

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

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NEW 44 WALL STREET LLC.,

Petitioner,

VERIFIED PETITION

-against-

Index No.

**SBE 44 MANAGEMENT LLC, SBE 44 WALL LLC,
SWIG EQUITIES HOLDINGS LLC, and
BARUCH 44 WALL LLC,**

Respondents.

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

Petitioner, New 44 Wall Street, LLC, by its attorneys, Meier Franzino & Scher, LLP,
respectfully alleges:

1. Petitioner, New 44 Wall Street, LLC (“New 44 Wall”), is a domestic limited liability company duly organized and existing under the laws of the State of New York and has its offices at c/o ABS Partners Real Estate, Inc. 200 Park Avenue South, 10th Floor, County of New York, State of New York, 10003.
2. 44 Wall Street, LLC (“44 Wall Street”), a domestic limited liability company, merged into Petitioner, New 44 Wall, under Section 1001 of the New York Limited Liability Company Law (“NYLLCL”). Petitioner is the surviving domestic limited liability company; the separate legal existence of 44 Wall Street thereby ceased.
3. This proceeding is brought pursuant to N.Y. Bus. Corp. Law § 623 and NYLLCL § 1005, to determine the rights of certain dissenting minority members of 44 Wall Street and to fix the fair value of the membership interests of said dissenting members, respondents

herein.

- Each of the respondents named herein was the owner of membership interests of 44 Wall Street immediately prior to the filing of the Certificate of Merger. The name and address of each respondent is as follows:

<u>Name and Address</u>	<u>Percentage of Membership Interest in 44 Wall Street</u>
Baruch 44 Wall, LLC c/o Zamir Equities, LLC 587 Fifth Avenue, 4 th Floor New York, New York 10017	12.2%
SBE 44 Wall, LLC 110 William Street New York, New York 10038	9.6%
SBE Management, LLC 110 William Street New York, New York 10038	0%
Swig Equities Holdings, LLC 110 William Street New York, New York 10038	0%

- Kommersiella Fastigheter in NY 3 Corp. (“KFS”), as a majority holder of 78.2% of the membership interests of 44 Wall Street, and 100% of the membership interests of New 44 Wall determined that it was in the best interests of these two limited liability companies to combine into a single entity, to enable it to raise needed capital. Respondents failed to make capital payments to 44 Wall Street pursuant to a capital call.
- KFS, as majority holder of the membership interests in and manager of 44 Wall Street and 100% owner of the membership interests in New 44 Wall adopted the Agreement of Merger dated as of July 9, 2012 (“Agreement”), attached hereto as Exhibit “A”.
- Pursuant to the Agreement, on the effective date of the merger (when the Certificate of

Merger was duly filed with the Department of State, July 11, 2012) all membership interests of KFS in 44 Wall Street were converted into membership interests of New 44 Wall.

8. Pursuant to the Agreement, on the effective date of the merger (the filing date of the Certificate of Merger), all membership interests of each of the Respondents were cancelled for no consideration, which represents the fair value of said membership interests in 44 Wall Street, as required by the NYLLCL.
9. KFS, holding more than the majority interests entitled to vote, consented in writing to the merger of 44 Wall Street into New 44 Wall and approved and adopted the Agreement. A copy of the Written Consent of Members in Lieu of a Meeting of Members of 44 Wall Street, LLC ("Consent") is attached hereto as Exhibit "B".
10. In accordance with Section 407 of the NYLLCL, on July 10, 2012, each of the respondents was given written notice by hand delivery of the action taken by KFS, as majority member of 44 Wall Street. Copies of these letters dated July 10, 2012, which included the Consent and Agreement, are attached hereto as Exhibits "C" and "D".
11. Pursuant to Section 1005(a) of the NYLLCL, on July 17, 2012, each of the respondents was given a written offer by New 44 Wall that it receive \$0 for its respective membership interests in 44 Wall Street, representing the fair value of such entity's former membership interests in 44 Wall Street. Copies of the written offers are attached hereto as Exhibits "E" and "F".
12. By telephone communication on July 18, 2012, Asher Zamir, representative of Baruch 44 Wall LLC, informed Paul Elliott, President of KFS, that Baruch 44 Wall, LLC rejected the aforesaid offer, and demanded the sum of \$300,000 to \$500,000

13. By letter dated July 23, 2012, respondents SBE Wall, SBE Management and Swig Holdings, by their attorneys, rejected the aforesaid written offer. A copy of this letter is attached hereto as Exhibit "G".
14. By letter dated July 30, 2012, New 44 Wall Street rejected Baruch's request that it pay Baruch in excess of its fair value for its membership interest. A copy of this letter is attached hereto as Exhibit "H".
15. Petitioner believes, based upon the financial condition of 44 Wall Street (the "Building", representing the principal asset of 44 Wall Street) and independent appraisals of the Building and its membership interests, that the amount per membership interest offered to the dissenting members, respondents herein, represents not less than the fair value of their membership units as of the close of business on the day prior to the effective date of the merger, excluding any appreciation or depreciation directly or indirectly induced by the adoption of the Agreement.
16. The refusal of the dissenting members, the respondents herein, to accept said offers was arbitrary and vexatious and not in good faith.
17. This Petition is timely made in accordance with the NYLLCL and N.Y. Bus. Corp Law §623.

WHEREFORE, petitioner prays:

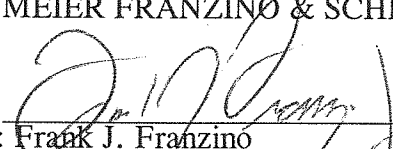
1. That the court determine and order without further hearings that the fair value of the membership interests of the dissenting member is the amount offered for them by petitioner, \$0.
2. That should the court not so determine, as requested in paragraph 1 above, that it fix the fair value of the membership interests of the dissenting members, and make such other

orders and determinations as to the Court shall deem just and proper

3. That the costs and expenses of this proceeding be assessed against respondents.

Dated: New York, New York
August 8, 2012

MEIER FRANZINO & SCHER, LLP


by: Frank J. Franzino
Attorneys for Petitioner
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VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

PAUL ELLIOTT, being duly sworn, deposes and says:

He is the president of Kommersiella Fastigheter in NY 3 Corp. ("KFS"), a New York Corporation; KFS is the Managing Member of the petitioner in the above entitled action which is a limited liability company created under and by virtue of the laws of the state of New York; that he has read the petition and knows the contents thereof; that the same is true to his knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, he believed them to be true. My knowledge is based upon the books, records and documents of petitioners.



PAUL ELLIOTT

Sworn to before me on this
8th day of August, 2012



NOTARY PUBLIC

ERIN C. KORMANN
Notary Public, State of New York
Registration #02K06257187
Qualified in Queens County
Commission Expires March 12, 2016