



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE BGC PARTNERS, INC.
DERIVATIVE LITIGATION

C.A. No. 2018-0722-AGB

REDACTED VERSION FILED:
02/19/2019

**VERIFIED FIRST AMENDED STOCKHOLDER DERIVATIVE
COMPLAINT**

Plaintiffs Roofers Local 149 Pension Fund and Northern California Pipe Trades Trust Funds (“Plaintiffs,” and each a “Plaintiff”), derivatively on behalf of nominal defendant BGC Partners, Inc. (“BGC” or the “Company”), bring the following verified first amended derivative complaint (the “First Amended Complaint”) against members of (i) the board of directors of BGC (the “Board”), including (a) BGC’s Chairman, Chief Executive Officer (“CEO”), and controlling stockholder Howard Lutnick (“Lutnick”), (b) Linda Bell (“Bell”), (c) Stephen Curwood (“Curwood”), (d) William Moran (“Moran”), and (e) John Dalton (“Dalton”); and (ii) BGC’s controlling stockholders, CF Group Management, Inc. (“CFGM”) and Cantor Fitzgerald, L.P. (“Cantor”) (collectively, the “Defendants” and each a “Defendant”), for breaches of fiduciary duty. Except for allegations specifically pertaining to Plaintiffs and Plaintiffs’ own acts, the allegations in the First Amended Complaint are based upon information and belief, which includes but is not limited to: (i) documents obtained from BGC pursuant to Section 220 of the Delaware General Corporation Law; (ii) BGC’s public filings with the United States

Securities and Exchange Commission (the “SEC”); (iii) filings with the SEC of other companies controlled and/or managed by Cantor and/or Lutnick; (v) securities analyst reports; (vi) transcripts of conference calls with securities analysts and investors; (vii) press releases; (viii) media reports; and (ix) other public sources.

NATURE OF THE CASE

1. This stockholder derivative action challenges a related-party transaction proposed and structured by BGC’s controlling stockholders, Lutnick and Cantor, to extract nearly \$1 billion in cash from BGC for their own personal benefit while saddling BGC with massive debt to third-party lenders. The challenged transaction was the result of an unfair process and resulted in unfair payments by BGC to Cantor affiliates and Lutnick.

2. Lutnick, who is “famously sharp-elbowed” and has a “reputation as a Wall Street bruiser,” used his control over Cantor and BGC to pocket millions of dollars for himself at the expense of BGC and its public stockholders. Specifically, Lutnick and Cantor caused BGC to take on hundreds of millions of dollars in debt to: (i) purchase Berkeley Point Financial LLC (“Berkeley Point”) from Cantor Commercial Real Estate Company, L.P. (“CCRE”), a Cantor affiliate, for the inflated price of \$875 million (the “Berkeley Point Acquisition”) and (ii) invest \$100 million for a 27% interest in CCRE’s remaining commercial mortgage-backed

securities business (the “Cantor CMBS Business”) (the “Joint Venture” and, together with the Berkeley Point Acquisition, the “Related Party Transaction”).

3. Lutnick and his controlled company, Cantor, stood on both sides of the Related Party Transaction. Cantor would receive BGC’s payment for Berkeley Point. Lutnick’s much larger ownership interests in Cantor than in BGC motivated him to cause BGC to overpay for Berkeley Point. Specifically, as explained in detail below, Lutnick’s ownership interests in Cantor and BGC guaranteed that he would personally receive approximately [REDACTED] of every dollar that BGC overpaid in the Related Party Transaction. Lutnick was thus able to line his pockets with millions of dollars by using BGC to overpay for Berkeley Point, accomplishing the extraction of cash without the hassle of declaring a dividend, which would have required him to share the extracted cash with the Company’s public shareholders.

4. The Related Party Transaction was *fait accompli* from the outset. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. Recognizing Lutnick’s clear conflict of interest, BGC created a special committee consisting of the four BGC directors on the Audit Committee who were already informed by Lutnick about the transaction: Bell, Curwood, Moran, and Dalton (the “Special Committee”). The members of the Special Committee were not independent and, from the beginning, favored the interests of Lutnick and Cantor over the interests of BGC and BGC’s public stockholders. Each member of the Special Committee was beholden to Lutnick and Cantor due to: (i) their extensive personal relationships with Lutnick; (ii) the material income they derived from serving on various Lutnick/Cantor related boards of directors.

6. The Special Committee’s actions showed their desire to favor Lutnick’s and Cantor’s interests over the interests of BGC and BGC’s public stockholders. Rather than negotiate an arms’ length transaction, the Special Committee Defendants were only concerned with “getting closure” on the Related Party

Transaction. Moreover, they authorized Lutnick to dictate the timetable for execution, run the process, and effectively negotiate the transaction with himself.

7. Recognizing that he controlled the process and the Special Committee, Lutnick promptly manipulated the timetable and the terms of the transaction to benefit Cantor and himself at the expense of BGC and its public stockholders. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. Step two of the Related Party Transaction -- the December 2017 IPO of Newmark -- confirmed that BGC overpaid for Berkeley Point by hundreds of millions of dollars. As discussed in detail below based on the IPO's \$14.00 sale price, which took place a mere three months following completion of the Related

Party Transaction, the value of Berkeley Point was *only \$563 million* establishing that BGC overpaid for Berkeley Point by at least *\$312 million* in the Related Party Transaction.

9. In sum, Lutnick and Cantor, with the acquiescence of the Special Committee, lined their own pockets at the expense of BGC and its public investors on terms that were patently unfair to BGC. Given Lutnick's and Cantor's status as controlling stockholders, the entire fairness standard of review applies to the Related Party Transaction. Because the parties entered into Related Party Transaction at an unfair price and pursuant to an unfair process, they must be held accountable.

PARTIES

I. PLAINTIFFS

10. Plaintiff Roofers Local 149 Pension Fund is a stockholder of BGC, was a stockholder of BGC at the time of the wrongdoing alleged herein, and has been a stockholder of BGC continuously since that time.

11. Plaintiff Northern California Pipe Trades Trust Funds is a stockholder of BGC, was a stockholder of BGC at the time of the wrongdoing alleged herein, and has been a stockholder of BGC continuously since that time.

II. NOMINAL DEFENDANT

12. Nominal Defendant BGC is a Delaware incorporated brokerage and financial services company headquartered in New York. BGC's predecessor entity,

BGC Partners, L.P., which took its name from the initials of Cantor founder Bernard Gerald Cantor, was formed in 2004 when Cantor spun it off. In 2008, BGC became the public company known as “BGC Partners, Inc.” following its merger with eSpeed, Inc. (“eSpeed”), another former Cantor subsidiary. At the time of the Related Party Transaction, some of BGC’s relevant wholly or majority-owned subsidiaries included Newmark, GFI Group, Inc. (“GFI”), a broker and trade executor; ELX Futures, L.P. (“ELX Futures”) and ELX Futures Holdings, LLC, both electronic futures exchanges; and BGC European GP Limited.

III. THE DEFENDANTS AND THEIR CONFLICTS

A. Cantor and CFGM

13. Defendant Cantor is a privately owned financial services and brokerage firm based in New York. Cantor, at all relevant times, has been one of BGC’s controlling stockholders. Upon information and belief, Lutnick owns approximately 60% of Cantor and has sole voting control of Cantor.

14. Defendant CFGM is a New York corporation that serves as Cantor’s managing general partner. Lutnick is the sole stockholder of CFGM. Through its control of Cantor, CFGM, at all relevant times, has been one of BGC’s controlling stockholders. Moreover, through his control of CFGM, Lutnick, at all relevant times, has been one of BGC’s controlling stockholders.

15.

[REDACTED]

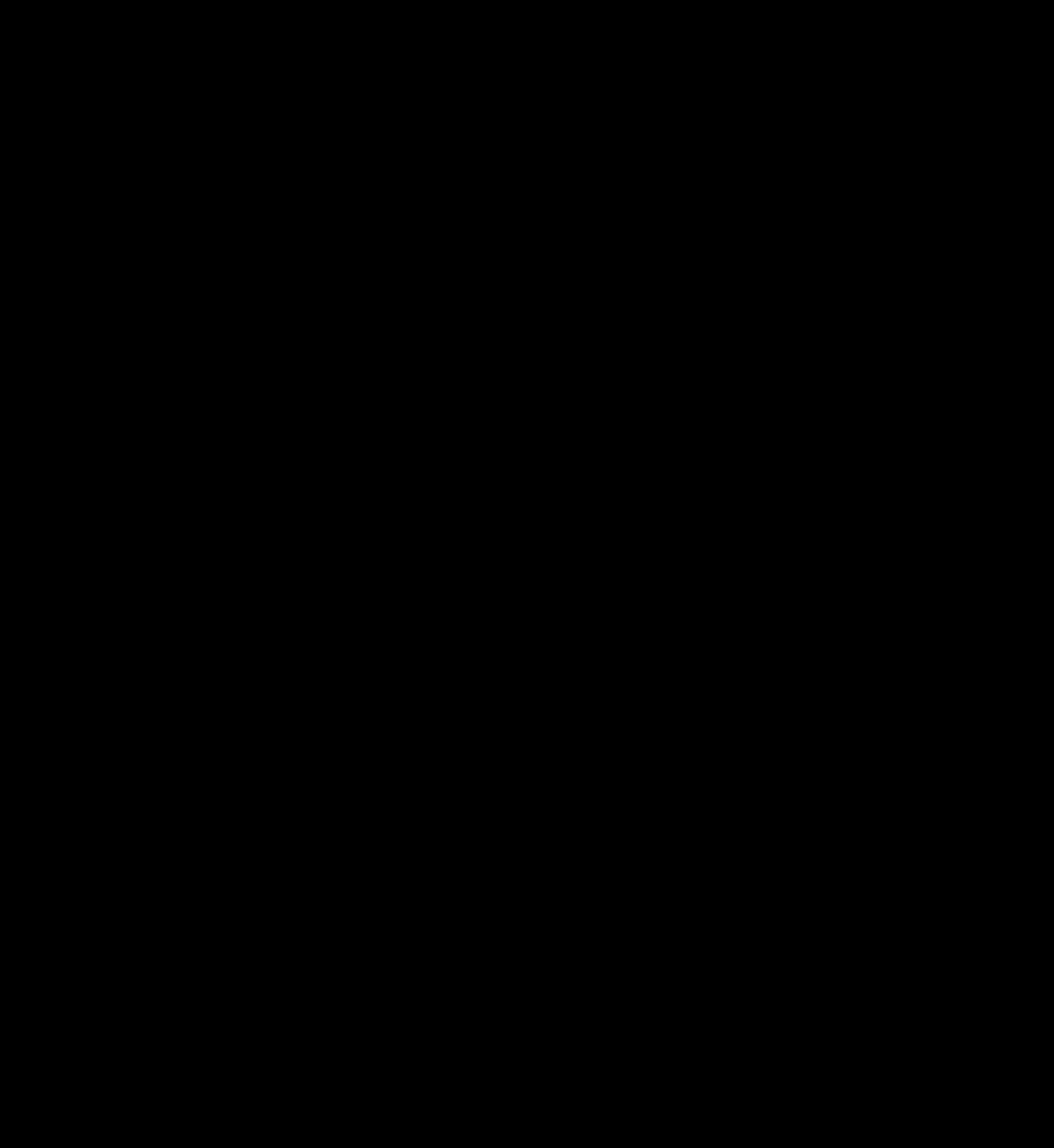
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16. Ultimately, BGC and Newmark are controlled by Cantor, CFGM, and Lutnick through a dizzying array of entities and dual class structures. The below diagram illustrates the BGC corporate family following Newmark's 2017 IPO:



17. At the time of the Related Party Transaction, Defendant Cantor also had a controlling interest in CCRE, which was comprised of two principal businesses: (i) Berkeley Point, a designated underwriting and servicing lender for multi-family

homes from government-sponsored entities such as the Department of Housing and Urban Development, Freddie Mac and Fannie Mae, and (ii) the Cantor CMBS Business, through which it engaged in the underwriting, pooling, and selling of first mortgage loans.

B. Howard Lutnick

18. Defendant Lutnick has been the Chairman of the Board and CEO of BGC (and/or its predecessors, including eSpeed) since June 1999. As the Chairman of the Board and CEO of eSpeed, Lutnick oversaw the merger of BGC and eSpeed in 2008 (the “eSpeed Merger”), a transaction that was executed through a structure and process bearing striking similarities to the structure and process at issue here. Lutnick stood on both sides of the eSpeed Merger and was not an independent eSpeed director. Thus, the eSpeed board of directors established a special committee to represent the rights and interests of the holders of eSpeed Class A common stock (other than Lutnick, Cantor, and its affiliates) in evaluating the eSpeed Merger.¹ As with the Merger and Special Committee here, Sandler and Debevoise & Plimpton LLP (“Debevoise”) were the financial and legal advisors to the eSpeed special

¹ In 2007, one of eSpeed’s largest shareholders, Chapman Capital, demanded that the members of the eSpeed special committee (including Defendant Dalton) be replaced by stockholders so that any offers for eSpeed could be evaluated “independently.”

committee in connection with the eSpeed Merger. Further, Defendant Dalton was a member of the eSpeed special committee in connection with the eSpeed Merger.

19. Lutnick is and was at the time of the Related Party Transaction the Chairman of the Board and CEO of Cantor and stood on both sides of the Related Party Transaction. At all relevant times, Lutnick was the controlling stockholder of CFGM and Cantor, and was in control of all BGC stock owned by CFGM and Cantor. Lutnick, likewise, has had control over the composition of the boards of both BGC and Cantor, as well as their related subsidiaries. Lutnick also serves or served on the Boards of multiple other Cantor-affiliated entities, including: (i) eSpeed, where he served with Defendant Moran between 1999 and 2005 and Defendant Dalton between 2002 and the close of the eSpeed Merger; (ii) ELX Futures, where he served with Defendants Bell and Moran between 2009 and 2013; (iii) GFI, where he has served with Defendant Moran since 2015; (iv) Newmark, where he served with Defendant Dalton between 2017 and 2018; and (v) Cantor Exchange, where he served with Defendant Dalton since 1999.

20. Lutnick is an alumnus of and has deep, ongoing connections to Haverford College, to which he is a major donor. Specifically, Lutnick has served on the Haverford College Board of Managers for 21 years, including as vice-chair and chair. Lutnick has donated at least [REDACTED] to the college over the past 25 years, [REDACTED] These donations

aided the college in wholly or partially financing, among other things, its Gary Lutnick Tennis & Track Center (a state of the art indoor tennis and track facility with four tennis courts and a 200-meter oval), Douglas B. Gardner '83 Integrated Athletic Center, Lutnick Library, and Cantor Fitzgerald Art Gallery, as well as five student scholarships. In Lutnick's words, the motivation for his connections and donations to Haverford College is "Love" and the belief that Haverford people "make [his] life special."

21. Defendants Bell and Curwood shared, and benefitted from, Lutnick's deep connection to Haverford College. Specifically, Defendant Bell was a member of the Haverford faculty since the 1990's and served as the college's provost from 2007 through July 2012. Lutnick, Bell, and Bell's husband were also members of the Haverford College "1833 Society" which honors Haverford College's most generous annual fund donors.

22. Defendant Curwood served on the Haverford College Board of Managers for 12 years (including during Lutnick's tenure on the Board of Managers). Since 2000, Curwood has continued to serve as a member of the Haverford College Corporation which holds "legal title to the College assets." Members of the Haverford College Corporation are expected "to have a demonstrated commitment to Haverford College," to provide "financial support of

the College annual fund” and are part of three working groups, one of which “encourage[s] financial support for the College through the Annual Fund.”

23. Lutnick also has deep connections with Horace Mann – an elite private preparatory school for children from pre-kindergarten through high school in New York. Lutnick has been a member of the Horace Mann Board of Trustees which is responsible for managing Horace Mann’s “property, affairs and business” and ensuring that “sound financial management is provided for both current and future operations.” Lutnick is also a major donor to Horace Mann, served as the Campaign Co-Chair of the HM in Motion donation campaign for [REDACTED] and donated the Lutnick Hall Science Classrooms and Labs which provides “10 new science laboratories and four new science classrooms.”

24. In 2012, Bell and her family left Haverford so she could join Barnard College (“Barnard”), Columbia University as Provost and Dean of the Faculty and a Professor of Economics. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

² Fast Facts about HM Admissions Archived January 31, 2013, at the Wayback Machine.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25. Lutnick and Cantor had the unilateral power to remove any of the BGC directors at any time. Specifically, BGC's public filings provide that BGC is "controlled by Cantor, which has potential conflicts of interest with [BGC] and may exercise its control in a way that favors its interests to [BGC's] detriment." According to the 10-K, this control includes the ability, "without the consent of the public holders of [BGC's] Class A common stock, to elect all of the members of [BGC's] board of directors and to control [BGC's] management and affairs." Pursuant to the Company's bylaws and certificate of incorporation, Cantor could use its control of the Company's voting power to call a special meeting at any time for the purpose of "remov[ing], with or without cause, any Director." Accordingly, Lutnick and Cantor had the power to remove any of the BGC directors at will.

C. The Special Committee

(a) Linda Bell

26. Defendant Linda Bell has been a director of BGC since July 2013. Bell was a co-chair and member of the Special Committee of BGC directors that recommended the Related Party Transaction to the full BGC Board. Bell also served

on the board of directors and regulatory oversight committee of ELX Futures with Lutnick from 2009 through July 2013. As discussed above, Bell shares a deep connection to Haverford College with Lutnick. Bell was the Provost and John B. Hurford Professor of Economics at Haverford College from 2007 to 2012 and a member of the faculty since the 1990s. Thus, Bell benefitted from Lutnick's [REDACTED] [REDACTED] in contributions to Haverford College over the past 25 years as the Provost and member of the college's faculty. Moreover, Lutnick, Bell, and Bell's husband were members of the Haverford College "1833 Society," which honors Haverford College's most generous annual fund donors.

27. [REDACTED]
[REDACTED]
[REDACTED]

28. In 2017, Bell received cash compensation of [REDACTED] plus an additional [REDACTED] implied value in equity compensation, for a total of [REDACTED] for the fiscal year from BGC. According to a recent report by F.W. Cook & Co., the value of the compensation paid to Bell in 2017 materially exceeded the compensation of directors at the majority of similarly-capitalized companies and ranks at or above the 75th percentile of director compensation for financial services companies of any size. Indeed, Bell received in excess of [REDACTED] of her compensation

from BGC in cash, dwarfing the 42 % national average for mid-cap companies and the 53 % national average for companies in the financial services industry.

29. This compensation was material to Bell because, upon information and belief, it represented over [REDACTED] of her total income. According to BGC's proxy filings, Bell's only other job is as Provost, Dean of the Faculty and a Professor of Economics at Barnard. Indeed, Barnard's publicly-available Form 990 for the 2015 fiscal year discloses that Bell earned total compensation of \$351,409 that year. Barnard's publicly-available Form 990 for the 2016 fiscal year discloses that Bell earned total compensation of \$373,547 that year. Thus, at a minimum, Bell's earnings from her BGC directorship comprised a material portion of her total income.

30. Further, Bell served on the board of ELX Futures, which is owned by BGC and thus controlled by Lutnick and Cantor, from 2009 through July of 2013. Upon information and belief, Bell was appointed to the ELX Futures Board at Lutnick's behest. Therefore, Bell has likely earned well in excess of [REDACTED] [REDACTED] in fees from her directorships at Lutnick- and Cantor-controlled entities, providing her with a powerful disincentive to oppose Lutnick's will.

31. Also, in February of 2015, Lutnick placed Bell (along with Curwood, Dalton and Moran) on a publicly-filed list of potential appointees to the board of GFI, a company that BGC had acquired through a back-end merger in January of

2016, demonstrating that she is one of a handful of individuals, along with the other so-called independent directors, whom Lutnick looks to for placement on boards within his control.

(b) Stephen Curwood

32. Defendant Stephen Curwood has been a director of BGC since December 2009. Curwood was also a member of the Special Committee of BGC Directors that recommended the Related Party Transaction to the full BGC Board.

33. Curwood and Lutnick share a close personal friendship due to their mutual associations with Haverford College. For years Lutnick and Curwood served together on the Board of Managers of Haverford. Indeed, Lutnick's reasoning for appointing Curwood to the BGC Board was because he "formerly served on the Board of Managers of Haverford with Mr. Curwood."

34. Since 2000, Curwood continues to serve on the Haverford College Corporation, which holds "legal title to the College assets." Members of the Haverford College Corporation are expected "to have a commitment to Haverford College," and "financial support of the College annual fund" and are part of three working groups, one of which "encourage[s] financial support for the College through the Annual Fund." Thus, Curwood directly benefits from Lutnick's donations to Haverford College, including the [REDACTED] donations over the past

25 years, as a member of the Haverford College Corporation which is responsible for encouraging donations to the college's fund.

35. Since 1992, Curwood has been primarily employed as President of World Media Foundation, Inc. ("World Media"), a non-profit media production company. Curwood has also been Senior Managing Director of SENCAP LLC ("SENCAP"), a New York and New Hampshire-based investment group, since 2005. Curwood does not earn material income from either of these enterprises.

36. Curwood's income from his BGC directorship is significantly greater than the income he received from World Media or SENCAP, and material in light of his economic circumstances. According to publicly-available information disclosed in tax filings, World Media is a non-profit media production company that paid \$215,000 (or less) annually in total compensation to *all* of its executives between 2011 and 2013 and materially less in 2014, paying \$107,104 in total executive compensation for that year. Indeed, in 2015 (the last year that it filed a Form 990 with the Internal Revenue Service), the company paid only \$61,939 in total executive compensation.

37. SENCAP is a New York and New Hampshire-based investment group that lacks any internet footprint whatsoever and that Curwood evidently runs out of his New Hampshire residence. Based on publicly available information, there is no reason to believe that he receives material compensation from SENCAP.

38. Meanwhile, and similar to Bell, Curwood earned compensation from BGC in 2017 that materially exceeded compensation paid to the majority of similarly-situated directors, including in excess of [REDACTED] in cash, dwarfing the national average cash payment to directors of mid-cap companies and companies of any size in the financial services industry. Specifically, in 2017, BGC reported that Curwood had received cash compensation of \$226,000, plus an additional \$50,000 implied value in equity compensation, for a total of \$276,000 for the fiscal year. Over the past five years, Curwood's compensation as a member of the BGC Board reportedly amounts to a total of [REDACTED] the majority of which was paid in cash. Since 2009, he has earned in excess of \$1.3 million from his directorship at BGC, far in excess of any amounts earned from his primary employment.

39. Curwood's compensation from BGC also materially exceeds any income that Curwood earns as (a) an occasional lecturer at Harvard and associate of the Harvard University Center for the Environment; (b) a Professor of Practice in Environmental Communications at the University of Massachusetts Boston, where he teaches only one course every other fall; and (c) an environmental journalist who produces certain environment-related content for television and public radio (the latter of which pays freelancers a maximum of approximately \$1,500 per story).

(c) William Moran

40. Defendant William Moran has been a BGC director since June 2013. Moran was a co-chair and member of the Special Committee of BGC that recommended the Related Party Transaction to the full BGC Board. He served as a director with Lutnick of eSpeed, BGC's predecessor, from December 1999 to November 2005, before being appointed to the BGC Board in 2013. He also served with Lutnick as a member of the board of directors and as the Chairman of the Audit Committee of GFI from February 26, 2015 through the closing of BGC's back-end merger with GFI in January 2016. Additionally, from 2009 to 2013, he served on the board of directors of ELX Futures, of which Lutnick was a co-founder and Chairman.

41. Moran and Lutnick (and their respective families) have developed a deep personal friendship that dates back to at least 1999 when Moran joined the eSpeed board. Moran and his wife, Barbara Salzman, regularly attend public events with Lutnick, including a black-tie gala on March 7, 2007 in New York.



(Bill Moran (L), Barbara Salzman (C) and Harold Lutnick (R) during Lighthouse International's Music of Winternight Black Tie Gala - March 7, 2007 at Broadway Ballroom in New York City, New York, United States.)

42. In 2014, Moran's wife, Ms. Salzman, honored Edie Lutnick (Lutnick's sister and co-founder and executive director of The Cantor Fitzgerald Relief Fund) at the SUNY Optometric Center of New York's 11th annual "Eyes on New York" Gala.

43. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

44. Moran retired from JPMorgan Chase & Co. in June 2005. Upon information and belief, Moran earned a material portion of his post-retirement income from serving on Cantor-related boards. In his approximately five years as a member of the BGC Board, Moran's compensation reportedly amounts to a total of \$931,986, the majority of which was paid in cash. For example, in 2017, BGC reported that it paid Moran cash compensation of \$256,250, plus an additional \$50,000 implied value in equity compensation, for a total of \$306,250. Like the compensation paid to Bell and Curwood in 2017, this compensation materially exceeded that paid to similarly-situated directors at the majority of other companies, and included a cash component well in excess of the national average for mid-cap companies and companies of any size in the financial services industry.

45. Moran materially relied on income from his BGC directorship and was beholden to Lutnick and Cantor. Indeed, based on the Company's public filings, at the time of the Related Party Transaction and through the present, Moran derives his sole income from serving on the BGC Board.³ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Moran thus has a powerful disincentive to oppose Lutnick due to his deep friendship with Lutnick and his reliance on Lutnick and Cantor entities for his post-retirement income.

(d) John Dalton

46. Defendant John Dalton was a director of BGC or its predecessor entity from February 2002 through his resignation from the Board in December 2017, which was concurrent with his appointment to the board of directors of Newmark in connection with its IPO. Dalton was a member of the eSpeed special committee in connection with the eSpeed Merger. Dalton was also a member of the BGC Special Committee that recommended the Related Party Transaction to the full BGC Board.

47. Dalton has longstanding ties to Lutnick as a director of BGC from 2002 through 2017 and as a result of his service with Lutnick since 1999 on the board of

³ Moran also serves as a member of the Advisory Board of the School of Management at Marist College, which, upon information and belief, does not materially compensate Moran for his service.

the Cantor Exchange, an electronic exchange for trading U.S. Treasury futures that is a subsidiary of Cantor.

48. Dalton is known for his “passionate support of Navy athletics and personal generosity to the Academy through the Naval Academy Foundation as President’s Circle donors . . .” The Cantor Fitzgerald Relief Fund donates to the Naval Academy Foundation. As discussed above, Eddie Lutnick (Lutnick’s sister) is the president and co-founder with Lutnick of the Cantor Fitzgerald Relief Fund.

49. Like the other BGC directors, Dalton’s BGC directorship provided him with compensation that was material in light of his economic circumstances. In 2017, BGC reported that Dalton had received cash compensation of \$208,000, plus an additional \$50,000 implied value in equity compensation, for a total of \$258,000. Like the compensation paid to Bell, Curwood, and Moran in 2017, Dalton’s compensation materially exceeded that paid to similarly-situated directors at the majority of other companies, and included a cash component well in excess of the national average for mid-cap companies and companies of any size in the financial services industry. Upon information and belief, over his 15-year tenure as a BGC director, Dalton’s compensation amounts to a total of at least [REDACTED] with \$850,250 having been paid in the last five years.

50. Given Dalton’s service on the board of the Cantor Exchange, the total amount of compensation that he has earned as a director of Cantor-affiliated entities

is likely to be substantially more than [REDACTED] Upon information and belief, this compensation was material to Dalton, who was subject to removal from the Board at the whim of Cantor and/or Lutnick, because it (i) exceeded the approximately [REDACTED] per year that he earned from directorships at Washington FirstBank and Fresh Del Monte Produce, Inc. and (ii) was materially greater than any compensation paid to Dalton as president of the Housing Policy Council of the Financial Services Roundtable.

51. Though Dalton resigned from the BGC Board in late 2017, he did so to become a director of Newmark, another Lutnick and Cantor-controlled entity, where he continued to earn in excess of \$200,000 on an annual basis before stepping down in late 2018 at the age of approximately 76. Thus, for at least the past five years, Dalton has earned [REDACTED] of his income from Cantor and Lutnick-controlled entities, providing him with a powerful disincentive to oppose Lutnick.

52. Defendants Bell, Curwood, Moran, and Dalton are collectively referred to herein as the “Special Committee” or the “Special Committee Defendants.”

53. Defendants Lutnick, Bell, Curwood, Moran, and Dalton are collectively referred to herein as the “Director Defendants.”

IV. RELEVANT NON-PARTIES

Sandler O’Neill and Debevoise & Plimpton

54. Sandler, which has longstanding ties with Lutnick and Cantor, acted as the Special Committee's financial advisor in connection with the Related Party Transaction. Lutnick regularly speaks at Sandler's Global Exchange and Brokerage Conference. Further, as discussed above, Sandler had a history with Cantor because it acted as financial advisor to the eSpeed special committee in connection with the eSpeed Merger. Sandler was among the firms recommended to the Special Committee by William Regner of Debevoise, who, as discussed below, was also legal counsel to the eSpeed special committee.

55. Documents produced in response to Plaintiff Roofers' Section 220 demand, as well as the public record, confirm Cantor's relationship with Sandler and the lack of arm's-length bargaining leading up to the Related Party Transaction. Indeed, Sandler was made aware of Lutnick's plan to conduct an IPO of Newmark before delivering its fairness opinion to the Special Committee in connection with the Related Party Transaction. Not coincidentally, Sandler later acted as an underwriter and co-manager for the Newmark IPO. Then, in an ultimate subversion of any pretense of arm's-length bargaining between Sandler (on behalf of BGC) and Cantor, *Cantor* paid Sandler's invoices for its work provided to the Special Committee in connection with the Related Party Transaction.

56. Debevoise acted as the Special Committee's legal advisor in connection to the Related Party Transaction. Debevoise was also the legal advisor to the eSpeed special committee in connection to the eSpeed Merger.

FACTUAL BACKGROUND

A. Background of BGC

57. In August 2004, Cantor partially spun off its voice brokerage business to create BGC Partners L.P.

58. In April 2008, BGC Partners L.P. merged with eSpeed, a former wholly-owned subsidiary of Cantor in which Cantor maintained a [REDACTED] equity stake, to form BGC Partners, Inc. Lutnick, who was at the time and continues to be the Chairman and CEO of Cantor, became Chairman and CEO of BGC (as he had been of the Company's predecessors).

59. On October 14, 2011, BGC announced its acquisition of all the outstanding shares of Newmark & Company Real Estate, Inc., a leading U.S. commercial real estate brokerage and advisory firm serving corporate and institutional clients, along with a controlling interest in its affiliated companies, encompassing approximately 425 brokers.

60. In April 2013, BGC acquired Grub & Ellis Company, a full-service national commercial real estate platform of property management, facilities management and brokerage services, and combined it with Newmark & Company

Real Estate, Inc. to form Newmark Grubb Knight Frank, a full-service commercial real estate platform that, at the time of the Related Party Transaction, did business as Newmark Knight Frank and was operated by then-BGC subsidiary Newmark Group, Inc.

61. In the years following BGC's acquisition of Newmark, BGC and Newmark conferred substantial value on another Cantor affiliate, Berkeley Point, by originating business for it. Upon information and belief, between fiscal years 2014 and 2016, Newmark provided Berkeley Point with approximately [REDACTED] of its loan originations and was responsible for an increase in Berkeley Point's origination growth of more than [REDACTED] during that time period. Indeed, in 2016, Newmark provided Berkeley Point with over [REDACTED] in incremental volumes (a [REDACTED] increase over originations since CCRE acquired Berkeley Point in 2014), and, in the first three months of 2017, Newmark had referred [REDACTED] in insurance company loan servicing to Berkeley Point.

62. Since BGC and its subsidiary Newmark were responsible for a material portion of the overall value of Berkeley Point, there was no financial or economic rationale for BGC to pay a premium to acquire Berkeley Point in the Related Party Transaction.

B. Lutnick and Cantor Set the Stage for the Related Party Transaction

63.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

64.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

65.

[REDACTED]

[REDACTED]

[REDACTED]

66. The Special Committee Defendants were officially appointed to a Special Committee on March 14, 2017.⁴ [REDACTED]

[REDACTED]

⁴ [REDACTED]

67. Moreover, the Special Committee resolutions shielded Lutnick from having to share any information that would benefit BGC at his expense.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

68. Meanwhile, the resolutions placed no corresponding restriction on Lutnick's ability to share BGC's information with Cantor. In other words, the Special Committee simply looked the other way and enacted resolutions that allowed Lutnick to use his insider knowledge of BGC to advantage Cantor and, ultimately, himself.

69. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

70. [REDACTED]

[REDACTED]

[REDACTED]

71. Lutnick also controlled the valuation of Berkeley Point for his personal advantage. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

72. Lutnick was also permitted to attend multiple Board and Special Committee meetings from which he should have been excluded due to his conflicts. Put simply, there was no process that protected the rights of BGC's investors, since there was no meaningful effort to prevent Lutnick from participating on both sides of the negotiations.

73. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C. Cantor Pushes the Purchase Price that BGC Pays Higher

74. On or around April 21, 2017, Cantor submitted a term sheet to BGC

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

75. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

76. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

77.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

78. On May 2, 2017, the Audit Committee (comprised of the members of the Special Committee), along with Lutnick and others, met for 30 minutes at BGC's offices. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

79. As of the May 2 meeting, the Special Committee had only had one meeting [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

80. On May 11, the Special Committee received a presentation from Lutnick. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

81. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

82. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

83. On May 25, 2017, the Special Committee met to discuss the term sheet provided by Cantor on May 23. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

84. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

85. [REDACTED]

[REDACTED]

[REDACTED]

D. The Special Committee's Financial Advisor Explains Why Cantor's Asking Price Was Overinflated

86. On or around June 4 and 5, 2017, Sandler presented the Special Committee with an analysis of the proposed Related Party Transaction [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁵ The full presentation is attached hereto as Exhibit 1.

a.

[REDACTED]

[REDACTED]

[REDACTED]

b.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

d.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

e.

[REDACTED]

[REDACTED]

[REDACTED]

f.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

g.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

h. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

87. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

88. Sandler's presentation also identified certain issues regarding the proposed investment in the Cantor CMBS Business, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

89. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

E. The Special Committee Ignores Its Own Advisor and Capitulates to Lutnick and Cantor

90. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

91.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

92.

[REDACTED]

[REDACTED]

[REDACTED]

93.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

94.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

95.

[REDACTED]

[REDACTED]

[REDACTED]

96. Notably, the Special Committee did not request, and Sandler did not provide, a fairness opinion with respect to BGC's investment in CMBS. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

97.

[REDACTED]

[REDACTED]

[REDACTED]

F. The Newmark IPO Further Demonstrates that BGC Acquired Berkeley Point at an Unfair Price

98. The Related Party Transaction was completed on September 8, 2017, and Berkeley Point was integrated into Newmark by October 23, 2017, at which

⁶ See, e.g., Charles McGrath, *Heightened risk in CMBS as issuance increases*, Pensions & Investments (June 1, 2018).

point Newmark's value was partially comprised of the value of Berkeley Point. Thereafter, BGC and Newmark completed the Newmark IPO on December 19, 2017 at the price of \$14.00 per share. As explained in detail below, the implied valuation of Berkeley Point in the Newmark IPO further demonstrates that BGC paid an inflated and unfair price for Berkeley Point.

99. Newmark's public filings reflect that BGC held 115,593,786 Class A shares and 15,840,049 Class B shares of Newmark. Thus, based on the \$14 per share IPO price, BGC's Newmark holdings, which included both the entirety of Berkeley Point and Newmark's preexisting business, were valued at approximately \$1.84 billion. Based on data for Newmark and Berkeley Point contained in public filings for the most recently completed fiscal year before the IPO, as well as Section 220 documents, Newmark derived 30.6% of its EBITDA from Berkeley Point. Thus, based on the IPO's \$14.00 sale price, which took place a mere three months following completion of the Related Party Transaction, the value of Berkeley Point was 30.6% of \$1.84 billion, amounting to *only \$563 million* and establishing that BGC overpaid for Berkeley Point by at least *\$312 million* in the Related Party Transaction.

100. The Related Party Transaction was thus not entirely fair, as it reflected an unfair price and was the result of an unfair process that was dominated by Lutnick and tainted by a conflicted Special Committee.

G. Lutnick Pockets Millions from Causing BGC to Purchase Berkeley Point at an Unfair Price.

101. Through his ownership of Cantor and BGC, Lutnick received millions of dollars at the expense of BGC and its public stockholders as a result of causing BGC to overpay for Berkeley Point in the Related Party Transaction.

102. In 2017, Lutnick owned approximately [REDACTED] of BGC's common share equivalents. He also owned [REDACTED] of Cantor and its [REDACTED] stake in BGC. Lutnick thus had a pecuniary interest in approximately [REDACTED] of BGC.

103. Accordingly, in any transaction where BGC purchases an asset from Cantor, Lutnick personally receives [REDACTED] [REDACTED] of any BGC payment to Cantor. Thus, for every dollar by which BGC overpays in any given transaction, Lutnick personally receives a [REDACTED] windfall.

104. Here, based on Lutnick's initial valuation of approximately [REDACTED]
[REDACTED]
[REDACTED] as well as the \$312 million overpayment implied by the Newmark IPO, Lutnick personally pocketed at least ***\$82 to \$146 million*** at the expense of BGC and its public stockholders as a result of the Related Party Transaction.

DERIVATIVE ALLEGATIONS

105. Plaintiffs bring this action derivatively in the right and for the benefit of BGC to redress breaches of fiduciary duty by its Board and controlling stockholders.

106. Plaintiffs are stockholders of BGC, were stockholders of BGC at the time of the wrongdoing alleged herein, and have been stockholders of BGC continuously since that time.

107. Plaintiffs will adequately and fairly represent the interests of the Company and its stockholders in enforcing and prosecuting its rights.

DEMAND FUTILITY ALLEGATIONS

108. Plaintiffs did not make a demand on the Board to institute this action because pre-suit demand is excused. The facts alleged in the preceding paragraphs show that, at a minimum, reasonable doubt exists as to whether the Related Party Transaction was the product of a valid exercise of business judgment, or whether a majority of the Board was disinterested and independent.

A. Demand Is Excused Because the Related Party Transaction Is Subject to Entire Fairness Review, Fails to Meet That Review Standard, and Also Falls Within the Second Prong of *Aronson*

109. Lutnick, the admitted controller of both BGC and Cantor, stood on both sides of the Related Party Transaction. BGC engaged in the Related Party Transaction at the behest of, and with the participation and at the direction of,

Lutnick, for the benefit of Lutnick and Cantor and to the detriment of BGC and its public stockholders.

110. Entire fairness therefore applies to the Related Party Transaction, which cannot be presumed a product of a valid exercise of business judgment.

111. Because the Related Party Transaction was not entirely fair to the Company as explained herein and as will be proven at trial, demand is excused.

B. Demand Is Excused Because At least Half of the Current Board Members Face a Substantial Likelihood of Liability for Their Misconduct

112. Demand is also excused because Plaintiffs raise a reasonable doubt that at least half of the Board at the time of the filing of the complaint could properly exercise independent and disinterested business judgment in responding to a demand.

113. Director Defendants Bell, Curwood, Lutnick, and Moran constitute four of the five members of the Board as of the filing of this Complaint and, because they face a substantial likelihood of liability arising from their misconduct, are interested and unable to make an impartial decision regarding demand.

114. Lutnick faces a substantial likelihood of liability in his capacities as controller, Chairman, and Chief Executive Officer of BGC. Lutnick was conflicted because he stood on both sides of the transaction. As discussed herein, Lutnick breached his duties, as he dominated and otherwise directed and interfered with the

process through which the Related Party Transaction occurred, resulting in an unfair process and unfair price. As a result, Cantor, which Lutnick controls, unfairly benefitted from the Related Party Transaction at the expense of BGC and its public stockholders. Lutnick drove the Related Party Transaction, which was, in reality, a *fait accompli* accompanied by only the barest of fiduciary window-dressing.

115. In addition, the members of the Special Committee face a substantial likelihood of liability for their misconduct in connection with the Related Party Transaction, including by favoring the interests of Cantor and Lutnick over those of the Company and its minority stockholders in an unfair process that resulted in an unfair price.

116. Despite knowing the Related Party Transaction was unfair to BGC, the Special Committee members rolled over for Lutnick and Cantor and, in doing so, abdicated their fiduciary obligations to BGC and its public stockholders. The perfunctory process and lack of any meaningful negotiations make clear that the Related Party Transaction was a *fait accompli* from the very beginning.

117. Despite knowing that Lutnick was conflicted, the Special Committee completely delegated negotiations to Lutnick and his management team and immediately rolled over when Cantor inexplicably raised its price demand far above what it had originally demanded or what Lutnick himself had said the assets were worth. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

118. Indeed, despite advice from Sandler [REDACTED]

[REDACTED]

[REDACTED] each of these directors breached their duties of due care and loyalty by allowing the conflicted Lutnick and Cantor to dictate the terms of the Related Party Transaction in an unfair process that resulted in BGC making unfair payments to Cantor affiliates, lining Lutnick's pockets in the process.

119. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

120. On top of the Special Committee's supine decision to delegate negotiations to Lutnick and his management team, Lutnick was also enabled in his manipulation of the process by his attendance at roughly one-quarter of the Special Committee's meetings. Further, at two meetings of the BGC Audit Committee at which all members of the Special Committee were present, Lutnick discussed the Related Party Transaction. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The parties agreed to the principal terms of the deal barely a month later.

121. Lutnick also overstepped his bounds by taking personal control over critical matters including the financing of the Related Party Transaction and communication with ratings agencies. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

122.

123. Thus, Lutnick took advantage of his position to exert influence over the committee and to take matters as material as communication with the rating agencies and the financing of the transaction into his own hands, including by exploring an additional related-party loan between Cantor and BGC. These are not the acts of a “recused” interested director, but rather those of a conflicted fiduciary exercising dominance over a handpicked Special Committee and manipulating the deal on both sides of the transaction.

124. In addition, the Special Committee’s conflicts and lack of independence, as detailed above, provided a powerful motivation for the Special Committee to do as instructed by Lutnick, resulting in the unfair process. As alleged herein, Bell, Curwood and Moran (as well as Dalton) were conflicted at all relevant

times due to their material financial interests in maintaining their seats on numerous Cantor-affiliated boards, including the BGC Board, which they held at the prerogatives of Lutnick and Cantor, as well as due to their longstanding financial, personal, and other ties to Lutnick and Cantor.

125. As a result of the misconduct and other allegations herein, at least half of the current Board is incapable of objectively considering a demand and, accordingly, demand is excused.

C. Demand Is Excused Because a Majority of the Current Board Is Conflicted and Beholden to Lutnick and Cantor

126. Demand is also excused because, independent of the fact that at least half of the current Board faces a substantial likelihood of liability in this lawsuit, Lutnick is admittedly conflicted and Defendants Bell, Curwood, and Moran are beholden to Lutnick and Cantor and cannot impartially consider a demand to institute litigation against or otherwise involving Lutnick and Cantor on behalf of the Company.

127. The BGC Board presently consists of five members including Defendants Lutnick, Bell, Curwood, and Moran. The fifth member of the Board is David Richards who joined the BGC Board in December 2017 after the completion of the Related Party Transaction and the Newmark IPO.

128. According to the Company's public filings, BGC itself considers Lutnick not to be an independent director. Lutnick undeniably had a personal and

material financial interest in the Related Party Transaction that differed from the interests of BGC public stockholders. Lutnick and the Director Defendants conceded as much in forming the Special Committee of purportedly independent members of the Board to review and evaluate the Related Party Transaction.

129. As set forth herein, Defendants Bell, Curwood, and Moran had divided loyalties in connection with the Related Party Transaction, and thus are not disinterested and not independent and cannot impartially consider a demand to institute litigation against or otherwise involving Lutnick and Cantor on behalf of the Company.

130. Further, as discussed *supra*, as compared with their non-Cantor related income, all of these directors received substantial income through their seats on the BGC Board, which they occupied and continue to occupy at the discretion of Lutnick and Cantor. In 2017, each received cash compensation in excess of \$200,000 and total compensation valued in excess of \$250,000 for service on the BGC Board. Over the past five years, each has earned total compensation from BGC valued in excess of \$825,000, the majority of which was paid in cash.

131. Thus, the value of the annual compensation paid to these Defendants, in particular the amount of total compensation paid in cash, materially exceeded the compensation of directors of similarly-capitalized companies and ranked at or above the 75th percentile of director compensation for financial services companies of *any*

size. Further, the amount paid in cash—in excess of 80% per director in 2017—dwarfs the 42% national average for mid-cap companies and the 53% national average for companies in the financial services industry.

132. Based on publicly available information, the income earned from BGC and other Lutnick/Cantor controlled entities was material to each of Bell, Curwood and Moran. As set forth in greater detail above, (i) Bell’s income from BGC nearly doubled her income from other sources and she earned well in excess of one million dollars in fees from her directorships at Lutnick/Cantor controlled entities, (ii) Curwood’s BGC income most likely dwarfed his income from other sources, and (iii) Moran relied on Cantor related income as his sole source of income at the time the Amended Complaint was filed. BGC’s public filings make it clear that Lutnick and Cantor had the unilateral power to remove any of these directors at any time and cut off these material income streams. Thus, Bell, Curwood and Moran had a powerful and material financial incentive to comply with Lutnick’s will.

133. As discussed in detail above, Bell’s, Curwood’s, and Moran’s longstanding personal friendship and professional ties to Lutnick further underscore their lack of independence from Lutnick and Cantor.

134. In sum, Defendants Bell, Curwood, and Moran earn material income from Lutnick/Cantor related entities and share deep and beneficial relationships with

Lutnick and cannot impartially consider a demand to institute litigation against or otherwise involving Lutnick and/or Cantor on behalf of BGC.

COUNT I

Breach of Fiduciary Duty (Derivatively against the Director Defendants as Directors)

135. Plaintiffs reallege the preceding paragraphs as set forth above and incorporate them herein by reference.

136. The Director Defendants, as directors of BGC, are fiduciaries of the Company and its stockholders. As such, they owe the Company the highest duties of good faith, fair dealing, due care, and loyalty.

137. The Director Defendants have breached their fiduciary duties by approving the Related Party Transaction on unfair terms and pursuant to an unfair process. In acting for the benefit of Cantor and Lutnick rather than BGC, the Director Defendants were not acting in good faith, failed to exercise due care, and acted disloyally toward the Company in breach of their fiduciary duties.

138. As a result of the actions of the Director Defendants, the Company has been and will be damaged.

COUNT II

Breach of Fiduciary Duty (Derivatively against Defendants Lutnick, CFGM, and Cantor as Controlling Stockholders)

139. Plaintiffs reallege the previous paragraphs set forth above and incorporate them herein by reference.

140. Defendants Lutnick, CFGM, and Cantor, as controlling stockholders of BGC, are fiduciaries of the Company and its stockholders. As such, Lutnick and Cantor owe them the highest duties of good faith, fair dealing, due care, and loyalty.

141. Defendants Lutnick, CFGM, and Cantor breached their fiduciary duties by using their control over BGC and the Special Committee Defendants to cause the Company to enter into the Related Party Transaction on unfair terms and pursuant to an unfair process.

142. In contemplating, planning, and/or effecting the foregoing conduct and in pursuing and structuring the Related Party Transaction, Defendants Lutnick, CFGM, and Cantor did not act in good faith, failed to exercise due care, and acted disloyally toward the Company in breach of their fiduciary duties.

143. As a result of the actions of Defendants Lutnick, CFGM, and Cantor, the Company has been and will be damaged.

COUNT III

Breach of Fiduciary Duty (Derivatively against Defendant Lutnick as an Officer)

144. Plaintiffs reallege the previous paragraphs set forth above and incorporate them herein by reference.

145. Defendant Lutnick, as BGC's CEO, is a fiduciary of the Company and its stockholders. As such, Lutnick owes them the highest duties of good faith, fair dealing, due care, and loyalty when acting as an officer of BGC.

146. Defendant Lutnick breached his fiduciary duties as an officer of BGC by dominating, directing, and otherwise interfering with the process through which the Company entered into the Related Party Transaction, including by taking control of the Company's interactions with ratings agencies and financing sources.

147. In contemplating, planning, and/or effecting the foregoing conduct and in pursuing and structuring the Related Party Transaction, Defendant Lutnick did not act in good faith, failed to exercise due care, and acted disloyally toward the Company in breach of his fiduciary duties.

148. As a result of the actions of Defendant Lutnick, the Company has been and will be damaged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment as follows:

A. For an order deeming this action to be a proper derivative action and Plaintiffs to be proper and adequate derivative plaintiffs;

B. For an order declaring that the Defendants breached their fiduciary duties to the Company;

C. For an order awarding damages, together with pre- and post-judgment interest to the Company;

D. For an order of immediate disgorgement of all profits, benefits and other compensation obtained by Defendants as a result of their breaches of fiduciary duties;

E. For Plaintiffs' costs and expenses incurred in this action, including, but not limited to, experts' and attorneys' fees; and

F. For such other and further relief as this Court may deem just and proper.

Dated: February 12, 2019

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