

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

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PUBLIC SECTOR PENSION INVESTMENT	:	
BOARD,	:	
	:	
Plaintiff,	:	Index No. 653216/2015 (Singh, J.)
	:	
- against -	:	Motion Sequence No. 5
	:	
SABA CAPITAL MANAGEMENT, L.P., SABA	:	
CAPITAL OFFSHORE FUND, LTD., SABA	:	
CAPITAL, LLC and BOAZ WEINSTEIN,	:	
	:	
Defendants.	:	
	:	
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DEFENDANTS' RULE 19-a STATEMENT OF UNDISPUTED MATERIAL FACTS

In support of their motion for summary judgment, and in accordance with Rule 19-a of the Rules of the Commercial Division of the Supreme Court, Defendant Saba Capital Offshore Fund, Ltd.¹, respectfully submits this statement of material facts as to which Defendant contends there is no genuine issue to be tried.

1. In February 2012, PSP invested \$300 million in the Fund. Ex. 1 (SABA00002092).
2. In March 2013, PSP invested \$200 million in the Fund. Ex. 2 (PSP-SABA00005330).
3. In a notice dated January 31, 2015, PSP notified the Fund it wished to redeem all of its outstanding shares as of March 31, 2015. Ex. 3 (SABA00145629).

¹ As in prior filings, "PSP" refers to plaintiff "Public Sector Pension Investment Board"; "Saba Management" refers to the Investment Manager, "Saba Capital Management, L.P."; and "the Fund" refers to defendant "Saba Capital Offshore Fund, Ltd." "Ex." refers to the exhibits to the accompanying Affirmation of Mark Musico, executed on February 3, 2017.

4. On January 23, 2015, Saba informed PSP that redeeming over 2 periods could cost \$36.9 million, and redeeming over 3 periods could cost \$10.7 million. Ex. 5 (SABA00022941).
5. PSP insisted on a full redemption in one period and rejected Saba's request to take more time. Ex. 6 (Lanthier Dep. 89:17-90:5).
6. On March 9, 2015, a Guggenheim dealer told Saba Management that offering the MNI bonds would be "useless," and that "reducing" the price would not "do us any [good]." Ex. 15 (SABA00043372).
7. On March 17, 2015, Bank of America quoted a bid of 64 and ask of 65 for the MNI 29s. Ex. 40 (SABA00175801).
8. On March 17, 2015, when Saba requested a firm bid, the best Bank of America would bid was 50 for \$2MM face value of the MNI 29s. Ex. 41 (SABA00006295).
9. On March 18, 2015, Bank of America quoted a bid of 63 and an ask of 64 for the MNI 29s. Ex. 42 (SABA00176904).
10. On March 17, 2015, Goldman Sachs quoted a bid of 63 and an ask of 66 for the MNI 29s. Ex. 49 (SABA00175794).
11. On March 17, 2015, when Saba requested a firm bid, the best Goldman would bid was 60 for \$1MM face value and 50 for \$5MM face value of the MNI bonds. Ex. 50 (SABA00130147).
12. At March month-end, Reuters quoted a mid-level of 61.5 for the MNI 29s. Ex. 14 (SABA00002606).
13. On March 30, 2015, Saba received a high bid of 19.94 in response to its offer of \$1.5 million of MNI 29s on the MarketAxess trading platform. Ex. 12 (SABA00071745).

14. Pricing services like Reuters and Bloomberg rely on indicative quotes from broker-dealers to price securities like the MNI bonds. Ex. 43 (SABA00210685); 44 (SABA00213125).
15. At the end of March 2015, Saba offered 30 securities, including the MNI bonds, on a BWIC auction. Ex. 16 (SABA00002078).
16. In the March BWIC auction, Saba offered \$31 million face amount of the MNI 27s and \$23 million face amount of the MNI 29s to at least eight reputable dealers. Exs. 18 (SABA00015046); 19 (SABA00014885); 20 (SABA00014887); 21 (SABA00014890); 22 (SABA00015045); 23 (SABA00015044); 24 (SABA00014883); 25 (SABA00014892).
17. Saba Management told a dealer at Barclays it “[c]ould sell” credit default swaps along with the MNI bonds “if that helped get the bid up.” Ex. 21 (SABA00014892).
18. In response to the March BWIC, three dealers returned bids on the MNI bonds. Ex. 26 (SABA00002623-25).
19. In response to the March BWIC, Goldman Sachs returned the high bid of 31 for the MNI bonds. Ex. 26 (SABA00002623).
20. Goldman is a “well-known financial institution” that is “regularly engaged in the trading of corporate bonds” and “high yield bonds” like MNI. Ex. 32 (Fournier Dep. 41:15-42:8).
21. In response to the March BWIC, Barclays returned a bid of 22.76 for the MNI 27s and 29.771 for the MNI 29s. Ex. 26 (SABA00002624).
22. In response to the March BWIC, Citibank returned a bid of 22.5 for the MNI 29s. Ex. 26 (SABA00002625).

23. Saba Management believed pricing services like Bloomberg and Reuters were “off-market” in March 2015. Ex. 7 (SABA00002588-89); Ex. 8 (SABA00002593).
24. Bloomberg’s reported price of 68.19 for the MNI 27s on March 31, 2015, was above the range of 60.9-66.3 that PSP’s expert Brian Bouchard considers fair value for the MNI 27s on that day. (Ex. 39 ¶¶ 33, 56.)
25. Reuter’s reported price of 69 for the MNI 27s on March 31, 2015, was above the range of 60.9-66.3 that PSP’s expert Brian Bouchard considers fair value for the MNI 27s on that day. (Ex. 39 ¶¶ 33, 56.)
26. Duff & Phelps’ reported price of 72.47 for the MNI 27s on March 31, 2015, was above the range of 60.9-66.3 that PSP’s expert Brian Bouchard considers fair value for the MNI 27s on that day. (Ex. 39 ¶¶ 33, 56.)
27. Duff & Phelps’ reported price of 64.22 for the MNI 27s on March 31, 2015, was above the range of 54.9-62.0 that PSP’s expert Brian Bouchard considers fair value for the MNI 27s on that day. (Ex. 39 ¶¶ 33, 56.)
28. On April 6, 2015, Saba Management sent Ernst and Young a “pack on MNI that has dealer runs, trace screens, [Saba’s] historical trades, etc.” in order to discuss E&Y’s “view on fair value being marked to bid.” Ex. 33 (EY-SABCAP-GUM-EM-013078-91).
29. After April 6, 2015, Ernst & Young advised Saba “that marking to bid was appropriate under GAAP for long positions as long as it was representative of fair value.” Ex. 8 (SABA00002596).

30. Saba used Goldman's high bid of 31 in response to the March BWIC to mark both of the MNI bonds for purposes of determining the March 2015 month-end NAV. Ex. 14 (SABA00002606).
31. At the end of April 2015, Saba offered 23 securities on a BWIC auction. Ex. 27 (SABA00001839).
32. In the April BWIC, Saba offered \$32 million face amount of the MNI 27s and \$21 million face amount of the MNI 29s. Ex. 27 (SABA00001839).
33. In response to the April BWIC, Goldman Sachs returned a bid of 36 for the MNI bonds. Ex. 27 (SABA00001839).
34. In response to the April BWIC, Citi returned a bid of 52 for the MNI 29s. Ex. 27 (SABA00001839).
35. In response to the April BWIC, Bank of America returned a bid of 49.5 for the MNI bonds. Ex. 27 (SABA00001839).
36. Saba used Bank of America's high bid of 49.5 to mark the MNI 27s and Citi's high bid of 52 to mark the MNI 29s for purposes of determining the April 2015 month-end NAV. Ex. 30 (SABA00001852); Ex. 28 (SABA00002714).

Dated: New York, New York
February 3, 2017

Respectfully submitted,

SUSMAN GODFREY L.L.P.

s/ Jacob W. Buchdahl

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