer of Old HoldCo (and then, after the Reorganization, New HoldCo) since February 2016. Prior thereto, he served as Old HoldCo's chief capital markets officer from February 2013 to February 2016. Fartaj also has served in a

variety of similar executive positions at PNMAC since April 2008. Prior to joining OpCo, Fartaj was employed in a variety of positions at Countrywide from November 1999 to April 2008.

29. Doug Jones is an officer of New HoldCo and was an officer of Old HoldCo at all relevant times. Jones has been the Senior Managing Director and Chief Mortgage Banking Officer of Old HoldCo (and then, after the Reorganization, New HoldCo) since January 2017. Prior thereto, he served as Old HoldCo's senior managing director and chief institutional mortgage banking officer from February 2016 through December 2016, as its chief institutional mortgage banking officer from March 2015 to February 2016, and as its chief correspondent lending officer from February 2013 to March 2015. Jones also has served in a variety of similar executive positions at OpCo since March 2012. Prior to joining OpCo, Mr. Jones worked in several executive positions, including senior managing director, correspondent lending, at Countrywide (and Bank of America Corporation, as its successor) from 1997 until 2011.

30. David M. Walker is an officer of New HoldCo and was an officer of Old HoldCo at all relevant times. Walker has been the Senior Managing Director and Chief Risk Officer of Old HoldCo (and then, after the Reorganization, New HoldCo) since February 2016. Prior thereto, he served as Old HoldCo's chief risk

officer from July 2015 to February 2016, as its chief credit and enterprise risk officer from May 2013 to July 2015, and as its chief credit officer from February 2013 to May 2013. Walker also has served in a variety of similar executive positions at OpCo since January 2008. From October 1992 to April 2007, Mr. Walker served in a variety of executive positions at Countrywide and its affiliate Countrywide Bank, N.A.

OTHER RELEVANT ENTITIES

31. PNMAC Holdings, Inc., formerly known as PennyMac Financial Services, Inc. (Old HoldCo), is a Delaware corporation and a wholly owned subsidiary of New HoldCo. Prior to the closing of the Reorganization, Old HoldCo was publicly traded on the New York Stock Exchange under the ticker symbol "PFSI."

32. Private National Mortgage Acceptance Company, LLC (OpCo) is a Delaware limited liability company and controlled subsidiary of the Company.

33. PennyMac Mortgage Investment Trust (the "Public REIT") is a Maryland real estate investment trust, headquartered in California. The Public REIT trades on the New York Stock Exchange under the ticker symbol "PMT."

34. PNMAC Capital Management, LLC (the "REIT Manager") is a Delaware limited liability company and the external manager of the Public REIT. The REIT Manager is a subsidiary of OpCo.

FACTUAL ALLEGATIONS

A. Before PennyMac, There Was Countrywide

35. Kurland spent 28 years as a senior executive of Countrywide Financial Corporation, serving as its Chief Financial Officer from 1979 to 1989 and its Chief Operating Officer from 1988 until September 2006. Until his departure, Kurland was the right-hand man of Countrywide's CEO, Angelo Mozilo. Other PennyMac officers were also senior Countrywide executives, including Spector, McCallion, Walker, Jones, and Fartaj.

36. In *In re Countrywide Financial Corporation Securities Litigation*, the United States District Court for the Central District of California concluded that the complaint gave rise to a "strong inference"[8] that between February 2005 and September 2006, Kurland made false public statements about Countrywide's subprime mortgage lending operations with "actual knowledge" that the statements

[8] Under the Private Securities Litigation Reform Act of 1995, a "strong inference" is "one that is cogent and at least as compelling as any opposing inference of nonfraudulent intent." *In re Countrywide Fin. Corp. Sec. Litig.*, 588 F. Supp. 2d 1132, 1185 (C.D. Cal. 2008) (quoting *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308 (2007)).

were materially false and/or with intent to deliberately mislead investors.[9] On April 17, 2006, Kurland was copied on an infamous email in which Mozilo described Countrywide's subprime 80/20 loans as being the most "toxic" product he had ever seen "in all [his] years in the business." On September 7, 2006, Kurland left Countrywide. On September 12, 2006, Kurland sold $51.5 million worth of Countrywide stock. The next day, he sold another $68.2 million worth of stock. Two days after that, he sold another $10.9 million worth of Countrywide stock.

37. The rest is familiar history. On July 24, 2007, Countrywide's shares plummeted after the company revealed that the delinquency rates on its subprime mortgages had grown from 10% to almost 24% and Mozilo stated that "[w]e are experiencing home price depreciation almost like never before, with the exception of the Great Depression." By mid-August, Countrywide had been forced to draw down its entire $11.5 billion line of credit and the New York Times was openly speculating about its bankruptcy. During the second half of 2007, Countrywide took $5.2 billion in impairment charges and increases to loan-loss reserves. By January 2008, the company had been sold to Bank of America for $4 billion (less than 20% of its market capitalization in January 2007).

[9] *Id.* at 1195–96.

38. As a consequence of the Countrywide acquisition, Bank of America suffered billions of dollars in operating losses, and paid billions more in settlements of government and private actions relating to Countrywide-related mortgage-backed securities. Today, Bank of America's purchase of Countrywide is widely regarded as one of the "worst deals ever struck in corporate America."[10]

B. PennyMac Rises From The Ashes Of Countrywide

39. In March 2008, BlackRock, Highlands, and Kurland announced the formation of a new company, Private National Mortgage Acceptance Company, LLC (*i.e.*, OpCo):

> BlackRock and Highfields Capital Management Launch New Company To Acquire and Restructure Distressed Mortgage Loans
>
> …
>
> BlackRock, Inc. (NYSE: BLK) and Highfields Capital Management today announced that they have sponsored a new company that will acquire and restructure distressed residential mortgage loans in response to the ongoing dislocation in the U.S. mortgage market.
>
> The new company, Private National Mortgage Acceptance Company, LLC (PennyMac), has been formed by BlackRock, Highfields, and a management team of mortgage industry veterans led by Stanford L. Kurland, PennyMac's Chairman and Chief Executive Officer. PennyMac will raise capital from private investors, acquire loans from financial institutions seeking to reduce their mortgage exposures, and

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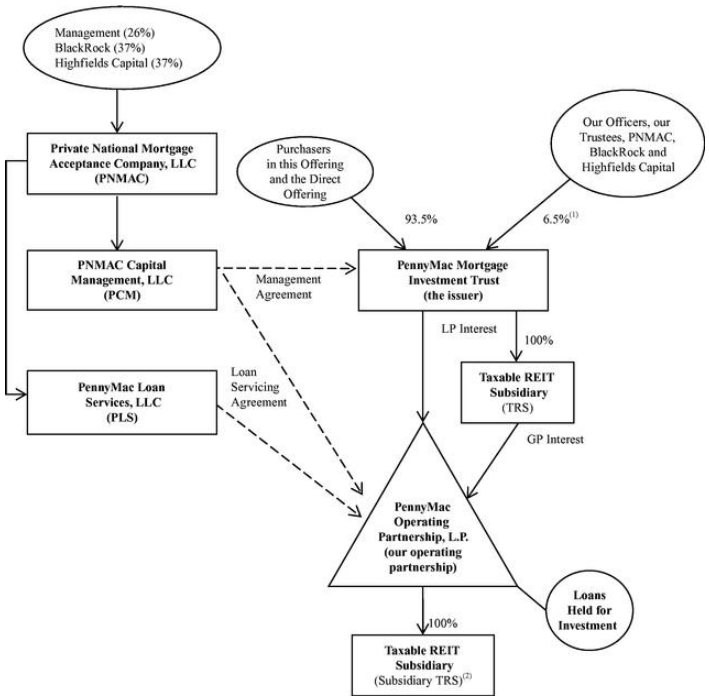
[10] *See* Shira Ovide, *Bank of America-Countrywide: Worst Deal In History?*, WALL STREET JOURNAL (June 29, 2011).

> seek to create value for both borrowers and investors through distinctive loan servicing.
>
> …
>
> "Our intent is to combine fresh capital with deep mortgage portfolio management and servicing expertise," said Mr. Kurland. "We are delighted to have the support of BlackRock and Highfields Capital as we expand our business and work to help both lenders and borrowers as one step in addressing the U.S. mortgage crisis."
>
> …
>
> Both BlackRock and Highfields will serve as strategic partners, enhancing PennyMac's relationships with global financial institutions and providing valuable input in structuring PennyMac's investment management activities.
>
> …

40. In 2009, OpCo formed the Public REIT (externally managed by the REIT Manager, a subsidiary of OpCo), which immediately went public with 93.5% of its shares sold to public investors and 6.5% sold to BlackRock, Highfields, and management. At the time of the IPO of the Public REIT, BlackRock owned 37% of OpCo, Highfields owned 37%, and Kurland and other managers owned 26%.

41. Following the IPO of the Public REIT, the PennyMac structure looked

like this:



C. The Old HoldCo IPO

42. In 2013, BlackRock, Highfields, and Kurland took the entire PennyMac structure public in an Up-C structure.

43. "The Up-C structure presents a unique combination of the benefits of C corporation status (namely the ability to go public) with the benefits of flow-through taxation."[11] "[T]raditionally when LLCs went public, the transaction was structured as a tax-free § 351 transaction. The legacy owners would contribute their

[11] Gregg D. Polsky & Adam H. Rosenzweig, *The Up-C Revolution*, 71 TAX L. REV. 415, 434 (2018).

LLC interests into Newco in exchange for Newco stock, with the public simultaneously buying shares of Newco stock for cash. Under § 351, the legacy owners would receive the benefit of deferral, with tax due only if and when they sold their Newco shares. A major downside of this structure, however, was that Newco would take a carryover basis in its assets, rather than a stepped-up basis."[12]

44. In an Up-C IPO, however, "a C corporation is placed atop [the] LLC, which is owned partially by the C corporation and partially by other investors, typically individuals and private investment partnerships such as venture capital (VC) or private equity (PE) funds. These investors also receive exchange rights that allow them to periodically tender their LLC interests for equivalent-value stock in the parent C corporation. When these exchanges occur, they are taxable exchanges to the investors and result in a stepped-up basis in a proportional part of the LLC's assets. This stepped-up basis will reduce the C corporation's future taxable income and often its future tax liability. The investors typically receive the benefit of such tax reductions through a tax receivable agreement (TRA) that requires the parent C corporation to pay the investors a specified percentage—usually 85%—of these future tax reductions as they materialize."[13]

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12 *Id.*

13 *Id.* at 416.

45. In short, Up-C structures are designed to allow the existing owners of an LLC (or partnership) to gain liquidity through access to the public capital markets while retaining pass-through tax treatment for revenues from the operating business. They also allow the existing owners of the LLC to obtain 85% of the tax benefits (*i.e.*, the stepped-up basis) created by the exchange of LLC units for shares in the public companies. As a number of commentators have explained, Up-C structures are used in IPOs to exploit a market inefficiency: public investors' failure to accurately price the cost of future payments to insiders pursuant to the TRA.[14]

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[14] *See, e.g.*, Gladriel Shobe, *Private Benefits in Public Offerings: Tax Receivable Agreements in IPOs*, 71 VAND. L. REV. 889, 893 (2018) ("[M]any pre-IPO owners believe that public shareholders do not perfectly price in TRAs. … [I]f public investors perfectly adjusted the IPO price to account for the presence of a TRA, the TRA would serve no purpose other than to increase the administrative and legal expenses of the IPO."); Morrison & Foerster LLP, *Practice Pointers on The Up-C Structure*, https://media2.mofo.com/documents/160500practicepointersupcstructure.pdf ("Because public stockholders tend not to assign full value to the tax attributes of a corporation, they do not discount the value of a corporation to account fully for future payments to be made under a TRA. This has permitted historic owners of a business going public to capture additional value."); Jeffrey J. Rosen & Peter A. Furci, *Monetizing the Shield: Tax Receivable Agreements in Private Equity Deals*, DEBEVOISE & PLIMPTON PRIV. EQUITY REP. (Fall 2010) at 9 ("[P]ublic markets systematically undervalue tax assets of various sorts.…"); Alan Kaden, Michael Alter, and Shane Hoffmann, *Expert Analysis: Selling Your Twinkie And Eating It Too*, LAW360 (Jul. 18, 2016), https://www.law360.com/articles/818198/selling-your-twinkie-and-eating-it-too ("TRAs are premised on the theory—generally accepted by underwriters—that the public markets do not properly value tax assets.").

46. In the PennyMac IPO, Old HoldCo became the sole managing member of OpCo. The owners of OpCo—including, BlackRock, Highfields, Kurland and other senior executives—were issued holding units in OpCo (OpCo Units) that had economic rights in OpCo, but no voting rights in OpCo. In connection with the IPO, Old HoldCo, OpCo, and the existing owners entered into an Exchange Agreement with BlackRock, Highfields, Kurland, and the other existing owners of OpCo, pursuant to which, OpCo Unitholders could, at their discretion, exchange their OpCo Units for Class A Common Stock of Old HoldCo, on a one-for-one basis (subject to conversion rate adjustments for stock splits, stock dividends, reclassifications and certain other transactions).

47. Also, in connection with the IPO, Old HoldCo entered into a Tax Receivable Agreement (the TRA) with BlackRock, Highfields, Kurland, and the other existing owners of OpCo. Pursuant to the TRA, Old HoldCo agreed to pay the OpCo Unitholders 85% of the amount of the net tax benefits, if any, that Old HoldCo was deemed to realize as a result of increases in tax basis resulting from exchanges of OpCo Units for Class A Common Stock of Old HoldCo.

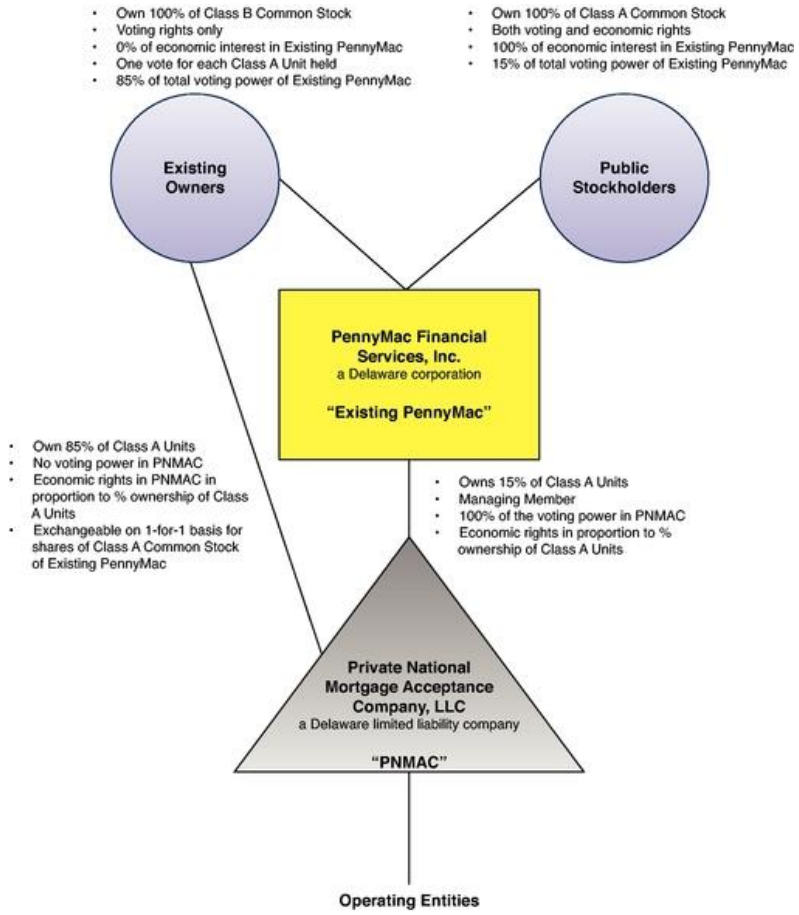
48. The owners of OpCo were also issued each issued one share of Class B common stock in Old HoldCo (Class B Common Stock), which carried one vote for each OpCo Unit held. The Class A Common Stock—which was issued and sold to

public stockholders—owned 100% of the economic interests in Old HoldCo as well as voting rights. The Class B common stock had no economic rights in Old HoldCo, but had the right to a number of votes on matters presented to stockholders that was equal to the aggregate number of OpCo Units held by such holder. In effect, every OpCo Unit (other than those owned by Old HoldCo itself) had one vote.

49. Old HoldCo used the proceeds of the IPO to purchase 15% of the OpCo Units, giving it a 15% economic interest in OpCo.

50. Thus, immediately following the Old HoldCo IPO, BlackRock, Highfields, and other existing owners retained 85% of the voting power in Old HoldCo. Public stockholders had 15% of the voting power and 100% of the economic interest in Old HoldCo. At all relevant times, Old HoldCo's only material assets were its cash and its OpCo Units.

51. Immediately following the Old HoldCo's IPO, PennyMac's corporate structure looked like this (the diagram below does not include the Public REIT, which remained a separate public company, or the Public REIT Manager, which remained a subsidiary of OpCo):



D. BlackRock, Highfields, and Kurland Controlled Old HoldCo

52. Following the IPO of Old HoldCo, BlackRock and Highfields formed a control group between the two entities. In the alternative, BlackRock and Highfields formed a control group with Kurland.

53. The Public REIT's filings in connection with its IPO described BlackRock and Highfields as PennyMac's "strategic investors," stating that "PennyMac's senior management team, with the support of its strategic investors, BlackRock and Highfields Capital, organized PennyMac and assembled a team with

the knowledge and experience to identify dislocations in the market for distressed residential mortgage loans and mortgage-related assets and enhance their value, primarily through customized solutions to assist borrowers in retaining their homes."

54. Similarly, Old HoldCo's public filings in connection with the Reorganization describe BlackRock and Highfields as "strategic partners," stating that "[OpCo], a Delaware limited liability company, was founded in 2008 by members of our executive leadership team [*i.e,* Kurland] and two strategic partners, BlackRock Mortgage Ventures, LLC … and HC Partners, LLC…" Old HoldCo used the same phrase—"strategic partners"—to describe BlackRock and Highfields in the Form S-1 issued in connection with its 2013 IPO and the phrase appeared repeatedly in its periodic filings between 2013 and the Reorganization.

55. BlackRock and Highfields are co-signatories to various agreements that formed the constituent documents of Old HoldCo's corporate structure, including the LLC Agreement for OpCo and the Tax Receivable Agreement. OpCo's Fourth Amended and Restated Limited Liability Company Agreement (the "OpCo Agreement"), for example, defined BlackRock and Highfields as the "Sponsor Members" and regularly treated the two interchangeably. The OpCo Agreement provided that:

a. "[OpCo] shall not (i) enter into any transaction with [Old HoldCo] (other than the issuance of Units by [OpCo] to [Old

HoldCo] … or (ii) convert the legal form of [OpCo] into a corporation, in each case, without the consent of BlackRock [] and Highfields [], as applicable, so long as such Sponsor Member holds any [OpCo] Units.

b. "[OpCo] shall not issue additional Units or issue any Capital Stock to any Person other than [Old HoldCo] without the approval of BlackRock [] or Highfields []"

c. Subject to certain exceptions, "[n]either [Old HoldCo] nor [OpCo] shall take any action or enter into any agreement that has the effect of limiting [OpCo's] ability to make distributions… without the consent of BlackRock [] or Highfields"

d. "A meeting of the Members entitled to vote on any matter for which voting is permitted hereunder as provided in Section 8.2 may be called at any time by [Old HoldCo] or by [] BlackRock [] or Highfields"

56. At the time of the Reorganization, there were 25.2 million shares of Class A Common Stock and 52.3 million units of OpCo Units (other than those owned by Old HoldCo) for a total of 77.5 million votes. BlackRock held approximately 15.6 million of those votes (approximately 20.1%); Highfields held approximately 20.2 million of those votes (approximately 26%); and Kurland held approximately 8.3 million of those votes (10.7%).

57. In addition to their majority voting power, as set forth above, BlackRock, Highfields, and Kurland controlled a majority of the Board. Kurland sat on the Board himself. Two other directors—McCallion and Spector—were (and remain) officers of Old HoldCo. Wiedman was (and is) a BlackRock employee and

Botein was (and is) a consultant to BlackRock. Both were nominated by BlackRock. Mazella was nominated by Highfields and was its General Counsel until 2017. Nanji worked for Highfields until 2015.

E. Defendants Stood On Both Sides Of The Reorganization And Were Incentivized To Favor The Interests of The OpCo Unitholders

58. Immediately prior to the Reorganization, there were approximately 25.2 million shares of Class A Common Stock of Old HoldCo and 77.5 million OpCo Units. Of those 77.5 million OpCo Units, 52.3 million OpCo Units were owned by someone other than Old HoldCo and thus eligible to vote.

59. Between the three of them, BlackRock, Highfields, and Kurland held a majority of Old HoldCo's voting power. And all of the Defendants owned significantly more OpCo Units than Class A Common Stock.[15] The following table shows the OpCo Units and Class A Common Stock beneficially owned by Defendants and other officers at the time that the Definitive Proxy was issued:

Defendant	Class A Common Stock	OpCo Units
BlackRock	1,800,000[16]	13,760,647

[15] These holdings were economically material. Old HoldCo's Class A Common Stock closed at $19.20 per share on August 2, 2018, the day that the Reorganization was announced.

[16] Does not include an additional 469,752 shares of Class A Common Stock acquired for certain client accounts by funds and accounts for which BlackRock,

Defendant	Class A Common Stock	OpCo Units
Highfields	0	20,169,732
Kurland	0	8,314,990
Spector	244,680	1,699,729
McCallion	115,980	510,720
Botein	15,765	718,552
Nanji	50,213	122,109
Wiedman	21,429	54,556
Mazzella	453,552	738,083[17]
Chang	134,617	856,671
Fartaj	117,787	845,254
Jones	97,983	712,767
Walker	104,712	463,055

60. Thus, all of the Defendants were (a) on both sides of the Reorganization; and (b) highly incentivized to favor the interests of the OpCo Units

Inc.'s advisory subsidiaries act as investment advisers.

[17] This includes 331,052 Class A Units owned by Mazella and 407,031 Class A Units owned by the Mazzella Family Irrevocable Trust (the "Mazzella Trust"). Mazzella's wife and children are the beneficiaries of the Mazzella Trust and Mazzella's wife is one of the trustees of the Mazzella Trust.

over the interests of the Class A Common Stock.

F. The Reorganization

61. For at least two reasons, PennyMac's Up-C structure did not result in tax benefits for OpCo Unitholders that were as significant as expected at the time of the IPO.

62. For one thing, the Trump administration's tax reform bill (the Tax Cuts and Jobs Act) reduced the corporate tax rate from 35% to 21%, reducing the expected future value of any future tax assets created by exchanges of OpCo Units for Class A Common Stock.

63. More importantly, following the IPO, OpCo's business operations changed in a way that resulted in less taxable income for OpCo (and, thus, for Old HoldCo). Specifically, OpCo's loan production volume grew from approximately $17 billion in unpaid principal balance for its own account in the year ended December 31, 2013, to approximately $46 billion in unpaid principal balance for its own account in the year ended December 31, 2017. Taxation of income that is associated with mortgage servicing rights that are created upon the securitization of such loans can be deferred and, therefore, this typically resulted in current period tax losses for OpCo and for Old HoldCo.

64. As set forth below, Old HoldCo reported net operating losses ("NOLs") in many years, resulting in significant NOL carryforwards (all figures in millions):

	2017	**2016**	**2015**	**2014**	**2013**
Net Operating Loss Carryforward	$10.2	$0.5	$8.6	-	$2.9

65. Given OpCo's current and expected future loan production levels, management did not expect to earn taxable income (and thus did not expect to receive payments pursuant to the TRA) for a decade, in certain scenarios.[18] [redacted]

[redacted]

[18] As discussed below, [redacted]

66. As a result of the NOL carryforwards and the projected tax losses going forward, the tax benefits to OpCo Unitholders of the Up-C structure could be eliminated. (There is no need to avoid double taxation if you do not have taxable income nor would OpCo Unitholders receive any TRA payments from future exchanges because Old HoldCo would not obtain any tax benefit from the stepped-up basis). But the Up-C structure still posed a significant obstacle to OpCo Unitholders who wished to liquidate their stake by converting to Class A Common Stock and selling: the exchange of OpCo Units for Class A Common Stock was treated as a taxable event for the OpCo Unitholder, resulting in ordinary income.

67. Enter the Reorganization, which would allow all of the OpCo Unitholders to exchange their OpCo Units for Class A Common stock in a tax-free exchange *and* receive long-term capital gains treatment (*i.e.*, a lower rate than the rate for ordinary income) on future sales of the Class A Common Stock as long as those shares were held for more than one year.

G. Kurland Proposed The Reorganization

68. On February 27, 2018, at a regularly scheduled meeting of the Board, Kurland introduced the idea of [redacted]. The Schedule 14A filed by Old HoldCo on September 18, 2018 (the "Definitive Proxy") states that the Board "requested that management present

potential ways to reorganize the Company and authorized management to discuss potential reorganization options with the holders of our Class B Common Stock."

[redacted]

69. [redacted]

70. [redacted]

71. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

19 This would, of course, include individual owners of pass-through entities.

20 [redacted]

Individual Tax Payer			
Current Structure		**New Structure**	
Sale Price	$22.00	Sale Price	$22.00
(–) Tax Basis	($3.13)	(–) Tax Basis	($3.13)
Taxable Gain	$18.87	Taxable Gain	$18.87
Tax Rate[2]	54.1%	Tax Rate[2]	37.1%
Taxes	$10.21	Taxes	$7.00
Net Proceeds	$11.79	Net Proceeds	$15.00
Estimated TRA Value[4]	$0.00	Estimated TRA Value[4]	$0.00
Net Economic Value	$11.79	Net Economic Value	$15.00

72. On April 30, 2018, management held a conference call with Highfields and BlackRock regarding the Reorganization.

73. Management did not make a formal presentation to the Board about the Reorganization until May 30, 2018 (more than a month after its presentation to BlackRock and Highfields). [redacted].

74. [redacted]

[redacted]

[redacted]

75. On May 31, 2018, the Board reconvened. It established a special committee consisting of James Hunt, Patrick Kinsella, Theodore Tozer, and Emily Youssouf (collectively, the "Special Committee") to evaluate the Reorganization. [redacted].

76. On June 2, 2018, the Special Committee held a conference call with management and Goodwin Procter, which regularly acted as Old HoldCo's outside counsel and [redacted]

[redacted]. Goodwin Procter was the Committee's sole source of legal advice.

77. On June 4, 2018, the Special Committee met and drafted a list of questions and requests for information from management regarding the Reorganization. On June 11, 2018, management presented the Special Committee with written responses to its list of questions. [redacted].

78. On June 12, 2018, the Special Committee held a conference call with management and Goodwin Procter to discuss the written responses to its list of questions. The primary area of discussion concerned the difference in book value per share that would occur after completing the Reorganization.

79. On June 15, 2018, the Special Committee met and discussed whether the Company should issue a special dividend to Class A stockholders (the "Distribution"). (As discussed in greater detail below, the Distribution was not fair compensation for the value created by the Reorganization. Indeed, the Distribution

did not reflect *any* sharing of the benefits created by the Reorganization. Rather, the Distribution was compensation for past benefits that should have already been distributed to public stockholders.)

80. [redacted]

81. [redacted]

82. [redacted]

83. [redacted]

84. [redacted]

85. [redacted]

86. On July 24, 2018, the full Board met and all of the Director Defendants voted to approve the Reorganization. The Board also directed the officers of Old HoldCo to attempt to cause each of the OpCo Unitholders to execute and become party to the proposed contribution agreement and plan of merger.

87. On August 2, 2018, the full Board met again to approve a revised proposed contribution agreement and plan of merger that reflected certain changes. The Definitive Proxy discloses that a change was made at the behest of "certain Class A Unit Holders" but does not disclose what those changes were. [redacted].

88. The Reorganization was not conditioned on majority-of-the-minority approval. As the Definitive Proxy informed Plaintiff and other public stockholders, "Even if no affirmative votes of Class A common stockholders are cast in favor of the Reorganization Proposal, the Reorganization Proposal will be approved if a sufficient number of votes of Class B common stockholders [*i.e.*, Class A Unit holders] are cast in favor of the Reorganization Proposal. … Based upon the percentage of control of the Class B Common Stock of the vote of the shares of Class

A Common Stock and Class B Common Stock, voting together as a single class, if sufficient affirmative votes of Class B common stockholders are cast in favor of the Reorganization Proposal, the Reorganization will be approved even if no affirmative votes of Class A common stockholders are cast in favor of the Reorganization Proposal."

89. On August 2, 2018, the Board declared the Distribution, a special, one-time cash dividend of $0.40 per share of Class A Common Stock to holders of record of Class A Common Stock as of August 13, 2018, and that was distributed on or about August 30, 2018.

90. Later on August 2, 2018, the parties entered into the Reorganization Agreement and publicly announced the proposed Reorganization.

91. Not surprisingly, between February 27, 2018—when Kurland first proposed the Reorganization—and when it closed on November 1, 2018, insiders sold a significant number of shares of Class A Common Stock, as set forth in the table below:

Insider	**Total Sales Of Class A Common Stock**
Botein	$2,078,192.25
Fartaj	$363,303.96
Jones	$810,651.88
Kurland	$4,264,622.44
McCallion	$2,375,000.35
Spector	$2,018,547.24

Insider	Total Sales Of Class A Common Stock
Walker	$2,952,916.42
TOTAL	**$14,863,234.54**

H. The Vote Was Uninformed

92. Stockholders voted to approve the Reorganization on October 24, 2018. That vote was uninformed.

93. Most importantly, the Definitive Proxy failed to disclose any of the management-prepared earnings projections that were given to, considered and relied upon by BlackRock, Highfields, and the Board.

94. The only thing that the Definitive Proxy disclosed with respect to the management forecasts and estimates that were considered by and relied upon by BlackRock, Highfields, and the Board was the following:

> On June 15 … the Special Committee held a conference call with BlackRock regarding forecasts and estimates that were provided to the Special Committee by management and sought BlackRock's views on the benefits of the reorganization transaction versus the benefits under the Tax Receivable Agreement. The forecasts and estimates prepared by management primarily showed that [Old HoldCo] would not generate taxable income in the near-term and minimal taxable income in the long-term. As a result, the forecasts and estimates helped advise the Special Committee that the net present value of potential benefits to holders of Class A Common Stock resulting from future exchanges of [OpCo Units] would likely be nominal.

95. In the Special Committee's June 12, 2018 meeting, [redacted]

96. [redacted].

97. [redacted]:

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

98. [redacted]

[redacted] All of this information, which was plainly material to the decision made by BlackRock and the Board, was hidden from public stockholders.

99. Second, as set forth above, the Definitive Proxy did not disclose [redacted]

100. Following the stockholder vote, the Reorganization closed on November 1, 2018.

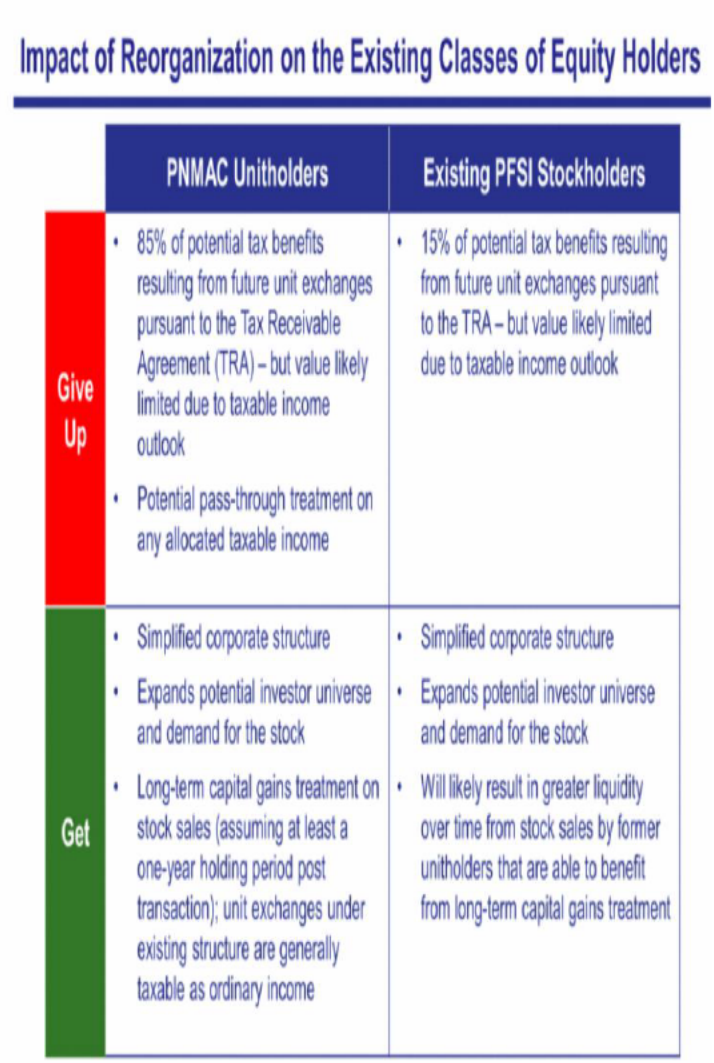
I. The Unfair Process Resulted In An Unfair Price

101. The unfair process resulted in an unfair price.

102. A chart included in a presentation released by Old HoldCo captures the disparate benefits given to OpCo Unitholders[21] versus holders of Class A Common

[21] Described as "PNMAC Unitholders."

Stock:[22]



Impact of Reorganization on the Existing Classes of Equity Holders

	PNMAC Unitholders	Existing PFSI Stockholders
Give Up	• 85% of potential tax benefits resulting from future unit exchanges pursuant to the Tax Receivable Agreement (TRA) – but value likely limited due to taxable income outlook • Potential pass-through treatment on any allocated taxable income	• 15% of potential tax benefits resulting from future unit exchanges pursuant to the TRA – but value likely limited due to taxable income outlook
Get	• Simplified corporate structure • Expands potential investor universe and demand for the stock • Long-term capital gains treatment on stock sales (assuming at least a one-year holding period post transaction); unit exchanges under existing structure are generally taxable as ordinary income	• Simplified corporate structure • Expands potential investor universe and demand for the stock • Will likely result in greater liquidity over time from stock sales by former unitholders that are able to benefit from long-term capital gains treatment

103. Notably, neither the Definitive Proxy [redacted]

[redacted]

[22] Described as "Existing PFSI Stockholders."

[23] The Company agreed to produce all final minutes of any meeting of the Board or Special Committee during which the Reorganization was discussed or voted upon by the Board or Special Committee; and all books or presentations to the Board or Special Committee concerning the Reorganization.

[redacted]

104. The Distribution was not fair compensation for the value created by the Reorganization. Indeed, the Distribution did not reflect *any* sharing of the **future** benefits created by the Reorganization.

105. Rather, the Distribution was compensation for **past** benefits that should have already been distributed to public stockholders. It could have happened with or without the Reorganization and should have happened years earlier.

106. To wit, even after an IPO takes place, the Up-C structure creates an ongoing risk of unfairness to investors in the public holding corporation through the potential for unitholders of the operating LLC to receive a double tax distribution if tax distributions made by the operating LLC to the public holding corporation are retained rather than immediately issued as dividends to public stockholders.

107. The Distribution was simply correcting this well-known problem.[24] As

[24] "Up-C agreements"—including the OpCo Agreement here (Section 5.10(b))—"require that the partnership [or LLC] make pro rata tax distributions to each partner [or member] (including the pre-IPO owners and the public C corporation), typically at the highest marginal effective tax rate that any one partner is subject to, regardless of any individual's actual tax liability. This means that partners subject to the highest marginal effective tax rate will have just the right amount of cash to pay their taxes, but partners subject to a lower marginal tax rate

explained in the Definitive Proxy, "[t]he Distribution generally represented (i) **historical** tax distributions from [OpCo] to [Old HoldCo] that were in excess of the actual tax liability of [Old HoldCo] and (ii) certain tax refunds receivable by [Old HoldCo]."

108. [redacted]

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will receive more than they need to pay their taxes." Shobe, *supra*, 71 VAND. L. REV. at 930-31.

"[B]ecause the highest marginal corporate tax rate is lower than the highest individual tax rate, the C corporation in an Up-C (*i.e.*, the entity that the public shareholders own shares in) receives more in tax distributions than it needs to pay its taxes." *Id.*

"Whether or not the pre-IPO owners are able to receive double tax distributions depends on what the public company does with its excess tax distributions. If it immediately distributes these amounts to its shareholders as dividends, then there is no potential windfall for the pre-IPO owners because all of the excess amount will go to the public shareholders who are rightly entitled to it. It is more likely, however, that the company will retain these excess distributions for some period of time, which creates the potential for pre-IPO owners to receive a portion of these excess distributions" and, thus, "a double benefit when they exchange their interests in the historic partnership for interests in the public company: the pre-IPO owners already received their own tax distributions as partners in the partnership, and upon exchange for an interest in the public company they own a portion of the company's excess tax distributions that should have been entirely attributed to the public shareholders at the time the excess tax distributions were paid." *Id.*

[redacted]

CLASS ACTION ALLEGATIONS

109. Plaintiff, a stockholder in the Company, brings this action individually and as a class action pursuant to Rule 23 of the Rules of the Court of Chancery of the State of Delaware on behalf of himself and all stockholders of the Company (except the Defendants herein, and any person, firm, trust, corporation or other entity related to or affiliated with any of the Defendants) to redress the Defendants' breaches of fiduciary duties and other violations of law.

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

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

112. The Class is so numerous that joinder of all members is impracticable. The number of Class members is believed to be in the thousands and are likely scattered across the United States. Moreover, damages suffered by individual Class members may be small, making it overly expensive and burdensome for individual Class members to pursue redress on their own.

113. There are questions of law and fact which are common to all Class members and which predominate over any questions affecting only individuals, including, without limitation:

a. whether the Defendants owed fiduciary duties to the Plaintiff and the Class;

b. whether the Defendants breached their fiduciary duties to Plaintiff and the Class; and

c. the extent of the Class' damages.

114. Plaintiff's claims and defenses are typical of the claims and defenses of other class members and Plaintiff has no interests antagonistic or adverse to the

interests of other class members. Plaintiff will fairly and adequately protect the interest of the Class.

115. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature.

116. Defendants have acted in a manner that affects Plaintiff and all members of the Class alike, thereby making appropriate injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.

117. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants; or adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members or substantially impair or impede their ability to protect their interests.

DERIVATIVE/DEMAND-FUTILITY ALLEGATIONS

118. "The same set of facts c[an] give rise to both" direct and derivative claims (so-called "dual-natured" claims).[25] Dual-natured claims frequently arise in the context of share issuances, such as the Reorganization, that transfer value from

[25] *El Paso Pipeline GP Co., L.L.C. v. Brinckerhoff*, 152 A.3d 1248, 1260 (Del. 2016).

public stockholders to significant insiders. As the Court explained in *Carsanaro*: "[b]ecause the rights that stock carries are relative, the effects of issuing additional stock necessarily will be felt at the stockholder level."[26] And transactions like the Reorganization, which reallocate rights among stockholders, create "horizontal conflicts among people at the equity level or other people in the capital structure."[27]

119. Nonetheless, to the extent Plaintiff's claims are derivative and subject to a demand requirement, demand would be futile because the Board is incapable of making an independent and disinterested decision to prosecute this action. As set forth above, a majority of Board members are conflicted and are therefore not capable of disinterested evaluation of claims arising from the Reorganization.

120. Moreover, this action challenges actions taken by sitting board members for which they face a substantial risk of liability. A majority of directors owned significantly more OpCo Units than Class A shares and face a substantial risk

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[26] *Carsanaro v. Bloodhound Techs., Inc.*, 65 A.3d 618, 656 (Del. Ch. 2013).

[27] *Montgomery v. Erickson Air-Crane, Inc.*, No. 8784-VCL (TRANSCRIPT) (Del. Ch. Apr. 15, 2014) at 58:11-21; *see also Gentile v. Rossette*, 906 A.2d 91, 100 (Del. 2006) ("the public (or minority) stockholders also have a separate, and direct, claim arising out of that same transaction. Because the shares representing the 'overpayment' embody both economic value and voting power, the end result of this type of transaction is an improper transfer—or expropriation—of economic value and voting power from the public shareholders to the majority or controlling stockholder.").

of liability for breaching their fiduciary duty of loyalty by voting for a Reorganization that favored the interests of OpCo Unitholders over Class A stockholders.

121. Finally, the presence of a controlling shareholder on both sides of the transaction—and the fact that a majority of the Board was conflicted—means that the entire fairness standard applies to the claims against the directors and demand is therefore excused under the second prong of the *Aronson* test. *Parfi Hldg. AB v. Mirror Image Internet, Inc.*, 794 A.2d 1211, 1231 n.47 (Del. Ch. 2001) (Strine, V.C.) ("The complaint pleads particularized facts that suggest that the entire fairness standard of review—rather than the business judgment rule—would apply to the Transactions and that the Transactions might not have been fair. As a result, the complaint satisfies the second prong of *Aronson*."), *rev'd on other grounds*, 794 A.2d 1211 (Del. 2002).

COUNT I

Individual and Class Claim for Breach of Fiduciary Duty Against The Defendants

122. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

123. The Defendants owed Plaintiff and the Class the utmost fiduciary duties of care and loyalty.

124. By reason of the foregoing, the Defendants breached their fiduciary duties. In particular, the Defendants violated their fiduciary duties of loyalty and care by agreeing to and entering into the Reorganization without ensuring that the Reorganization was entirely fair to Plaintiff and other public stockholders.

125. As a result of the foregoing, Plaintiff and the Class have been harmed.

COUNT II

Derivative Claim for Breach of Fiduciary Duty Against The Defendants

126. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

127. The Defendants owed the Company the utmost fiduciary duties of care and loyalty.

128. By reason of the foregoing, the Defendants breached their fiduciary duties. In particular, the Defendants violated their fiduciary duties of loyalty and care by agreeing to and entering into the Reorganization without ensuring that the Reorganization was entirely fair to the Company or to Plaintiff and other public stockholders.

129. As a result of the foregoing, the Company was harmed.

PRAYER FOR RELIEF

WHEREFORE**,** Plaintiff demands judgment and preliminary and permanent relief, including injunctive relief, in his favor, in favor of the Class, and/or in favor of the Company and against all Defendants as follows:

A. Declaring that this action is properly maintainable as a class action and certifying Plaintiff as Class Representative;

B. Declaring that the Defendants breached their fiduciary duties in connection with the Reorganization;

C. Awarding monetary damages to the Class and/or the Company, including pre- and post-judgment interest;

D. Awarding Plaintiff the costs and disbursements of this action, including attorneys' and experts' fees; and,

E. Granting the Company and/or Plaintiff and the other members of the Class such further relief as the Court deems just and proper.

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Dated: March 11, 2019

CERTIFICATE OF SERVICE

Aaron M. Nelson hereby certifies that on March 14, 2019, copies of the foregoing Public Version of the Verified Amended Class Action and Derivative Complaint were served electronically upon the following counsel:

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