Non Responsive

General Area of Concern	Specific Tip / Complaint	Source / Date Received	Notes
Private consents flawed – material misstatement	1333 Broadway prospectus contained a chart showing that the Malkins owned 80% of the entity, and only 70% vote was needed to approve the roll up. Also had the coercive disclosure about how buyout provisions kick in if you vote no. So everyone voted "yes" because it seemed inevitable that they would lose almost everything if voted no (Malkins had 80% and only needed 70%)—BUT there were TWO material misstatements – (1) the Malkins really only had 40% of the interest and (2) there was no applicable buyout provision for this entity. Please see position paper by (b)(6) on various abuses in the private consent solicitation.	Meeting with ESBA and 1333 Broadway investors on 4/19/12	(b)(5)
Private consents flawed	Concern that the private entity consents violated the roll-up rules because they were done separately from the public entities being rolled up. We received a position paper from (b)(6) (one of investors in the 4/19/12 meeting) alleging that the private consents were secured using a patently false and coercive scheme and requesting that the votes from the private entities be deemed invalid and that the Sponsor be required to file with the SEC a supplemental prospectus in compliance with Items 902 and 910 for each private entity. Paper states that, among other abuses, sponsors included language in private consents suggesting that the deal could be drastically changed after consent was given, but the prior consent is binding—and this goes against spirit of the roll up rules and offers no protection to investors.	Meeting with ESBA and 1333 Broadway investors on 4/19/12; Position paper by (b)(6) (b)(6) received on 4/19/12	(b)(5)
Private consents flawed	There is an open legal question as to whether votes of the Malkin and Morse families can be counted toward the super-majority because they are interested parties (i.e.,	Position paper by (b)(6) (b)(6)	(b)(5)

	will receive special benefits). See position paper by (b)(6) citing to Peretta v. Prometheus Development co. (9th Cir.)	received on 4/19/12	
Private consents flawed	Organizational documents provided that the "no" voters had 10 days to change their votes, but the Malkin's allegedly did not mention this in obtaining the private consents	Phone call with (b)(6) on 4/2/12	(b)(5)
Private consents flawed	Consents were "materially tainted" and that there is "credible evidence of wrongdoing." Request for a "formal investigation" and asked us how to proceed with this. Stated that the New York AG "expressed a willingness to become involved" but only if SEC took the initial lead. Please also see 4/19/12 position paper by (b)(6) on various abuses in the private consent solicitation.	(b)(6) email, received 4/11/12	(b)(5)
Private consents flawed	People who voted in the private deals were not presented with accurate information--most importantly that there is a question as to the legitimacy of the 50/50 split. Investors were unable to know that there was a question as to the assertion made by management as to the original intent (to treat as joint venture) because information like the organizational documents were neither included, referred to, nor readily available.	In-person meeting with Richard Edelman, phone call with (b)(6) (b)(6), email from (b)(6) (b)(6) on 3/1/12 2/28/12, and 2/22/12	(b)(5)
Private consents flawed	Potential 14a-7 issue with 112 West 34th Street—management refused to provide shareholder lists to	Email from (b)(6)	

	investors until 2 days before the extended deadline for investors to consent, making it virtually impossible for them to speak with one another before the vote.	on 2/28/12	
Private consents flawed	Investors in private entities had only about 3 weeks to vote yes or no; was done around the holidays, and the documents were voluminous. Position paper by (b)(6) (b)(6) lists this as one of the many abuses in the private consent solicitations – states that the roll-up rules require 60 days, and nothing in NY law suggests that a shorter time is acceptable.	Meeting with ESBA and 1333 Broadway investors on 4/19/12; also one of complaints in class action suits	(b)(5)
Private consents flawed / coercion in voting yes	At least one investor in private deal voted "no and was told they couldn't do that." They put investor at risk of losing entire investment because they refused to provide the date by which she must consent (see 2/22/12 email). Their "experience to reverse…[was] very distressing." Malkin refused to give them the exact date by which they needed to reverse and provided no protocol for reversing the vote. This is apparently recorded on tape. Other claims of "threatening phone calls" as to the effect of a "no" vote and the entity's right to repurchase interest for "essentially nothing" if vote no.	Emails from (b)(6) dated 5/35/12, 4/11/12, 3/5/12, 2/28/12, and 2/22/12; in person meeting with Richard Edelman; phone call with (b)(6) (b)(6) on 5/23/12.	(b)(5)
Private consents flawed / coercion in voting yes	Investors from one of private entities were told by Malkins that they must vote "yes" or may lose their investment, even though investors in this particular entity were NOT subject to a buyout provision. (see above—1333 Broadway)	Phone call from (b)(6) on 5/23/12	(b)(5)
Private consents flawed / coercion in voting yes	(b)(6) was personally told by one of the Malkins that if ESBA does not approve the deal, the Helmsleys (who control ESBC, the operating lessee) will make	Phone call from (b)(6) on 5/23/12	(b)(5)

	terrible trouble for ESBA.		as coercion.
Private & Public consent coercion	Statements that if participants do not approve the transaction, they will be bought out for a minimal purchase price make the private and public consents inherently coercive. We also have a "position paper" from (b)(6) (investor in the 4/19/12 meeting) on this issue, requesting, ultimately, that the buyout provisions be removed from the document.	Meeting with ESBA and 1333 Broadway investors on 4/19/12; class action lawsuit filed 3/1/12	(b)(5)
Prior vote to obtain 10% interest upon sale was flawed	Claim that when management of ESBA proffered a consent in which they asked the investors to allocate themselves a 10% interest upon sale, they failed to indicate their belief they already possessed a right to 50% of the sale. So, possibly, the consent to receive the 10% interest was flawed.	Emails from (b)(6) on 3/1/12 and 2/22/12; email from (b)(6) (b)(6) on 9/6/12	(b)(5)
Prior increase to supervisory fee was flawed / unenforceable	Supervisors unilaterally increased their supervisory fee from $100K to $750K in 2011 and made the increase retroactive as of 18 mos. earlier. Likely did this to give them the opportunity to capitalize higher fees. These fees are now cumulative and get priority above distributions (which is opposite how used to be). Supervisors do far less work than used to—now have to hire most out because they are no longer a lawfirm—but still granting selves higher fees. The agents for the 3 participation groups of ESBA approved this (they also	Meeting with ESBA and 1333 Broadway investors on 4/19/12; complaint in class action lawsuits; memo from (b)(6) (b)(6) emailed	

	happen to be the supervisors who are receiving the fees). Nothing in the organizational documents permits them to do this. (Class action suits allege that this amounts to about $16M in exchange value for the Malkins). Plus, these retroactive, improper fees suppress the valuations of the Private Entities and Public LLCs by reducing their net income. Investors learned of this increase by letter, but it does not appear that the letter was filed with the SEC (see position paper from [b;(6;] ("Certain Consideration to be Received…"). See [b;(6;] Memo from 9/8/12, which states The recent unilateral increases in and other modifications to the terms of the supervisory fees (i.e., priority, cumulative carryover of a deficiency, elimination of obligation to perform services) by the Registrant without the approval of the participants are inconsistent with the terms of the original offering documents and participating agreements and makes the following supporting arguments: The original prospectus (page 5) provides for a payment of a basic supervisory fee of $100,000 and lists a number of services that the Wien firm was obligated to render in return for that fee, which was described as "compensation for the above services". In addition, the Wien firm was required to absorb all accounting costs. Now, accounting costs previously covered the by the fee must now be paid by Associates, and the legal services originally referred to cannot be performed by Malkin Holdings because it is not a lawfirm.	on 9/8/12	

	On page 10, there are provisions for adjusting the basic rent from time to time to reflect changes in the ground rent payable to Prudential. If these adjustments resulted in an increase in distributions to the participants, 6% of those additional amounts were payable to the Wien firm as part of the supervisory fee (shows priority) –now modified so that the sup fee has priority		
Notice of increase in supervisory fee flawed	The 10-K for the year 2010, filed on August 16, 2011, is the first public record of the increase in the fees paid by both Associates and Company. In the case of Associates, this is retroactive to July 1, 2010; in the case of Company, to January 1, 2010. No reason has been given for the difference in effective dates. Also, The first communication discussing these increases addressed to the participants in either Associates or Company was in a letter dated December 9, 2011 to the participants in Associates, almost eighteen months after the Supervisory arbitrarily and without notice increased the supervisory fee. This letter did not arrive in the hands of the participants in Associates until almost two weeks after the Registrant had started soliciting the private entities for consents to the roll-up (November 28, 2011). Those solicitation materials did not disclose the increases in supervisory fees and, hence, the investors could not have known about the adverse impact that those changes would have on the consolidated company they were being asked to exchange their interests for in a roll-up when they first received the materials soliciting their consents to the roll-up or how those changes affected the calculation of the exchange values	Memo from (b)(6) sent by mail on 9/8/12	

Recent amendments to partnership agreement are flawed and unenforceable	At the bottom of page 12 of the prospectus, it is absolutely and unequivocally stated that the property can not be sold or transferred, nor can the sublease be modified or a new sublease created, nor can any of the participating agreements between the "Agents" and the public investors be changed, without the consent of 80% of the investors in each participating group. Also, all three ESBA participation agreements contain the following provisions: 4. The Agent shall not agree to sell, mortgage or transfer The Property of the Master Lease, nor to renew or modify the Master Lease, nor to make or modify any mortgage thereon, nor to make or modify any sublease affecting the premises, nor to convert the partnership to a real estate investment trust, a corporation or any other form of ownership, nor to dispose of any partnership asset in any manner without the consent of all of the Participants. 5. This agreement may be modified or amended with the consent of all of the Participants. [1] In exhibit 3.1 attached to the 8-K filed on December 5, 2011. (http://www.sec.gov/Archives/edgar/data/32776/000003277611000022/f8kesbafilingw_rightsplan.htm) A new section 12 is added to the partnership agreement	Memo from (b)(6) sent by mail on 9/8/12; email on 9/4/12	(b)(5)

[1] The requirement for 100% consent is modified in a subsequent clause to make it effectively only an 80% requirement. If the Agent gets at least 80% consent, he notifies the non-consenting participants and offers them an option to change their vote to "yes". If they don't withdraw the "no" vote, he can then buy that unit and cast a "yes" vote for that unit.

	and provides in part: "(g) Amendments, etc. The Members may, from time to time, notwithstanding any provision in this Amendment, amend, modify or repeal this Section 12 or Section 13 or Section 14 or any portion thereof without the consent of any other person." The "members" are Messrs. Peter and Anthony Malkin and (b)(6) and this clause purports to permit them to amend sections 12-14 without the approval of a single investor This gave them the ability to amend the partnership agreement at any time in any way. It also purported to give them the right to extend or renew the lease upon its termination on any terms they wish.		
Lease extensions and renewals flawed	Allegation that the master lease and sublease renewals and modifications violate the partnership agreement and are invalid.	emails from Richard Edelman on 9/4/12, 9/25/12 and 11/19/12; email from (b)(6) on 9/4/12;	(b)(5)
Investors not receiving adequate dividends	When supervisors increased their fee from $100K to $750K to adjust for inflation / COLA, they did not also adjust the dividends investors received. Investors have been receiving the same payment of $1100 / year for 50+ years (approx. 10% ROI).	Call with (b)(6) on 4/24/12	(b)(5)

Unclear whether roll-up rules apply	Unclear whether the roll-up rules even applied to the LLCs, given that it is not certain that the LLCs are "finite-life" within the meaning of Item 901(b).	Call with (b)(6) on 4/30/12	(b)(5)
Prior vote to change voting mechanism flawed	Claim that the supervisor proffered a voting rights change under false pretenses and made false assertions as to the effect on voting rights—changed from requiring investors to vote as single group to one where each of three unnamed partnerships vote individually. Believes this will allow the supervisor to more easily win approval of this proposal. At minimum, believes that the statement that this will not alter SH voting rights is false.	Emails from (b)(6) on 2/28/12 and 2/27/12	(b)(5)
Individual Investor relationship with ESBA	The legal relationship between each individual investor in ESBA and ESBA is unclear, and, thus, the rights of each investor under law is unclear. The investors invested money subject to a participation agreement, which describes the formation of three joint ventures (when ESBA was a partnership, but it is now an LLC). The actual legal form of these JVs is unclear. They may be partnerships, but they are unnamed, have never registered with the State, and they file no tax returns. Possibly they are mere contractual arrangements between the parties. Investors were told when they asked for shareholder lists that they were not members of ESBA.	Emails from (b)(6) dated 4/11/12, 3/1/12, and 3/13/12	

			(b)(5)
Helmsley involvement	Question the fairness of one investor ((b)(6) estate) "having a seat at the table when methodology and factual issues are being decided that are material to the valuation process." In 6/1/12 email, investor stated that he received confirmation that the Helmsley estate was granted access to appraisals of the other entities when the other investors were not.	Emails from (b)(6) dated 4/11/12, 3/5/12, and 6/1/12	(b)(5)
Third Party Portfolio option unfair / very problematic	Asserted many issues with the 3P portfolio option—that there are "no limits" to what the managers can agree to, even if it greatly benefits themselves and is detrimental to the investors. (Note: detailed complaints in position papers prepared by (b)(6) and (b)(6) (b)(6), given to us in meeting on 4/19/12)	Meeting with ESBA / 1333 Broadway investors on 4/19/12; class action lawsuits filed 3/1/12, 3/7/12, and 3/12/12; letter from (b)(6) (b)(6) (b)(6) and (b)(6) dated 10/5/12; email from (b)(6) on 9/6/12	
Portfolio option unfair / very problematic	Asserted that if 3P portfolio option goes through, participants would have to come up with the cash to pay the taxes on their own. This amounts to approximately 30% of their investment, more than a hundred thousand	Email from (b)(6) (b)(6) on 5/31/12	(b)(5)

	dollars per unit. To cover this, many investors will have to sell the investment itself. But because the entity is private and there is no ready market and a substantial number of units will be coming up for sale at the same time, the price will almost certainly be severely depressed. Adding up the taxes, 10% commission upon sale to the Malkins, expenses and likely discount investors could easily end up netting substantially less than what their interest is currently worth.		
Misleading statement re: valuation	It's misleading to call Duff & Phelphs an "independent valuer," since all of the valuer's work was distorted and contrived to accommodate the dictates of the outcome-interested supervisor.	Email from (b)(6) and (b)(6) (b)(6) sent on 5/15/12	(b)(5)
Valuation unfair	Inappropriate that the supervisor's beliefs influenced the independent valuer's opinion as to the relative values of the lessor and lessee entities. Improper for the valuer to have adopted the mythology of a 50/50 JV relationship that does not exist in the agreements. Improper for the valuer to have abandoned the consistent valuation method it had otherwise employed throughout and to have distorted its conclusions by ignoring the residual values of the registered entities' interests.	Email from (b)(6) and (b)(6) (b)(6) sent on 5/15/12	(b)(5)
Disclosure re: valuation	Request that allocations appearing in the S-4 be evaluated with great skepticism and that appropriate treatment be given as to their weight and competence (since valuation was performed at the direction of the supervisor, and valuer deviated from normal DCF analysis to perform valuation based on supervisor's	Email from (b)(6) and (b)(6) (b)(6) sent on	(b)(5)

	guidance). Also, request that appropriate action be taken to qualify the validity of the Fairness Opinion or remove it entirely. Note disclaimer in FO that states that to the extent any assumption proves untrue, the FO should not be relied upon.	5/15/12	
Valuation unfair	No appraisal of the relative value of ESBC/ESBA was performed. States that this is a "critical omission."	Email from (b)(6) dated 4/11/12	(b)(5)
Valuation unfair	Page 231 of 11/2/12 S-4 discusses debt service as a shared expense, but says that the principal amount due on maturity is an obligation of only the lessor. Investor asserts that the term "debt service" by definition does not include a "shared expense" to pay interest only.	Email from Richard Edelman on 12/4/12	
Valuation unfair	The registration statement bases the 50/50 split on an intent to treat ESBA and ESBC like a joint venture. Disclosure says that the split is based on "representations of the supervisor as to the original intent to treat the two tier entities as equivalent to a joint venture and the historical treatment of the two tier entities in this manner." Complaint is that there is no evidence of such intent (not in organizational documents, etc.) and that this statement is unfounded. Email from (b)(6) states that this misrepresentation makes all the other consents used to obtain the other properties materially flawed.	Emails from (b)(6) on 3/13/12, 3/6/12, 3/5/12 and 2/22/12, in person meeting with Richard Edelman on 3/1/12, phone call with (b)(6) (b)(6) on [approximately] 3/30/12; emails from Richard	(b)(5)

		Edelman on 7/10/12, 8/27/12, 9/21/12, and 12/3/12; letter from Sonya (b)(6) (b)(6) and (b)(6) dated 10/5/12	
Valuation unfair	Original documents, including the original 1961 prospectus, do not support the 50/50 split. There are provisions in those documents that actually point to the contrary: With respect to the sharing of capital expenditures:: 1) principal costs of substantially all major capital expenditures have been borne solely by Associates, including the initial purchase of the leasehold ($68m) and the 2) cost of acquiring the ground lessor position (title) ($60.5m) 3) cost of the current improvement program (budgeted at over $625,000,000), being financed with mortgage loans for which Company is expressly released from any obligation to pay any part of the principal debt With respect to proceeds of a distribution: sublease contains provisions re: the division of casualty	Memo by (b)(6) emailed on 9/8/12	(b)(5)

	and condemnation proceeds – use complex sharing formulas, not 50/50 split. With respect to sharing of profits and losses: All losses are borne solely by ESBC, and Associates has a first priority to approximately the first $6 million of the profits.		
Valuation unfair	Proxy solicitation for the purchase of fee interest in the ESB land enumerated advantages to ESBA, one of which was that it would "substantially increase the value of your investment" and also that the "ownership of the fee title will convert Associates' wasting leasehold into a permanent asset." Proxy also stated that the agents believed it was appropriate to offer the Operating Sublessee an opportunity to participate in the purchase of the Fee Title. However, they declined to participate – affirming its independence from ESBA as a matter of law and a matter of fact. All these facts negate the intent to treat 50/50.	Email from (b)(6) and (b)(6) (b)(6) sent on 5/15/12	(b)(5)
Misleading statement	On pages 192 – 195 where registrant tries to justify 50/50 split, they state that in the past, there has been a 50-50 sharing of costs and benefits. Statement is not true. The first $6 million of net income goes entirely to Associates, and the next $1 million goes to Company. Also, when the opportunity to purchase the land under the building, Company declined to participate. Associates acquired fee title to the entire property at its own expense, so any appreciation in the value of that interest will insure solely	Letter to SEC from (b)(6) (b)(6) on 5/16/12	(b)(5)

	to Associates. Also, Associates is entitled to 100% of the value of the reversionary interest upon termination of the lease.		
Misleading disclosure	Investors have identified six reasons why the assertions re: the 50/50 split are false. Thinks there has been a willful act on the part of the Malkins to misrepresent info in the S-4 (i.e., that 50/50 split is supportable). 1) One hundred percent of the cost of the building was paid for by Associates. Company contributed absolutely nothing to that cost. 2) One hundred percent of the cost of the land was paid for by Associates. Company refused to contribute to that cost. 3) All of the improvements in the current improvement program are being paid for by Associates. Company is contributing absolutely nothing to that. (It is paying half the interest cost, but none of the principal.) 4) Associates is entitled to the first $6 million of income on a priority basis, as compared to a $1 million payment to Company which is junior in priority to Associates' $6 million. 5) Associates does not bear any loss from the operation of the property. If there is a loss from operations, Company bears the entire amount (and there are no clawbacks or carryovers). 6) If the entire building is sold, free and clear of the lease, Associates is entitled to all of the value attributable to the building and land, but is also responsible for satisfying 100% of all mortgages on the property.	Email from (b)(6) on 5/31/12	(b)(5)
Intellectual	It is unclear who is the proper owner of all intellectual	Emails from	(b)(5)

Property Rights	property associated with the ESB. The S-4 states that IP rights belong to ESBA, but the relevant trademark was submitted by ESBC and has been marketed as property of ESBC.	(b)(6) dated 7/20/12.	
New voting rights unfair	Unfair that management gets stock with 50x voting power of others	Email from (b)(6) on 4/9/12; phone call with (b)(6)	(b)(5)
Management is double-dipping	Management has capitalized their override interests (which represent commissions on work to be performed in the future), PLUS they will receive management fees from the REIT (as well as additional property management agreements, yet TBD). Stated that 7 of the private entities have no override provisions, but they are effectively funding these payments to management, just like everyone else.	Phone call with (b)(6) meeting with ESBA and 1333 Broadway investors on 4/19/12; complaint in class action lawsuits	
Violation of participation agreement	The participation agreement requires participant consent in order to convert ownership to a REIT; however, management has already spent more than $10 million in expenses to prepare for this conversion. Contends that this violates participation agreement. When received (b)(6) complaint, the number had reached over $16 million.	Email from Richard Edelman on 7/4/12 and follow up email on 7/21/12; email from (b)(6) m; email from (b)(6) om) on 1/9/13	(b)(5)

Violation of participation agreement	Participation agreement states that consent of all investors is required in order to convert to a REIT and that "the REIT that was filed with the SEC" violates this because a vote has not taken place.	Email from (b)(6) (b)(6) on 7/8/12	(b)(5)
Violation of participation agreement/lease/sub lease	Investor contends that the early renewal of lease and sublease agreements (related to ESB), for which consent was solicited in Jan. and Feb. of 2010, violates agreements, which state that leases may be renewed at certain dates in the future.	Email from Richard Edelman on 7/6/12; letter from (b)(6) (b)(6) (b)(6) and (b)(6) dated 10/5/12	
Agents acting beyond scope	The agents' interest as partners of the partnership is solely as agents for the participants, and so they have no authority to do anything with respect to those partnership interests other than on behalf of the participants. Therefore, amending the agreement to benefit themselves as principals of the operating lessee is beyond the scope of the agents' authority and consequently invalid.	Email from (b)(6) on 10/3/12; ; letter from (b)(6) and (b)(6) (b)(6) dated 10/5/12	
Override interests issue	Override provision may result in entity not being able to list on NYSE as intended. Limited Partnership Rollup Reform Act of 1933 provides that an exchange's rules must prohibit the listing of a security issued in a roll-up transaction that don't accord with procedures designed to protect rights of LPs including "restrictions on the conversion of contingent interests or fees into non-contingent interests or fees and restrictions on the receipt of a non-contingent equity interest in exchange for fees	Position paper by (b)(6) (b)(6) received 4/19/12 ("Certain Consideration to be Received by Sponsor")	

	for services which have not yet been provided." This is exactly what the override interests are. They were never grants of equity interest; they were designed as performance rewards each year, and they are being capitalized in this transaction and will transform into an equity interest.		
Payments for Sponsor's subsidiaries	The organizational documents do not recognize the existence of the Sponsor's subs, nor do they authorize payments to any such companies. Thus, allocation of values to these enterprises is unwarranted. They should not be considered assets of the portfolio.	Position paper by (b);(6); (b);(6); received 4/19/12 ("Certain Consideration to be Received by Sponsor")	
Coercion into voting "YES" in this deal (not private deals)	Investors are afraid to vote "no" because, even though there is a 10 day window where investors can change their votes, investors fear that the Malkins can manipulate the process and not give people a chance to change their votes. (b);(6); suggested that the supervisor should be required to offer more time or to secure the informed consent of any dissident owner.	Email from (b);(6); dated 4/11/12; email from (b);(6); investor in ESBA, received on 4/9/12.	(b);(5);
Disclosure lacking	Request that certain disclosures be removed because misleading: 1) [When the (b);(6); and Malkins structured the transactions] "Their intent from the beginning was to achieve the economic attributes of a 50/50 joint venture." Intent is irrelevant. No basis. 2) "Because the scheduled lease terms (with renewals) were fixed to continue for more than	Email from (b);(6); and (b);(6); (b);(6); , sent on 5/15/12	

	100 years in the future." There is no future inevitability of grants to extend the lease. 3) Supervisor believes "it is likely the operating lease term will be extended at the Empire State Building." No basis.		
Disclosure lacking	Re: third party portfolio proposal: it is not possible to calculate estimated distributions - the tax protection agreement ($83 million to the Malkins) will be triggered, and cost will be borne by the subject LLCs. - -the 10% overrides will be triggered ($110 million to the Malkins).	Distribution Spreadsheet from (b)(6) (b)(6) emailed 9/8/12	(b)(5)
Disclosure lacking	Claims that the S-4 is deficient in the following areas: (1) omission of projection of operations of ESBA were it to remain a stand-alone entity; (2) failure to properly describe the right of a participant to vote "no;" (3) fails to clearly and concisely identify Malkin Holdings' interest in the successor entity; and (4) questions validity of the exchange values of properties other than ESB. Note that the call with investor on 12/7/12 yielded a few other complaints (including asking for support for the supervisor's "belief" that the deal is good for investors and questioning whether the Malkins' management fee is included in the consideration chart on page 34), but investor apparently got comfortable with these issues and did not include them in the follow up email.	Call with (b)(6) (b)(6) on 12/7/12; followed by Email from (b)(6) dated 12/10/12; email from (b)(6) on 11/27/12 re: (2) only	(b)(5)

Disclosure lacking	Exchange values for several properties changed significantly from Am. No. 3 to Am. No. 4 (page 256) with little/no explanation.	Call with (b);(6); (b);(6); on 12/7/12; call with (b);(6); (b);(6); dated 12/7/12	(b);(5);
Disclosure lacking	Certain crucial information about the ESB valuation is	Letter from	

	missing from the document. Investors are not able, without this information, to make an informed decision. Such information includes the actual appraisals and projection disclosure.	(b);(6); dated 7/19/12; email from (b);(6); on 7/21/12	
Disclosure lacking	Request that Malkin Holdings L.L.C., disclose in a new SEC filing, any instances where the term "*two-tiered*" is used in: (a) the "*original formation documents*"; (b) Empire State Building Associates L.L.C. SEC filings from 1961-2010; or (c) Written communications sent to participant investors in Empire State Building Associates L.L.C between 1961 and 2010.	Email from Richard Edelman on 5/22/12	(b);(5);
Disclosure lacking	Complaint that disclosure does not mention the name of the company that manages the Empire State Building.	Email from Richard Edelman on 12/14/12	
Disclosure lacking	Request also that document be in plain English. Claims that the 5/11/12 SEC filing is written in a manner that renders it unreadable by most participant investors in Empire State Building Associates L.L.C.	Email from Richard Edelman on 5/22/12	
Disclosure lacking	Document is not clear about what investors are actually getting.	Call with (b);(6); on 9/19/12; email from (b);(6); (b);(6); on 9/18/12	
Disclosure lacking	S-4 omits the original investment by ESBC investors in the chart on page 210 of S-4 filed 8/13/12, as well as a letter mailed to participants on 8/24/12, which reproduces the chart.	Email from Richard Edelman on 12/5/12	

Disclosure lacking	Request that Malkin Holdings L.L.C., disclose in a new SEC filing, copies of the "*original formation documents*" which "*are important to understanding the structure of the proposed consolidation and IPO* ".	Email from Richard Edelman on 5/22/12	(b)(5)
Disclosure lacking	Request that the forefront of the S-4 include table in prominent typeface showing for each entity in the portfolio its exchange value followed by columns showing (a) the immediate dilution of value effected by the conversion of contingent fees to non-contingent fees plus the conversion of fees for services yet to be performed to asset-based interests; (b) the tax impact on such exchange value for investors (other than those protected by tax agreements—Sponsor and family members); and (c) the combined effect of "(a)" and "(b)" on each entity's exchange value.	Position paper by (b)(6) (b)(6) received 4/19/12 ("Certain Consideration to be Received by Sponsor")	
Disclosure lacking	Page 154 where discusses allocated exchange value as 50/50 doesn't discuss how or when supervisors came to the conclusion that the two tier structure was intended to be treated as JV (especially when the organizational documents indicate the contrary).	Emails from (b)(6) on 3/1/12, 2/28/12, and 2/22/12; class action lawsuits filed 3/1/12, 3/7/12, and 3/12/12	
Disclosure lacking	Should be required to make public the appraiser's DCF analysis (which wasn't used; instead just did 50/50 split) and explain why DCF wasn't used.	Email from (b)(6) on 4/9/12	
Disclosure lacking	Should disclose the "significantly higher amount" that would have been received by ESBA investors if DCF was used for valuation	Meeting with ESBA / 1333 Broadway	

		investors on 4/19/12	
Disclosure lacking	Need risk factor disclosure should the 50/50 split / JV treatment (and hence valuation) be challenged	Email from (b)(6) on 2/22/12	(b)(5)
Disclosure lacking	S-4 doesn't discuss relationship between ESBA and investors or related historical chronology	Email from (b)(6) on 2/22/12	
Disclosure lacking	S-4 lacks risk factor disclosure related to the fact that the private consents may be found to be fatally flawed and thus overturned. Says that "a process is underway to overturn the consent."	Email from (b)(6) on 2/28/12	
Disclosure lacking	S-4 lacks disclosure related to the fact that 10% grant via consents in 1991 and 2001 may be flawed because they made no mention of management's opinion that they were already entitled to 50% of the underlying assets of ESBA.	Email from (b)(6) on 2/28/12	
Disclosure lacking	No discussion of how value was assigned to the overrides. Also no discussion of conflicts and other specific requirements listed in 904-906.	Position paper from (b)(6) (b)(6) entitled "Certain Consideration to be Received…"	
Disclosure lacking	Failure of the documents to adequately compare before and after distributions. Page S1-28 (in prospectus supplement for ESBA) discloses "before" dividends, but	Meeting with ESBA and 1333 Broadway	

	there is only general disclosure about how public REITS over the past 10 years have paid an average yield of 2-4% of market price. This disclosure is allegedly misleading because the dividend is controlled by the REIT taxable income, not the trading price of the stock. Also, the documents contain pro forma financials for the consolidated entity, including estimated taxable income, so they should be able to show an estimated range for the dividend post-roll up. Updated letters received 6/27/12 and 7/2/12 include estimates of before and after dividends, which are based on assumptions from available information. Charts by (b)(6) show distribution comparisons between the IPO, status quo (i.e., if ESBA continues to operate alone), and the third party portfolio (distributions unknown). Complaints from (b)(6) references a letter from Malkins dated 8/6/12 that states that distributions will go up more over time with the consolication.	investors on 4/19/12. Also discussed in submission from (b)(6) (b)(6) dated 6/6/12 (updated letters rec'd 6/27/12 and 7/2/12); meeting with (b)(6) on 9/6/12; charts from (b)(6) emailed on 9/8/12 and 10/11/12; emails from (b)(6) on 8/19/12 and 8/16/12; email from Richard Edelman on 8/7/12	
Disclosure lacking	None of participants can know true value of shares or units they will receive; will be determined by UWs at the market. (b)(6) alleges that the company can determine an estimated per share value, based on cash flow and assumption that REITs typically trade at 6% premium to this	Complaint in class action lawsuit filed 3/1/12; call with (b)(6) on 4/24/12	(b)(5)

			based on IPO price.
Disclosure lacking	910 disclosure lacking – S-4 needs to address the fairness of overall consolidation, as well as individualized treatment of each entity	Position paper by (b)(6) (b)(6) from 4/19/12 meeting	(b)(5)
Disclosure lacking	Request that initial formulation of allocations and precise amounts thereof, in all the two-tier properties, be disclosed prominently and in the forefront of the S-4	Email from (b)(6) and (b)(6) (b)(6), sent on 5/15/12	
Disclosure lacking	S-4 does not adequately disclose that the combined effect of the typical market behavior of new REIT shares, the terminations of the various lock-up periods and other restrictions on selling on market price, and the involuntary tax costs may (and perhaps is more likely than not to) reduce the net value of one's investment by one-half or more.	Position paper by (b)(6) (b)(6) from 4/19/12 meeting. Also discussed in submission from (b)(6) (b)(6) dated 6/6/12.	
Disclosure lacking	S-4 does not disclose the amount of the underwriting discount for sales that do occur at the IPO price.	Position paper by (b)(6) (b)(6) from 4/19/12 meeting	
Disclosure lacking	Not clear that the registrant is likely to exercise its right to extend the prohibition on sales of all the stock for at least 18 mos. and possibly up to 2 years, in order to qualify for the reduced real property transfer rates or that the reason for doing that is to accommodate the (b)(6) (b)(6). (S-4 is unclear as to whether the "18 mos" is in	Position paper by (b)(6) (b)(6) from 4/19/12 meeting	

	addition to the other lock ups, which run 6 mos. for 100% and 12 mos. for 50%, or is a total of 18 mos.)		(b)(5)
Disclosure lacking	Disclosure about the probable amount of income taxes is inadequate. No hint of how much of investment will be taxable in each of the brackets (15%, 25%, 35%). Also fails to disclose that New York will tax both residents and nonresidents at rates as high as 8.97% and that residents of New York City could be liable for another 3.876%, which could increase the total tax cost by close to 93% of the federal tax.	Position paper by (b)(6) (b)(6) from 4/19/12 meeting	
Disclosure lacking	Misleading in suggesting that the bulk of the cash from the IPO has to be allocated to tax exempt entities in order to obtain the reduction in the local real property transfer taxes and that this is the reason why the public investors will not be able to receive enough cash to pay their tax liabilities. While the real property transfer tax statutes condition the reduced rate by limiting the total amount of cash that may be paid out, they do not require that all of the cash that is available be awarded to the Helmsley Trust. No details are set out as to why those conditions restrict the cash payable to the investors, but not to the (b)(6) and other owners.	Position paper by (b)(6) (b)(6) from 4/19/12 meeting	
Disclosure lacking	No discussion of how the REIT would be able to pay the estimated cost of $83,000,000 under the Tax Protection Agreement and no explanation that the payment of that amount would be of no benefit to the investors. Also not clear that Malkins can determine whether and when their tax liability would be triggered and that they will have an economic incentive to trigger that payment.	Position paper by (b)(6) (b)(6) from 4/19/12 meeting	

Disclosure lacking	Need crystal clear disclosure about what happens if investors vote "no" to the proposed transaction, and then the transaction does NOT go through (make sure they can't still be bought out).	Call with (b)(6) on 4/27/12	(b)(5)
Disclosure lacking	Chart on page 232 in 11/2/12 S-4 filing contained an incomplete chart – does not show the original investment by ESBC investors.	Emil from Richard Edelman on 12/5/12	
Disclosure lacking	The holders of operating units who attempt to convert their interests into Class A stock after a property has been sold wind up paying the capital gains tax on that sale twice. They can deduct the tax paid the first time in computing the gain on the second calculation but that still leaves them out of pocket for pretty close to twice the correct amount	Emails from (b)(6) 9/9/12 and 9/11/12	
Disclosure lacking	Request for simple, summary disclosure of: (1) what is being proposed; and (2) the benefits to be received by the Malkins vs. the other investors re: (a) taxes, (b) distributions, (c) sharing of proceeds from the sale. Investor suggested this, particularly in this case, since most investors are 60 – 80 years old and cannot easily read a voluminous document.	Phone message from (b)(6) from Colorado on 5/21/12	
Disclosure lacking	Ask for more disclosure re: tax implications—RF, etc. According to a recent news article (Empire State Building IPO change may help pay tax – Reuters; 5/8/12), some investors and their advisors say their tax liability on a $10K investment made in 1961 could be more than $100K / unit. They won't receive nearly enough cash to cover this. Plus, share price could fall before the lock-up expires, leaving less to satisfy the tax bill.	Taken from Reuters article. Also discussed in submission from (b)(6) (b)(6) dated 6/6/12(updated letter rec'd 6/27/12).	

Disclosure lacking	Investor claims that using numbers from the S-4 and looking out a few years if the deal is declared effective each $10,000 unit would distribute approximately $2,243. If the IPO is aborted and everything returns to status quo that number would be around $11,969.	Email from (b)(6) n on 5/31/12	(b)(5)
Disclosure lacking	Investor received email from company counsel stating that investors will suffer enormous economic damages if the consolidation and IPO are not approved and that the S-4 includes "risks and detriments to participants if it does not occur." The S-4 does not seem to contain any of this information, especially what "enormous economic damages" will result.	Email from (b)(6) on 10/18/12	
14a-7	Supervisor has repeatedly refused to provide the investors list, even though the registration statement specifically states that this information will be given to shareholders upon request (as they are entitled to it by law).	Email from (b)(6) on 8/30/12; email from (b)(6) (b)(6) on 8/17/12; emails from (b)(6) (b)(6) on F9/12/12, 5/24/12, 4/25/12, 3/20/12, 3/17/12, 3/16/12, 3/5/12, 3/1/12, 2/29/12, 2/28/12, 2/23/12, and 2/22/12; phone calls from (b)(6)	(b)(5)

		[redacted] call with [redacted] on 4/24/12; emails from [redacted] on 4/25/12 and 4/26/12;	
14a-7	Instead of providing shareholder lists as required by law, management "used their exclusive knowledge of [the shareholder lists] to purchase interests on their own person behalf at below market price" and did not offer these purchases to ESBA, breaching their fiduciary duties.	Emails from [redacted] on 3/5/12, 3/1/12, 2/29/12, 2/28/12, and 2/22/12; phone calls from [redacted]	[redacted]
Request for copies of appraisals	One of the ESBA/1333 Broadway SHs requested copies of appraisals and supporting documents provided by management to appraiser, and the supervisor originally granted the request but then never sent copies of anything. Also, [redacted] requested these documents and was denied—and also said that the [redacted] was given access to the appraisals for each property. Class actions allege that none of the consent solicitations contain the appraisals or allocation computations, except for incomplete summary descriptions of the process. Formal letter from [redacted] on 5/29/12 requested that the "Securities Exchange Commission not approve the S-4 unless and until all of the appraisals (including certain drafts of the appraisals) for both the private entities and the public entities are attached as exhibits or otherwise made available to the	Meeting with ESBA and 1333 Broadway investors on 4/19/12; Emails from [redacted] dated 4/11/12 and 6/1/12; complaint in class action lawsuits; Letter from [redacted] dated 5/29/12	

	investors."		
Request for copies of appraisals	Written request to compel registrant to provide copies of numerous appraisals (appraisals w/r/t each and every entity in the proposed roll-up, both public and private, from Duff & Phelps) to which the registration statement refers, based on Item 21(c) of Part I of the instructions to Form S-4, which refers to Item 4(b) of Form S-4. Appendix B of the registration statement contains only brief summaries of the value opinions reached in the appraisals, not the appraisals themselves.	Written request submitted to SEC by (b)(6) (b)(6) on 5/16/12	(b)(5)
Request for draft report	Page S1-22 states that the "independent valuer initially provided a preliminary draft valuation that allocated the property value based on the lease agreements between the lessor and the operating lessee using a discounted cash flow analysis" and that the draft valuation "allocated additional value to the lessor." Because this draft report qualifies as a "report or opinion materially relating to the transaction" and which is "referred to in the prospectus," it should be disclosed. In this case, it may be the only document that reflects the appraiser's real opinion as to value, rather than an amount he was directed to use by the Registrant.	Written request submitted to SEC by (b)(6) (b)(6) on 5/16/12; Email from (b)(6) (b)(6) and (b)(6) (b)(6) sent on 5/15/12	
Request for info to back up the appraisals	The appraisals were done using info provided solely by the Registrant, none of which the Registrant has been willing to share with investors. Several requests have	Written request submitted to SEC by (b)(6)	(b)(5)

	been made to Malkin Holdings for this information, and the requests have been ignored. Request to provide to all investors, upon request, copies of all exchanges with the valuer via documentation and electronically.	(b)(6) on 5/16/12; Email from (b)(6) (b)(6) and (b)(6) (b)(6). sent on 5/15/12	(b)(5)
Request for Helmsley agreement	SH (b)(6) requested copy of the agreement between the (b)(6) and ESBA. SH was denied. (b)(6) responded that the agreement was between the supervisor and the (b)(6) estate and because ESBA was not a party to the agreement, they need not include the agreement in the S-4, and (b)(6) (b)(6) has no right to see it.	Meeting with ESBA and 1333 Broadway investors on 4/19/12; email from (b)(6) (b)(6) on 4/20/12. in which he forwarded the exchange between Thomas Dewey and himself.	(b)(5)
Request for other rolled up entity docs	SH requested copy of prospectus / appraisals from other entities being rolled up and was denied.	Meeting with ESBA and 1333 Broadway investors on 4/19/12	(b)(5)
Filing of exhibits	Request that EBSA file the sublease agreement immediately. Class action requested others—including organizational docs	In person meeting with Richard Edelman ; class action lawsuit	

		filed 3/1/12	
Accounting	Tippee has "been made aware that hundreds of millions of dollars of assets that are listed as the property of the operating company ESBC (company in which management holds a large interest) are almost certainly the property of ESBA (company owned by investors).	Email from (b)(6) on 2/28/12. Tip initially sent to enforcement; coordinating with AD8 accountants	(b)(5)
Accounting	Claim that the S-4 mischaracterizes the financials by $1.2 billion	Tip from Richard Edelman by phone—to (b)(6) (b)(6) and referred to ENF and AD8	(b)(5)
Accounting	Claim that ESB may have been underreporting rent income in most years.	TCR WI 53320	(b)(5)
Accounting	Claim that the revised number for 2011 ESBA **Overage rent** does not match the 2011 ESBA Overage rent amount given in the S-4 filed by Empire State Realty Trust, Inc. on 12/21/12. Similarly, the **Payroll and Related expenses** for 2011 are 80% higher than those of the five prior years, which should have been explained in the filing.	Email from Richard Edelman on 1/10/13	

Accounting	Claim that there are errors in ESB's treatment of "debt service," material changes in the financial information in the 1/4/13 version of the SEC filing, including restated operating expenses, and "threatening language" aobut the operating lessee's borrowing authorization.	Email from Richard Edelman on 1/7/13; Email from Richard Edelman re: debt service portion only on 12/20/12 & 12/4/12	(b)(5)
Accounting	Claim that S-4 misrepresents the debt obligations of ESBA and ESBC and says that they are "shared" when that is not how they are treated.	Emails from Richard Edelman on 10/11/12 and 9/26/12	
Forms 14D-9 deficiencies	Claim that the Forms 14D-9 prepared by Malkin Holdings did not appropriately support the positions/recommendations in the documents.	Email from (b)(6) 12/29/12	
Private consents flawed – material misstatement / Request for Wrappers of other entities/ Information in Wrapper misleading	Claim that the Sponsor seeks to bifurcate what should be a single transaction in order to circumvent the SEC's review and approval process. None of the documents upon which investors in the non-registered entities relied on to form a decision were submitted for review and acceptance by the Commission. The materials submitted do not meet securities laws due to, inter alia: 1) Material information was omitted, including: copies of all relevant agreements with the (b)(6) Trust, as well as the appraisals. 2) There are inconsistencies in the wrapper. In addition, the material is dense and investors were only given 30 days to read during the Holidays. 3) Investors in each of the entities were not provided	Letter from (b)(6) and (b)(6) (b)(6) dated 6/21/12	

	with copies of wrappers for the other entities. Requests for these materials, as well as requests for appraisals were denied. 4) Wrapper states that terms "may be significantly different than described" after the solicitation has concluded. 5) Wrapper is false and misleading. States that 1333 Broadway Associates LLC is subject to a buy-out "at a price substantially lower than the current value," even though the governing agreements state they were not. Also, wrapper for 1333 Broadway stated that Malkin group controlled 80.9035% of the partnership interest when only 70% was needed to pass the consolidation (in fact, they only owned 40%). A supplement was sent on December 27, 2011 (with 4 days remaining for the solicitation period) to correct these misstatements and to extend the voting period to January 10, 2012, but the extension was limited to investors who had not yet submitted a consent. Investors were foreclosed from changing a previously submitted vote. 6) Sponsor sent additional supplement to the Offering Memorandum on January 5, 2012, that confirmed the previous extensions of time and set forth new extensions. The supplement would have been received on January 10, 2012, or thereafter, which is the very last date on which to consent. 7) The Malkins have multiple conflicts of interest and have awarded themselves innumerable special benefits in the proposed consolidation.		

	They are also related to the (b)(6). As conflicted parties, the votes of the Malkins and (b)(6) should not have counted.		
14a-9	Objection to 425 communication made by the registrant, referring to the "Edelman Group" when there is no such group. Also objects to numerous other statements, including that Steve Edelman has no real estate experience, has manipulated the media, said the transaction is taxable, etc.	Call with (b)(6) (b)(6) on 12/7/12; follow up emails on 12/7/12, 12/12/12 and 1/10/13	(b)(5)
14a-9	Two volunteers (on behalf of (b)(6) Empire investors) received a threatening call from Peter Malkin, who allegedly accused the volunteers of giving out "misinformation" even though the only information they were giving out was how to participate in an upcoming conference call. Says Malkin told at least one individual that was inviting investors to an upcoming phone conference that s/he could be sued if s/he continued the activity.	Emails from (b)(6) on 12/9/12, 12/5/12, 11/16/12	
14a-9	Empire investor who spoke with Peter Malkin says that the SEC is responsible for the delay in investors receiving their money. Also claims that Malkin office staff said they were "too busy" getting ready for the IPO to issue checks.	Emails from Richard Edelman on 12/5/12 and 12/4/12	
14a-9	Malkins are claiming inaccuracy of certain projections/calculations that one investor (b)(6) shared with certain other investors when the projections/calculations were not wrong.	Email from (b)(6) dated 1/10/13, forwarding email from (b)(6) on 11/13/12;	

		related emails from [redacted] on 11/6/12 and [redacted] on 10/30/12	
14a-9	Investors allege that the Malkins are intentionally misleading and confusing investors regarding their right to freely approve or disapprove the proposed deal. Malkin is making people believe he has the right to immediately buy out those who vote the deal down, when, in fact, investors have a 10 day period after requisite consent has been received to change their vote and avoid the buyout.	Emails (2) from [redacted] dated 1/17/13, forwarded message from [redacted]	[redacted]
14a-9/Threat received	Investor received cease and desist letter from Malkins dated 10/4/12 citing certain misstatements. Told us he did not make misstatements.	Email from [redacted] on 10/9/12	
14a-9/Threat received	[redacted] and [redacted] contacted us separately to let us know that they received threatening letters from counsel to the Malkins. The letters state that the recipients made certain statements and took "reckless and unlawful actions [that] have the potential to cause enormous economic damages to thousands of investors." The letter ends with "We reserve our rights." Told us they did not make misstatements.	Emails from [redacted] on 9/27/12 and 10/8/12; call with [redacted] on 10/2/12 and fax from [redacted] on 10/16/12	
14a-9	[redacted] emailed us refuting alleged misstatements made in a 7/17/12 letter addressed to [redacted] and [redacted]	emails from [redacted] dated 9/11/12 and 9/8/12	
14a-9/Threat	Alleged that two volunteers (seemingly hired by [redacted]	Email from	[redacted]

received	[redacted] received a threatening call from Peter Malkin, accusing the volunteer of giving out misinformation. Says the volunteers did nothing but invite people to participate in conference calls.	[redacted] on 12/9/12	[redacted]
14a-9/Threat received	[redacted] received letter dated 9/17/12 from company counsel alleging that [redacted] made misstatements and omissions during a conference call. [redacted] refutes the claim.	Email from [redacted] on 9/25/12	
14a-9/Threat received	[redacted] received threating letter from Malkins re: false statements re: projections, etc. [redacted] denies the allegations.	Email from [redacted] on 9/27/12	
14a-9/Threat received	[redacted] received letter from company counsel alleging that [redacted] made misstatements and omissions that will result in damages and asked him to preserve all documents. Refutes the claim.	Email from [redacted] on 10/18/12	
14a-9/Threat received	Another round of letters dated 10/15/12 went out to several investors calling on them to "preserve all documents concerning communications with, or on behalf of the Edelmans" and that "any failure to comply with this obligation may result in serious sanctions against [the investors]." Letters also end "We reserve all rights." People have told us they did not make false statements.	Phone calls from [redacted] on 10/16/12; emails from [redacted] (on behalf of [redacted]) and [redacted] on 10/16/12 and [redacted] on 10/18/12; email	[redacted]

		from [redacted] on 10/26/12; email from [redacted] on 10/19/12	
14a-9/Threat received	Another round of letters dated 11/2/12 went out to several investors calling on them to preserve documents.	Email from [redacted] on 11/2/12	
Threat Received	Said the Malkins are using threats and scare tactics to try to squelch public conversation.	Email from [redacted] on 9/10/12	
Threat Received	R. Edelman told us that [redacted], an investor who was interviewed in a newspaper article about the proposal by ESB, was threatened with a lawsuit by Mr. Malkin for speaking to the newspaper.	Email from Richard Edelman on 9/11/12	
Threat Received	R. Edelman told us that a reporter for the WSJ was threatened by Tony Malkin, in explicit language to do violence to him physically, for the stories he has written about the deal.	Email from Richard Edelman on 9/14/12	
Company Complaint: OPUs will not be transferable	Claimed that investors (specifically [redacted]) stated wrongfully that OPUs would not be transferable. Note that the complaint letter included several more complaints about misstatements made by investors, but we determined that none of the others rose to the level of our needing to address them because they were either arguably true or the accuracy is unclear because the disclosure is unclear (which cases we have also noted so we can propose comments in the future)	Complaint letter dated 10/11/12	[redacted]
Company complaint: Investor website chart	Claim that the website includes chart that purports to be from the S-4, which breaks down the attribution of ESB value between ESBA and ESBC, but it does not reflect what is in the S-4		

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