

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 8-K**

**Current Report**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Date of Report: July 17, 2018

**Two Harbors Investment Corp.**

(Exact name of registrant as specified in its charter)

**Maryland**  
(State or other jurisdiction  
of incorporation)

**001-34506**  
(Commission  
File Number)

**27-0312904**  
(I.R.S. Employer  
Identification No.)

**575 Lexington Avenue, Suite 2930**  
**New York, NY 10022**

(Address of principal executive offices)  
(Zip Code)

Registrant's telephone number, including area code: **(612) 629-2500**

**Not Applicable**

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging Growth Company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

**Item 8.01 Other Events.**

As previously disclosed, on April 25, 2018, CYS Investments, Inc. ("CYS"), Two Harbors Investment Corp. ("Two Harbors") and Eiger Merger Subsidiary LLC, an indirect, wholly owned subsidiary of Two Harbors ("Merger Sub"), entered into an Agreement and Plan of Merger (the "Merger Agreement"), providing for the merger of Merger Sub with and into CYS, with CYS surviving the merger as an indirect, wholly owned subsidiary of Two Harbors (the "Merger"). On June 25, 2018, CYS and Two Harbors filed a definitive joint proxy statement/prospectus (the "Proxy Statement") with the Securities and Exchange Commission for the solicitation of proxies in connection with special meetings of CYS's stockholders and Two Harbors' stockholders, to be held on July 27, 2018, to vote upon, among other things, matters necessary to complete the Merger.

Six lawsuits have been filed by purported stockholders of CYS. The first suit, styled as *Fran Stone v. CYS Investments, Inc., et al.*, No. 1:18-cv-11156 (the "Stone Lawsuit"), was filed in the United States District Court for the District of Massachusetts on June 1, 2018 and asserts claims against CYS, certain of its directors, Merger Sub and Two Harbors (collectively, the "Stone Defendants"). The second suit, styled as *Jordan Rosenblatt v. CYS Investments, Inc., et al.*, No. 1:18-cv-11220 (the "Rosenblatt Lawsuit"), was filed in the United States District Court for the District of Massachusetts on June 11, 2018 and asserts claims against the Stone Defendants and certain additional CYS directors not named in the Stone Lawsuit (collectively, the "Rosenblatt Defendants"). The third suit, styled as *Peter Enzinna v. CYS Investments, Inc., et al.*, No. 1:18-cv-11238 (the "Enzinna Lawsuit"), was filed in the United States District Court for the District of Massachusetts on June 13, 2018 and asserts claims against CYS and certain of its directors (collectively, the "Enzinna Defendants"). The fourth suit, styled as *Arthur Ruscher v. CYS Investments, Inc., et al.*, No. 1:18-cv-01763 (the "Ruscher Lawsuit"), was filed in the United States District Court for the District of Maryland on June 14, 2018 and asserts claims against the Enzinna Defendants (the "Ruscher Defendants"). The fifth suit, styled as *Walter Penchuk v. CYS Investments, Inc. et al.*, No. V449557 (the "Penchuk Lawsuit"), was filed in the Circuit Court for Montgomery County, Maryland on June 14, 2018 and asserts claims against the Enzinna Defendants and certain additional directors not named in the Enzinna Lawsuit (collectively, the "Penchuk Defendants"). The sixth suit, styled as *Shiva Stein v. CYS Investments, Inc. et al.*, No. 1:18-cv-01826 (the "Stein Lawsuit" and, with the Stone, Rosenblatt, Enzinna, Ruscher, and Penchuk Lawsuits, the "Lawsuits"), was filed in the United States District Court for the District of Maryland on June 19, 2018 and asserts claims against the Enzinna Defendants (the "Stein Defendants").

Each of the Lawsuits alleges that the Proxy Statement is deficient, and seeks preliminary and injunctive relief. CYS and Two Harbors believe that the claims asserted in the Lawsuits are without merit and intend to contest them. However, in order to avoid further expense and the nuisance created by the Lawsuits, and in particular the request for preliminary injunctive relief, and notwithstanding its position that the disclosure of such information is not required by the federal securities laws, and in fact is not material to the decision of either the CYS stockholders or the Two Harbors stockholders as to how to vote their shares at the special meetings on July 27, 2018, CYS and Two Harbors make the following disclosures, which are incorporated by reference in the Proxy Statement:

*The disclosure on page 68 of the Proxy Statement is hereby supplemented by revising the last complete paragraph on the page in its entirety as follows:*

Mr. Grant then rejoined the CYS Board meeting and provided the CYS Board with an update regarding his recent discussions with Company C relating to its proposal. The CYS Board then discussed the relative strategic merits of a potential transaction with Company C and Vinson & Elkins advised the CYS Board of its duties in the context of a sale transaction or business combination. The CYS Board then discussed the hiring of a financial advisor to assist the CYS Board in its consideration of a potential transaction with Company C and other strategic alternatives available to CYS. At this time, representatives of each of Barclays and Credit Suisse were invited to join the meeting and review their respective preliminary financial analyses with respect to a potential transaction with Company C and other strategic alternatives available to CYS. After the representatives of Credit Suisse and Barclays left the meeting, the CYS Board discussed the potential financial advisor candidates, their industry knowledge and experience and how each of Barclays and Credit Suisse could assist the CYS Board and the CYS Special Committee in their consideration of a potential transaction with Company C and other strategic alternatives available to CYS. **From April 25, 2016 through April 25, 2018, Credit Suisse and its affiliates did not receive any revenues from CYS for investment banking services. From April 25, 2016 through April 25, 2018, Barclays and its affiliates did not receive any revenues from CYS for investment banking services.**

*The disclosure on page 70 of the Proxy Statement is hereby supplemented by revising the third complete paragraph on the page in its entirety as follows:*

Following Barclays' and Credit Suisse's outreach to other potential bidders, CYS entered into non-disclosure agreements that contained customary standstill provisions with seven of the eight potential bidders, which included Two Harbors, Company A, Company B, and Company C. **None of the standstill provisions precluded any of the potential bidders from submitting a confidential proposal, including any topping proposal, following public announcement of the Merger Agreement, to the**

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**Board of Directors of CYS.** CYS subsequently provided all the potential counterparties, except Company C, with certain limited confidential information about CYS's existing securities portfolio for purposes of submitting an initial offer to acquire or otherwise enter into a strategic transaction or business combination with CYS. Company C had previously been provided with similar information. At the direction of the CYS Special Committee, representatives of Barclays and Credit Suisse requested that the counterparties provide preliminary indications of interest by March 12, 2018. Company C was not invited to submit an indication of interest because it had already submitted a non-binding offer to acquire CYS on February 8, 2018.

*The disclosure on page 74 of the Proxy Statement is hereby supplemented by revising the first complete paragraph on the page in its entirety as follows:*

On April 4, 2018, the CYS Special Committee held a telephonic meeting with representatives of Barclays, Credit Suisse, and Vinson & Elkins to discuss each bidder's response to the Legal and Business Points. Representatives of Vinson & Elkins provided an overview of each bidder's response, noting that several of the bidders made significant concessions to their initial markup of the draft merger agreement. **These concessions included, in certain cases, lower, more favorable termination fees, elimination of the so-called "force-the-vote" provision, the insertion of so-called "anti-ConEd" language in the effect of termination provision, acceptance of the Alternative Proposal concept in the termination provisions, and other related changes in the deal protection provisions that make those provisions more favorable to CYS.** Following a discussion of each bid and markup of the draft merger agreement, the CYS Special Committee determined, after considering a multitude of factors, including the value of the consideration offered, the tax structure of the proposed transaction, whether the bidder would be required to obtain stockholder approval, the pricing mechanics of the proposed merger consideration and the markups of the draft merger agreement, among other factors, to recommend to the CYS Board that CYS should (i) continue to engage in negotiations with Company C and Two Harbors and (ii) pause negotiations with Company D and Company E.

*The disclosure on page 74 of the Proxy Statement is hereby supplemented by revising the last complete paragraph on the page that carries over to page 77 in its entirety as follows:*

Also on April 11, 2018, counsel to Company C delivered a revised draft of the merger agreement to Vinson & Elkins. Company C's revised draft of the merger agreement contained a number of revisions, including **the deletion of a multiplier to CYS's adjusted book value**, that effectively resulted in at least a \$0.11 per share reduction in Company C's per share offer price (to \$7.32 or less, which was less than the value of the Two Harbors bid). In addition, Company C's revised draft of the merger agreement failed to include certain purchase price protection mechanisms that were expected to be included in the merger agreement, and deemed by the CYS Board to be favorable and important to CYS stockholders. Upon receipt of Company C's revised draft of the merger agreement, representatives of Barclays and Credit Suisse contacted representatives of Company C to seek further clarification in regards to the revisions to the economic terms that were reflected in the draft of the merger agreement.

*The disclosure on page 76 of the Proxy Statement is hereby supplemented by revising the last complete paragraph on the page that carries over to page 75 in its entirety as follows:*

On April 17, 2018, the CYS Board met telephonically, together with members of CYS management and representatives of Barclays, Credit Suisse, and Vinson & Elkins, to discuss financial projections prepared by CYS management. Members of CYS management provided an overview of these projections to the CYS Board and the assumptions and approach undertaken with respect to such projections. Following questions from members of the CYS Board and a discussion regarding the projections, the CYS Board determined that, based on the assumptions set forth therein, the CYS management projections were reasonable. **These projections were utilized by Barclays and Credit Suisse for purposes of their fairness opinions and were provided to Two Harbors.** Representatives of Barclays, Credit Suisse, and Vinson & Elkins informed the CYS Board that the CYS Special Committee had terminated negotiations with Company C as a result of Company C's unwillingness to increase its offer, which reflected an overall decrease in the economics of Company C's proposal compared to its initial bid, and a lower bid compared to other bids, including Two Harbors' bid. Representatives of Barclays, Credit Suisse, and Vinson & Elkins also explained that the CYS Special Committee had proposed to Two Harbors a list of economic and legal proposals in exchange for CYS negotiating exclusively with Two Harbors and that Two Harbors had agreed to some, but not all, of those requests.

*The disclosure on page 100 of the Proxy Statement is hereby supplemented by revising the paragraph under the subheading "CYS" on the page in its entirety as follows:*

To calculate the estimated present value of CYS Common Stock, Barclays added the estimated dividends expected to be paid by CYS to holders of CYS Common Stock during the last three quarters of the calendar year ending December 31, 2018 through the calendar year ending December 31, 2020 (based on the CYS Projections) to the estimated terminal value per share of CYS Common Stock on December 31, 2020 and discounted such sum to its present value using a range of selected discount rates. In connection with this analysis, Barclays assumed (i) a terminal value of 0.80x to 1.00x tangible book value (which is referred

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to in this section as "TBV") on December 31, 2020, **which multiples were selected based on Barclays' professional judgment**, (ii) a constant payout ratio of core earnings and drop income of 100% and (iii) discount rates based on the cost of equity (based on the capital asset pricing model) of CYS of 7.5% to 9.5% and the 2018 Q1 annualized dividend yield of the CYS comparable of 10.0% to 12.0%, respectively. Drop income is the difference between the spot price and the forward settlement price for the same security on a trade date. Based upon these assumptions, Barclays calculated a range of implied prices per share of CYS Common Stock. The following summarizes the result of these calculations:

*The disclosure on page 100 of the Proxy Statement is hereby supplemented by revising the paragraph under the subheading "Two Harbors" on the page that carries over to page 101 in its entirety as follows:*

To calculate the estimated present value of Two Harbors Common Stock, Barclays added the estimated dividends expected to be paid by Pro Forma Two Harbors to holders of Two Harbors Common Stock during the last two quarters of the calendar year ending December 31, 2018 through the calendar year ending December 31, 2020 (based on the Pro Forma Projections) to the estimated terminal value per share of Two Harbors Common Stock on December 31, 2020 and discounted such sum to its present value using a range of selected discount rates. In connection with this analysis, Barclays assumed (i) a terminal value of 0.85x to 1.00x TBV on December 31, 2020, **which multiples were selected based on Barclays' professional judgment**, (ii) dividends paid to holders of Two Harbors Common Stock in accordance with the Pro Forma Projections and (iii) discount rates based on the cost of equity (based on the capital asset pricing model) of Pro Forma Two Harbors of 8.0% to 10.0% and the 2018 Q1 annualized dividend yield of Two Harbors comparable of 10.0% to 12.0%, respectively. Based upon these assumptions, Barclays calculated a range of implied prices per share of Two Harbors Common Stock. The following summarizes the result of these calculations:

*The disclosure on page 102 of the Proxy Statement is hereby supplemented by revising the second complete paragraph under the subheading "General" on the page in its entirety as follows:*

Barclays is acting as financial advisor to CYS in connection with the proposed transaction. As compensation for its services in connection with the proposed transaction, CYS paid Barclays a fee of \$1.0 million upon the delivery of Barclays' opinion, which is referred to as the "Opinion Fee". The Opinion Fee was not contingent upon the conclusion of Barclays' opinion or the consummation of the proposed transaction. Additional compensation of between \$7.0 million and \$7.5 million will be payable on completion of the proposed transaction against which the Opinion Fee will be credited. In addition, CYS has agreed to reimburse Barclays for its expenses incurred in connection with the proposed transaction and to indemnify Barclays for certain liabilities that may arise out of its engagement by CYS and the rendering of Barclays' opinion. Barclays has performed various investment banking services for CYS and Two Harbors in the past, and expects to perform such services in the future, and has received, and expects to receive, customary fees for such services. **During the two-year period ended April 25, 2018, Barclays received compensation for investment banking and financial services provided by its investment banking divisions to Two Harbors and/or its affiliates of less than \$25,000.**

*The disclosure on page 109 of the Proxy Statement is hereby supplemented by revising the first complete paragraph on the page in its entirety as follows:*

CYS. Credit Suisse performed a dividend discount analysis of CYS to calculate the estimated present value of the distributed cash flows that CYS was forecasted to generate during the last three quarters of CYS's fiscal year ending December 31, 2018 through the full fiscal year ending December 31, 2020 based on the CYS Projections. Credit Suisse calculated terminal values for CYS by applying a selected range of TBVPS multiples of 0.80x to 1.00x, **which multiples were selected based on Credit Suisse's professional judgment**, to CYS's estimated TBVPS as of December 31, 2020. The present values (as of March 31, 2018) of the distributed cash flows and terminal values were then calculated using a selected range of discount rates of 7.25% to 13.75%, **representing CYS's estimated cost of equity based on the capital asset pricing model.** Approximate implied per share equity values for CYS were calculated as total implied equity value divided by the total number of fully diluted shares of CYS Common Stock estimated by the management of CYS to be outstanding as of April 20, 2018. This analysis indicated the following approximate implied per share equity value reference range for CYS, as compared to the implied per share merger consideration:

*The disclosure on page 109 of the Proxy Statement is hereby supplemented by revising the second complete paragraph on the page in its entirety as follows:*

*Two Harbors.* Credit Suisse performed a dividend discount analysis of Two Harbors (on a standalone basis) to calculate the estimated present value of the distributed cash flows that Two Harbors was forecasted to generate during the last three quarters of Two Harbors' fiscal year ending December 31, 2018 through the full fiscal year ending December 31, 2020 based on the Two Harbors Projections. Credit Suisse calculated terminal values for Two Harbors by applying a selected range of TBVPS multiples of 0.90x to 1.10x, **which multiples were selected based on Credit Suisse's professional judgment**, to Two Harbors' estimated

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TBVPS as of December 31, 2020. The present values (as of March 31, 2018) of the distributed cash flows and terminal values were then calculated using a selected range of discount rates of 7.0% to 15.0%, **representing Two Harbors' estimated cost of equity based on the capital asset pricing model**. Approximate implied per share equity values for Two Harbors were calculated as total implied equity value divided by the total number of fully diluted shares of Two Harbors Common Stock estimated by the management of Two Harbors to be outstanding as of March 31, 2018, which estimate was approved for Credit Suisse's use by CYS's management. This analysis indicated the following approximate implied per share equity value reference range for Two Harbors, as compared to Two Harbors' closing stock price as of April 20, 2018:

*The disclosure on page 110 of the Proxy Statement is hereby supplemented by revising the last complete paragraph on the page in its entirety as follows:*

CYS has agreed to pay Credit Suisse for its financial advisory services in connection with the proposed merger an aggregate fee currently estimated to be \$7.5 million, of which a portion was payable upon the rendering of Credit Suisse's opinion and \$6.5 million is contingent upon consummation of the proposed merger. In addition, CYS has agreed to reimburse Credit Suisse for its expenses, including fees and expenses of legal counsel, and to indemnify Credit Suisse and certain related parties for certain liabilities and other items arising out of or related to its engagement. **During the two-year period prior to the date of Credit Suisse's opinion, Credit Suisse and its affiliates received aggregate fees from Two Harbors for investment banking and financial services of approximately \$6.3 million.**

*The disclosure on page 111 of the Proxy Statement is hereby supplemented by revising the paragraph that extends from the bottom of page 110 to the top of page 111 in its entirety as follows:*

As the CYS Board was aware, Credit Suisse and its affiliates in the past have provided and currently are providing investment banking and other financial advice and services unrelated to the proposed merger to Two Harbors and its affiliates for which advice and services Credit Suisse and its affiliates have received and would expect to receive compensation, including among other things, during the past two years, having acted as (i) the sole underwriter in connection with an offering of Convertible Senior Notes by Two Harbors in January 2017 and (ii) financial advisor to the Two Harbors board in connection with the initial public offering and spin-off of Granite Point in June 2017. Credit Suisse may in the future provide investment banking and other financial advice and services to CYS, Two Harbors and their respective affiliates for which advice and services Credit Suisse and its affiliates would expect to receive compensation. During the two-year period prior to the date of Credit Suisse's opinion, Credit Suisse and its affiliates received aggregate fees from Two Harbors for the services described in clauses (i) and (ii) above of approximately \$6.3 million.

*The disclosure on page 113 of the Proxy Statement is hereby supplemented by revising the section entitled "Two Harbors Projections" in its entirety as follows:*

#### **Two Harbors Projections**

The following table presents selected unaudited prospective financial data for the fiscal years ending 2018 through 2020 for Two Harbors on a standalone basis.

|  | Year Ended December 31, |        |        |
|--|-------------------------|--------|--------|
|  | 2018E                   | 2019E  | 2020E  |
| <b>Core Earnings, including dollar roll income, Per Common Share<sup>(1)</sup></b> | \$1.88                  | \$1.90 | \$1.90 |

- (1) Core Earnings is a non-GAAP measure That Two Harbors defines as comprehensive (loss) income attributable to common stockholders, excluding "realized and unrealized gains and losses" (impairment losses, realized and unrealized gains and losses on the aggregate portfolio, reserve expense for representation and warranty obligations on mortgage servicing rights and non-cash compensation expense related to restricted common stock). As defined, Core Earnings includes interest income or expense and premium income or loss on derivative instruments and servicing income, net of estimated amortization on mortgage servicing rights. Dollar roll income is the economic equivalent to holding and financing Agency residential mortgage-backed securities using short-term repurchase agreements. Two Harbors believes the presentation of Core Earnings, including dollar roll income, provides investors greater transparency into its period-over-period financial performance and facilitates comparisons to peer REITs.

In preparing the Two Harbors Projections, Two Harbors made a number of assumptions. Assumptions made include, among others:

- Two Harbors maintains the ability to acquire its targeted assets of Agency RMBS, MSR and non-Agency RMBS at its current levered return targets;
- other operating expenses increase marginally throughout 2018, 2019 and 2020 and are limited to volume-driven activities and/or inflationary increases in compensation and vendor contracts;
- tangible book value per share will not materially change during the forecast period, and is not adjusted to give effect to any potential impacts from changes in Agency RMBS and non-Agency RMBS spreads or other market conditions;
- dividend distributions declared on common stock will remain at \$0.47 per share for each quarter during the forecast period;
- interest rates will remain static throughout the forecast period;
- no significant changes in its investment strategy or targeted leverage are forecasted for 2018, 2019 or 2020; and
- no new equity capital raises, share repurchases and/or change in the number of outstanding shares of Two Harbors Common Stock or Two Harbors preferred stock are forecasted for 2018, 2019 or 2020

The Two Harbors Projections did not include projections of cash flows, common stock dividends or book value, as each of these items is subject to significant variability based on business, market and economic factors that make it impracticable to predict results with any certainty and, consequently, would not be a meaningful indicator of Two Harbors future performance or financial condition.

*The disclosure on page 115 of the Proxy Statement is hereby supplemented by revising the table on the page in its entirety as follows:*

The CYS Projections were provided to the CYS Board and CYS's financial advisors, Barclays and Credit Suisse. The following table presents a summary of the CYS Projections for the calendar years ending 2018 through 2020 for CYS on a standalone basis.

|   | Year Ended December 31, |        |        |
|---|-------------------------|--------|--------|
|   | 2018E                   | 2019E  | 2020E  |
| <b>Core Earnings Per Common Share<sup>(1)</sup></b> | \$0.89                  | \$0.89 | \$0.89 |
| <b>Dividends Per Common Share (2)</b>               | \$0.99                  | \$0.99 | \$0.99 |
| <b>Book Value Per Common Share<sup>(3)</sup></b>    | \$7.33                  | \$7.23 | \$7.13 |

- (1) Core earnings represents a non-GAAP financial measure and is defined as net income (loss) available to common stockholders excluding net realized and unrealized gain (loss) on investments and derivative instruments. Management of CYS uses core earnings to evaluate the effective yield of the portfolio after operating expenses. CYS believes that providing users of CYS's financial information with such measures, in addition to the related GAAP measures, gives investors additional transparency and insight into the information used by CYS's management in its financial and operational decision-making. The primary limitation associated with core earnings as a measure of financial performance over any period is that it excludes the effects of net realized and unrealized gain (loss) on investments and derivative instruments. In addition, CYS's presentation of core earnings may not be comparable to similarly-titled measures used by other companies, which may employ different calculations. As a result, core earnings should not be considered a substitute for CYS's GAAP net income (loss), as a measure of its financial performance, or any measure of CYS's liquidity under GAAP.
  - (2) Dividends per common share is calculated by dividing the sum of core earnings plus drop income, by common shares outstanding at period end. For more information on drop income, see Note (13) on page 37 in the section entitled "Summary-Selected Historical Financial Information of CYS."
  - (3) Book value per common share is calculated by dividing the difference of total stockholders' equity, less the liquidation value of preferred stock at period end, by common shares outstanding at period end.
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*The disclosure on page 141 of the Proxy Statement is hereby supplemented by revising the second complete paragraph on the page in its entirety as follows:*

From and after the date of the Merger Agreement until the effective time of the Merger or if earlier, the termination of the Merger Agreement, CYS will, and will cause its subsidiaries and instruct its representatives to (i) immediately cease, and cause to be terminated, any discussion or negotiations with any person conducted by CYS or any of its subsidiaries or representatives with respect to a CYS Competing Proposal (any such persons and their affiliates and representatives being referred to as "Prior CYS Bidders") and (ii) use its reasonable best efforts to take such action as is necessary to enforce any confidentiality provisions or provisions of similar effect to which CYS or any of its subsidiaries is a party or of which CYS or any of its subsidiaries is a beneficiary. CYS will promptly request that each Prior CYS Bidder in possession of nonpublic information that was furnished by or on behalf of CYS or any subsidiary of CYS in connection with its consideration of any potential CYS Competing Proposal return or destroy all such nonpublic information furnished to such Prior CYS Bidder and immediately terminate all physical and electronic data room access previously granted to any such Prior CYS Bidder. CYS will not, and will not permit any of its subsidiaries to, terminate, waive, amend or modify any provision of any standstill or confidentiality agreement to which CYS or any of its subsidiaries is a party. **Notwithstanding the foregoing, CYS is not a party to any standstill provision that would preclude any potential bidders from submitting a confidential proposal, including any topping proposal, to the Board of Directors of CYS.**

#### **Forward-Looking Statements**

This Form 8-K may contain "forward-looking statements". Such statements are subject to numerous assumptions, risks, and uncertainties. Statements that do not describe historical or current facts, including statements about beliefs and expectations, are forward-looking statements. The forward-looking statements are intended to be subject to the safe harbor provided by Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, and the Private Securities Litigation Reform Act of 1995. These forward-looking statements are predictions and generally can be identified by use of statements that include phrases such as "may," "believe," "expect," "anticipate," "intend," "estimate," "project," "target," "goal," "plan," "should," "will," "predict," "potential," "likely," or other words, phrases or expressions of similar import, or the negative or other words or expressions of similar meaning, and statements regarding the benefits of the Merger or the other transactions contemplated by the Merger Agreement or the future financial condition, results of operations and business of Two Harbors, CYS or the Combined Company. Without limiting the generality of the preceding sentence, certain information contained in the sections "The Merger-Background of the Merger," "The Merger-Recommendation of the Two Harbors Board and Its Reasons for the Merger," "The Merger-Recommendation of the CYS Board and Its Reasons for the Merger," "The Merger-Certain Two Harbors Unaudited Prospective Financial Information," and "The Merger-Certain CYS Unaudited Prospective Financial Information" constitute forward-looking statements.

Two Harbors and CYS base these forward-looking statements on particular assumptions that they have made in light of their industry experience, as well as their perception of historical trends, current conditions, expected future developments and other factors that they believe are appropriate under the circumstances. The forward-looking statements are necessarily estimates reflecting the judgment of Two Harbors' and CYS's respective management and involve a number of known and unknown risks, uncertainties and other factors which may cause actual results, performance, or achievements of Two Harbors, CYS or the Combined Company to be materially different from those expressed or implied by the forward-looking statements. In addition to other factors and matters contained in the Proxy Statement, including those disclosed under "Risk Factors" beginning on page 43, these forward-looking statements are subject to risks, uncertainties and other factors, including, among others:

- the ability of Two Harbors and CYS to obtain the required stockholder approvals to consummate the Merger;
  - the satisfaction or waiver of other conditions in the Merger Agreement;
  - the risk that the Merger or the other transactions contemplated by the Merger Agreement may not be completed in the time frame expected by the parties or at all;
  - the occurrence of any event, change or other circumstances that could give rise to the termination of the Merger Agreement and that a termination under certain circumstances could require Two Harbors to pay CYS or CYS to pay Two Harbors a termination fee or expense amount, as described under "The Merger Agreement-Termination Fees and Expenses" beginning on page 146 of the Proxy Statement;
  - the ability of Two Harbors to successfully integrate pending transactions and implement its operating strategy, including the Merger;
  - adverse changes in residential real estate and the residential real estate capital markets;
  - financing risks;
  - the outcome of current and future litigation, including any legal proceedings that may be instituted against Two Harbors, CYS or others related to the Merger Agreement;
  - regulatory proceedings or inquiries;
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- changes in laws or regulations or interpretations of current laws and regulations that impact Two Harbors' or CYS's business, assets or classification as a REIT; and
- other risks detailed in filings made by each of Two Harbors and CYS with the SEC, including the Annual Report on Form 10-K for the year ended December 31, 2017 and the Quarterly Report on Form 10-Q for the quarter ended March 31, 2018 filed by Two Harbors with the SEC and incorporated herein by reference and the Annual Report on Form 10-K for the year ended December 31, 2017, and the Quarterly Report on Form 10-Q for the quarter ended March 31, 2018 filed by CYS and incorporated herein by reference. See also "Where You Can Find More Information and Incorporation by Reference" on page 212 of the Proxy Statement.

Although Two Harbors and CYS believe that the assumptions underlying the forward-looking statements contained herein are reasonable, any of the assumptions could be inaccurate, and therefore there can be no assurance that such statements included in this Form 8-K will prove to be accurate. As you read and consider the information in this Form 8-K, you are cautioned to not place undue reliance on these forward-looking statements. These statements are not guarantees of performance or results and speak only as of the date of this Form 8-K, in the case of forward-looking statements contained in this Form 8-K. Neither Two Harbors nor CYS undertakes any obligation to update or revise any forward-looking statements, whether as a result of new information or developments, future events, or otherwise, except as required by law.

In light of the significant uncertainties inherent in the forward-looking statements included herein, the inclusion of such information should not be regarded as a representation by Two Harbors, CYS or any other person that the results or conditions described in such statements or the objectives and plans of Two Harbors or CYS will be achieved. In addition, Two Harbors' and CYS's qualification as a REIT involves the application of highly technical and complex provisions of the Code.

All forward-looking statements, expressed or implied, included in this Form 8-K are expressly qualified in their entirety by this cautionary statement. This cautionary statement should also be considered in connection with any subsequent written or oral forward-looking statements that Two Harbors, CYS or persons acting on their behalf may issue.

#### **Certain Information Regarding Participants in the Solicitation**

Two Harbors, CYS and their respective directors, executive officers and certain other members of management and employees of Two Harbors and CYS may be deemed to be "participants" in the solicitation of proxies from the stockholders of Two Harbors and CYS in connection with the Merger. Stockholders can find information about Two Harbors and its directors and executive officers and their ownership of common stock of Two Harbors in Two Harbors' annual report on Form 10-K for the fiscal year ended December 31, 2017, in its definitive proxy statement relating to its 2018 annual meeting of stockholders filed with the Securities and Exchange Commission (the "SEC") on March 29, 2018 and in its Current Report on Form 8-K filed on April 26, 2018. Stockholders can find information about CYS and its directors and executive officers and their ownership of common stock of CYS in CYS's annual report on Form 10-K for the fiscal year ended December 31, 2017, in its definitive proxy statement relating to its 2018 annual meeting of stockholders filed with the SEC on March 29, 2018 and in its Current Report on Form 8-K filed on April 26, 2018. Additional information regarding the interests of such individuals in the Merger has been included in the joint proxy statement/prospectus relating to the Merger filed with the SEC. Free copies of these documents may be obtained as described in the preceding paragraph.

#### **Additional Information about the Proposed Transaction and Where to Find It**

This communication relates to the proposed transaction pursuant to the terms of the Merger Agreement.

In connection with the proposed Merger, Two Harbors has filed with the SEC a registration statement on Form S-4 that includes a joint proxy statement of Two Harbors and CYS that also constitutes a prospectus. Two Harbors and CYS also plan to file other relevant documents with the SEC regarding the proposed transaction. On June 25, 2018, CYS and Two Harbors filed with the SEC the definitive joint proxy statement/prospectus for each of CYS and Two Harbors and commenced mailing the definitive joint proxy statement/prospectuses to stockholders of CYS and Two Harbors, as applicable. On July [ ], 2017, CYS and Two Harbors filed with the SEC this Current Report on Form 8-K, which should be read in conjunction with the Joint Proxy Statement/Prospectus. **INVESTORS ARE URGED TO CAREFULLY READ THE REGISTRATION STATEMENT AND THE JOINT PROXY STATEMENT/PROSPECTUS REGARDING THE PROPOSED TRANSACTION AND ANY OTHER RELEVANT DOCUMENTS FILED OR TO BE FILED WITH THE SEC, AS WELL AS ANY AMENDMENTS OR SUPPLEMENTS TO THOSE DOCUMENTS WHEN THEY BECOME AVAILABLE, BECAUSE THEY CONTAIN OR WILL CONTAIN IMPORTANT INFORMATION RELATED TO THE PROPOSED TRANSACTION.** You may obtain a free copy of the joint proxy statement/prospectus and other relevant documents filed by Two Harbors and CYS with the SEC at the SEC's website at [www.sec.gov](http://www.sec.gov). Copies of documents filed with the SEC by Two Harbors will be made available free of charge on Two Harbors' website at <http://www.twoharborsinvestment.com> or by directing a request to: Two Harbors Investment Corp., 575 Lexington Avenue, Suite 2930, New York, NY 10022, Attention: Investor Relations. Copies of documents filed with the SEC by CYS will be made available free of charge on CYS's website at <http://www.cysin.com> or by directing a request to: CYS Investments, Inc., 500 Totten Pond Road, 6th Floor, Waltham, MA 02451, Attention: Richard E. Cleary.

**No Offer or Solicitation**

This document shall not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act.

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**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

| <b>Exhibit No.</b> | <b>Description</b>  |
|--------------------|---|
| 99.1               | <a href="#"><u>Complaint filed by Fran Stone on June 1, 2018 in the United States District Court for the District of Massachusetts.</u></a>         |
| 99.2               | <a href="#"><u>Complaint filed by Jordan Rosenblatt on June 11, 2018 in the United States District Court for the District of Massachusetts.</u></a> |
| 99.3               | <a href="#"><u>Complaint filed by Peter Enzinna on June 13, 2018 in the United States District Court for the District of Massachusetts.</u></a>     |
| 99.4               | <a href="#"><u>Complaint filed by Arthur Ruscher on June 14, 2018 in the United States District Court for the District of Massachusetts.</u></a>    |
| 99.5               | <a href="#"><u>Complaint filed by Walter Penchuk on June 14, 2018 in the Circuit Court for Montgomery County, Maryland.</u></a>                     |
| 99.6               | <a href="#"><u>Complaint filed by Shiva Stein on June 19, 2018 in the United States District Court for the District of Massachusetts.</u></a>       |

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

TWO HARBORS INVESTMENT CORP.

By: /s/ REBECCA B. SANDBERG  
Rebecca B. Sandberg  
General Counsel and Secretary

Date: July 17, 2018

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

|   |   |                                  |
|---|---|----------------------------------|
|   | X |                                  |
| FRAN STONE, Individually and on Behalf of | ) |                                  |
| All Others Similarly Situated,            | ) |                                  |
|   | ) |                                  |
| Plaintiff,                                | ) |                                  |
|   | ) | Civil Action No. _____           |
| v.  | ) |                                  |
|   | ) |                                  |
| CYS INVESTMENTS, INC., KEVIN E.           | ) | CLASS ACTION COMPLAINT FOR       |
| GRANT, TANYA S. BEDER, KAREN              | ) | VIOLATIONS OF SECTIONS 14(a) AND |
| HAMMOND, RAYMOND A.                       | ) | 20(a) OF THE SECURITIES EXCHANGE |
| REDLINGSHAFFER, JR., DALE A. REISS,       | ) | ACT OF 1934                      |
| JAMES A. STERN, EIGER MERGER              | ) |                                  |
| SUBSIDIARY LLC, and TWO HARBORS           | ) |                                  |
| INVESTMENT CORP.,                         | ) |                                  |
|   | ) | JURY TRIAL DEMAND                |
| Defendants,                               | ) |                                  |

CLASS ACTION COMPLAINT

Plaintiff Fran Stone (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief, including investigation of counsel and review of publicly-available information, except as to those allegations pertaining to Plaintiff, which are alleged upon personal knowledge:

NATURE OF THE ACTION

1. Plaintiff brings this class action on behalf of the public stockholders of CYS Investments, Inc. (“CYS” or the “Company”) against CYS’s Board of Directors (the “Board” or the “Individual Defendants”) for their violations of Section 14(a) and 20(a) of the Securities Exchange Act of 1934, 15.U.S.C. §§ 78n(a), 78t(a), and SEC Rule 14a-9, 17 C.F.R. 240.14a-9, arising out of the Board’s attempt to sell the Company to Two Harbors Investment Corp. through



its wholly-owned subsidiary Eiger Merger Subsidiary LLC (collectively “Two Harbors”).

2. Defendants have violated the above-referenced Sections of the Exchange Act by causing a materially incomplete and misleading registration statement (the “S-4”) to be filed with the Securities and Exchange Commission (“SEC”) on May 25, 2018. The S-4 recommends that CYS stockholders vote in favor of a proposed transaction (the “Proposed Transaction”) whereby CYS is acquired by Two Harbors. The Proposed Transaction was first disclosed on April 26, 2018, when CYS and Two Harbors announced that they had entered into a definitive merger agreement (the “Merger Agreement”) pursuant to which Two Harbors will acquire all of the outstanding shares of common stock of CYS for approximately \$7.79 per share in a mix of cash and Two Harbors stock (the “Merger Consideration”).

3. The Proposed Transaction is the product of an opportune decline in the Company’s stock price. Circumstances outside of the control of the Company depressed its stock price, and almost immediately other companies began their attempts to acquire CYS. A quick sales process led to the Merger Agreement, with a Merger Consideration that undervalues the Company. Indeed, the Company’s own financial advisors conducted analyses that found implied per share equity values of the Company as high as \$8.98.

4. Furthermore, the S-4 is materially incomplete and contains misleading representations and information in violation of Sections 14(a) and 20(a) of the Exchange Act. Specifically, the S-4 contains materially incomplete and misleading information concerning the sales process, financial projections prepared by CYS management, as well as the financial analyses conducted by Barclays Capital Inc. (“Barclays”) and Credit Suisse Securities (USA) LLC (“Credit Suisse”), CYS’s financial advisors.

5. For these reasons, and as set forth in detail herein, Plaintiff seeks to enjoin

Defendants from taking any steps to consummate the Proposed Transaction unless and until the material information discussed below is included in an amendment to the S-4 or otherwise disseminated to CYS's stockholders. In the event the Proposed Transaction is consummated without the material omissions referenced below being remedied, Plaintiff seeks to recover damages resulting from the Defendants' violations.

#### PARTIES

6. Plaintiff is, and has been at all relevant times, the owner of shares of common stock of CYS.

7. Defendant CYS is a corporation organized and existing under the laws of the State of Maryland. The Company's principal executive offices are located at 500 Totten Pond Road, 6<sup>th</sup> Floor, Waltham, Massachusetts 02451. CYS common stock trades on NYSE under the ticker symbol "CYS."

8. Defendant Kevin E. Grant has been President, CEO, Chairman and a director of the Company since 2006. Defendant Grant founded the Company in 2006.

9. Defendant Tanya S. Beder has been a director of the Company since 2012.

10. Defendant Karen Hammond has been a director of the Company since 2014.

11. Defendant Raymond A. Redlingshafer, Jr. has been a director of the Company since 2006.

12. Defendant Dale A. Reiss has been a director of the Company since 2015.

13. Defendant James A. Stern has been a director of the Company since 2006. Defendant Stern serves as Lead Independent Director.

14. Defendants Grant, Beder, Hammond, Redlingshafer, Reiss and Stern are collectively referred to herein as the "Board."

15. Defendant Two Harbors Investment Corp. is a Maryland corporation with its principal executive offices located at 575 Lexington Avenue, Suite 2930, New York, New York 10022.

16. Defendant Eiger Merger Subsidiary LLC is a Maryland limited liability company and is a wholly owned subsidiary of Two Harbors Investment Corp.

#### JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges violations of Section 14(a) and 20(a) of the Exchange Act and SEC Rule 14a-9.

18. Personal jurisdiction exists over each Defendant either because the Defendant conducts business in or maintains operations in this District, or is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over Defendant by this Court permissible under traditional notions of fair play and substantial justice.

19. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because: (i) the conduct at issue took place and had an effect in this District; (ii) CYS maintains its primary place of business in this District; (iii) a substantial portion of the transactions and wrongs complained of herein, including Defendants' primary participation in the wrongful acts detailed herein, occurred in this District; and (iv) Defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

CLASS ACTION ALLEGATIONS

20. Plaintiff brings this action on her own behalf and as a class action on behalf of all owners of CYS common stock and their successors in interest and/or their transferees, except Defendants and any person, firm, trust, corporation or other entity related to or affiliated with the Defendants (the "Class").

21. This action is properly maintainable as a class action for the following reasons:

(a) The Class is so numerous that joinder of all members is impracticable. As of April 25, 2018, CYS had approximately 155.4 million shares outstanding.

(b) Questions of law and fact are common to the Class, including, *inter alia*, the following:

- (i) Whether Defendants have violated Section 14(a) of the Exchange Act and Rule 14a-9 promulgated thereunder;
- (ii) Whether the Individual Defendants have violated Section 20(a) of the Exchange Act;
- (iii) Whether Plaintiff and other members of the Class would suffer irreparable injury were Defendants not to file an amendment to the S-4 with the SEC that contained the material information referenced above and the Proposed Transaction is consummated as presently anticipated;
- (iv) Whether Plaintiff and the other members of the Class would be irreparably harmed were the transaction complained of herein consummated; and

(v) whether the Class is entitled to injunctive relief or damages as a result of Individual Defendants' wrongful conduct.

(c) Plaintiff is committed to prosecuting this action, is an adequate representative of the Class, and has retained competent counsel experienced in litigation of this nature.

(d) Plaintiff's claims are typical of those of the other members of the Class.

(e) Plaintiff has no interests that are adverse to the Class.

(f) The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications for individual members of the Class and of establishing incompatible standards of conduct for the party opposing the Class.

(g) Conflicting adjudications for individual members of the Class might as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

(h) Plaintiff anticipates that there will be no difficulty in the management of this litigation. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

#### FURTHER SUBSTANTIVE ALLEGATIONS

##### A. CYS Agrees to Sell the Company at a Discount

22. CYS is a real estate investment trust ("REIT") that invests in residential mortgage-backed securities with the principal and interest guaranteed by a federally chartered corporation, such as the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or an agency of the U.S. government, such as the Government National Mortgage Association. The Company also invests in debt securities issued by the U.S. Department of the Treasury ("Treasury") or a government-sponsored entity.

23. As demonstrated by the following chart, the Company's stock traded above \$7.50 per share until January 17, 2018, when the stock fell approximately 16% to a low of \$6.37 per share at close on February 9, 2018.



24. No negative financial results were released during that time, nor any other negative news about CYS. Instead, the stock price fell because of various uncontrollable forces. The downward trend began in December 2017, when the yield on 10-year Treasury bonds increased by 10 basis points. Many REITs like CYS saw a corresponding dip in their stock prices. Stock prices fell even more in January 2018 as the market speculated that interest rates would increase quicker than expected. The decrease continued at the end of January 2018, when the Federal Reserve essentially announced an increase in interest rates in March 2018.

25. At the same time that CYS saw its stock price declining, other companies saw an opportunity. Unsolicited, on February 8, 2018 Company C sent Defendant Grant a proposal to acquire CYS. About two weeks later, Company B similarly sent an unsolicited acquisition proposal to Defendant Grant. On February 27 and 28, 2018, Barclays and Credit Suisse reached out to six other mortgage REITs about their interest in a transaction with CYS; five entered into

non-disclosure agreements with CYS and three submitted proposals to acquire CYS.

26. On March 9, 2018, CYS' common stock closed at \$6.49 per share. Three companies submitted preliminary proposals to acquire CYS, in addition to the proposal submitted by Company C on February 8, 2018. Company B proposed an all-cash tender offer with a purchase price of \$7.27 per share. Company C proposed an all-stock merger with a purchase price of \$7.33 to \$7.47 per share. Company D proposed an all-stock merger with a purchase price of \$7.42 per share. Company E proposed a part-cash, part-stock merger with a purchase price of \$7.15 per share. And Two Harbors proposed an all-stock merger with a purchase price of \$7.33 per share. Company B indicated its willingness to pay up to 50% of merger consideration in common stock, but demanded access to CYS's virtual data room (to which Company C already had access). CYS appears to have denied that request, and Company B was removed from the process. Instead, CYS determined to allow Two Harbors and Company C to move forward, despite Company D's offering a higher price than Two Harbors. The special committee decided to enter into an exclusivity agreement with Two Harbors after Company C revised its offer downward, never discussing whether to go back to Company D.

27. On April 26, 2018, the Board entered into the Merger Agreement with Two Harbors.

28. The analyses of the Company's financial advisors illustrate that the Merger Consideration does not reflect a fair price. For example, Barclays's Selected Comparable Company Analysis for CYS implied a per share equity value as high as \$8.80, the Dividend Discount Analysis for CYS implied a per share equity value as high as \$8.30, and its consideration of CYS's historical trading implied a per share equity value as high as \$8.98. And Credit Suisse's Dividend Discount Analysis for CYS implied a per share equity value as high as

\$8.36. Both Barclays and Credit Suisse calculated that the Merger Consideration implied a per share value for CYS of \$7.75.

B. The Preclusive Deal Protection Devices

29. As part of the Merger Agreement, Defendants agreed to certain preclusive deal protection devices that ensure that no competing offers for the Company will emerge.

30. By way of example, section 6.3(b) of the Merger Agreement includes a “no solicitation” provision barring the Company from soliciting or encouraging the submission of an acquisition proposal. Section 6.3(a) demands that the Company cease and terminate all solicitations, discussions or negotiations with any party concerning an acquisition proposal.

31. Despite already locking up the Proposed Transaction by agreeing not to solicit alternative bids, the Board consented to additional provisions in the Merger Agreement that further guarantee the Company’s only suitor will be Two Harbors. For example, pursuant to section 6.3(c) of the Merger Agreement, the Company must notify Two Harbors of any offer, indication of interest, or request for information made by an unsolicited bidder. Thereafter, should the Board determine that the unsolicited offer is superior, section 6.3(e) requires that the Board grant Two Harbors three (3) business days to negotiate the terms of the Merger Agreement to render the superior proposal no longer superior. Two Harbors is able to match the unsolicited offer because, pursuant to section 6.3(c) of the Merger Agreement, the Company must provide Two Harbors with the material terms of the superior proposal, eliminating any leverage that the Company has in receiving the unsolicited offer.

32. In other words, the Merger Agreement gives Two Harbors access to any rival bidder’s information and allows Two Harbors a free right to top any superior offer. Accordingly, no rival bidder is likely to emerge and act as a stalking horse for CYS, because the Merger



Agreement unfairly assures that any “auction” will favor Two Harbors and allow Two Harbors to piggy-back upon the due diligence of the foreclosed second bidder.

33. In addition, pursuant to section 8.3(b) of the Merger Agreement, CYS must pay Two Harbors a termination fee of \$43.2 million if the Company decides to pursue another offer, thereby essentially requiring that the alternate bidder agree to pay a naked premium for the right to provide the stockholders with a superior offer.

34. Ultimately, these preclusive deal protection provisions restrain the Company’s ability to solicit or engage in negotiations with any third party regarding a proposal to acquire all or a significant interest in the Company. The circumstances under which the Board may respond to an unsolicited written bona fide proposal for an alternative acquisition that constitutes or would reasonably be expected to constitute a superior proposal are too narrowly circumscribed to provide an effective “fiduciary out” under the circumstances. Likewise, these provisions also foreclose any likely alternate bidder from providing the needed market check of Two Harbors’s inadequate offer price.

C. The Materially Incomplete and Misleading S-4

35. The Individual Defendants owe the stockholders a duty of candor. They must disclose all material information regarding the Proposed Transaction to CYS stockholders so that they can make a fully informed decision whether to vote in favor of the Proposed Transaction.

36. On May 25, 2018, Defendants filed the S-4 with the SEC. The purpose of the S-4 is, inter alia, to provide the Company’s stockholders with all material information necessary for them to make an informed decision on whether to vote their shares in favor of the Proposed Transaction. However, significant and material facts were not provided to Plaintiff and the Class. Without such information, CYS stockholders cannot make a fully informed decision concerning

whether or not to vote in favor of the Proposed Transaction.

Materially Misleading Statements/Omissions Regarding the Management-Prepared Financial Forecasts

37. The S-4 discloses management-prepared financial projections for the Company which are materially misleading. The S-4 indicates that in connection with the rendering of Barclays's fairness opinion, Barclays reviewed "and analyzed financial and operating information with respect to the business, operations and prospects of CYS furnished to Barclays by CYS, including financial projections of CYS prepared by CYS's management furnished to Barclays by CYS." In connection with the rendering of its fairness opinion, Credit Suisse reviewed "financial forecasts relating to CYS for the fiscal years ending December 31, 2018 through December 31, 2020 (which are referred to in this section as the 'CYS Projections') prepared and provided to Credit Suisse by the management of CYS." Accordingly, the S-4 should have, but failed to, provide certain information in the projections that CYS's management provided to the Board as well as Barclays and Credit Suisse.

38. Defendants failed to disclose the financial projections for CYS for 2018 to 2020 for: (a) interest income; (b) interest expense; (c) other income (loss); (d) compensation and benefits; (e) general, administrative and other; (f) dividends on preferred stock; (g) net income to common; (h) share based compensation; (i) book value/book value per share; and (j) tangible book value/tangible book value per share. Defendants also failed to disclose the financial projections for Two Harbors for 2018 to 2020 for: (a) interest income; (b) interest expense; (c) other income (loss); (d) management fees; (e) servicing expenses; (f) other operating expenses; (g) provision for income taxes; (h) dividends on preferred stock; (i) net income to common; (j) equity based compensation; (k) book value/book value per share; and (l) tangible book

value/tangible book value per share. This omitted information is necessary for CYS stockholders to make an informed decision on whether to vote in favor of the Proposed Transaction.

Materially Incomplete and Misleading Disclosures Concerning Barclays's Financial Analyses

39. With respect to the Selected Comparable Company Analysis, the S-4 fails to disclose the individually observed multiples/metrics for each of the selected companies as used by Barclays for both CYS and Two Harbors standalone, as well as for Two Harbors pro forma. The S-4 also fails to disclose the basis for the multiples of Price to 2018 EPS not being selected and applied to Two Harbors on a standalone basis. The S-4 further fails to disclose whether Barclays performed any kind of benchmarking analysis for CYS or Two Harbors (standalone and/or pro forma) relative to the selected companies.

40. With respect to the Selected Precedent Transactions Analysis, the S-4 fails to disclose the individually observed multiples/metrics for each of the selected transactions, including Transaction/Book. The S-4 also fails to disclose whether Barclays performed any kind of benchmarking analysis for CYS relative to the targets of the selected transactions.

41. With respect to the Dividend Discount Analysis for CYS, the S-4 fails to disclose the individual inputs and assumptions utilized by Barclays to derive the discount rate range of 7.5% to 9.5% using the capital asset pricing model. The S-4 also fails to disclose the assumed December 31, 2020 tangible book value per share metric used by Barclays in the analysis.

42. With respect to the Dividend Discount Analysis for Two Harbors, the S-4 fails to disclose the individual inputs and assumptions utilized by Barclays to derive the discount rate range of 8.0% to 10.0% using the capital asset pricing model. The S-4 also fails to disclose the assumed December 31, 2020 tangible book value per share metric used by Barclays in the analysis.

Materially Incomplete and Misleading Disclosures Concerning Credit Suisse's Financial Analyses

43. With respect to the Selected Companies Analysis for CYS, the S-4 fails to disclose the individually observed multiples/metrics for each of the selected companies, including price to TBVPS. The S-4 also fails to disclose whether Credit Suisse performed any kind of benchmarking analysis for CYS relative to the selected companies.

44. With respect to the Selected Companies Analysis for Two Harbors, the S-4 fails to disclose the individually observed multiples/metrics for each of the selected companies, including price to TBVPS. The S-4 also fails to disclose whether Credit Suisse performed any kind of benchmarking analysis for Two Harbors relative to the selected companies.

45. With respect to the Selected Precedent Transactions Analysis, the S-4 fails to disclose the individually observed multiples/metrics for each of the selected comparable transactions, including price to TBVPS. The S-4 also does not disclose whether Credit Suisse performed any kind of benchmarking analysis for either CYS or Two Harbors relative to the targets of the selected transactions.

46. With respect to the Dividend Discount Analysis for CYS, the S-4 fails to disclose the individual inputs and assumptions utilized by Credit Suisse to derive the discount rate range of 7.25% to 13.75%. The S-4 also fails to disclose the assumed December 31, 2020 tangible book value per share metric used by Credit Suisse in the analysis.

47. With respect to the Dividend Discount Analysis for Two Harbors, the S-4 fails to disclose the individual inputs and assumptions utilized by Credit Suisse to derive the discount rate range of 7.0% to 15.0%. The S-4 also fails to disclose the assumed December 31, 2020 tangible book value per share metric used by Barclays in the analysis.

Materially Incomplete and Misleading Disclosures Concerning the Flawed Process

48. The S-4 also fails to disclose material information concerning the sales process. For example, the S-4 fails to state whether the confidentiality agreements CYS entered into with seven parties (other than Two Harbors) are still in effect and/or contain DADW standstill provisions that are presently precluding each and every of these parties from making a topping bid for the Company.

49. The disclosure of the terms of any standstill provisions is crucial to CYS stockholders being fully informed of whether their fiduciaries have put in place restrictive devices to foreclose a topping bid for the Company. This information is especially important where, as here, the S-4 is silent as to whether any standstill agreements have been waived. Six other parties had indicated interest in a transaction with CYS, including Company D, whose proposal originally indicated a higher merger consideration as of March 19, 2018. Yet the S-4 is silent as to whether Company D may now be foreclosed from making a superior proposal.

50. In addition, section 6.3(a) of the Merger Agreement prohibits the Board from waiving any previously executed standstill agreement (the "Anti-Waiver Provision"). Whether the Board agreed to that provision knowing that agreements with Company D, or any other party, contained a standstill agreement, must be disclosed to CYS stockholders before they decide on voting for or against the Proposed Transaction.

51. The S-4 fails to disclose the fees that Barclays has earned from services provided to Two Harbors, stating only that Barclays "has received, and expects to receive, customary fees for such services." Without this information, stockholders will not know if there were biases or conflicts that permeated Barclays's advice to the Board and/or the special committee and stockholders cannot know what credence, if any, to give to Barclay's opinion.

52. The Company received a number of indications of interest from 2016 through the time that the Merger Agreement was signed. However, the S-4 does not disclose details of those indications of interest, including the indication of interest sent by Company B to Defendant Grant in 2016, the indication of interest sent to Defendant Grant by Company C on February 8, 2018, the indication of interest sent to Defendant Grant by Company B on February 21, 2018, the indications of interest received around March 12, 2018 by Company D, Company E and Two Harbors, and the revised indication of interest by Company C received on March 20, 2018. Similarly, the S-4 fails to disclose the details of the revisions of the draft merger agreement as submitted by Company C on April 11, 2018 that effectively reduced its per share offer price.

53. Throughout the sales process, Barclays and Credit Suisse provided the Board and the special committee with their preliminary analyses of the indications of interest. However, those analyses have not been disclosed to the stockholders, including the preliminary financial analyses of a transaction with Company C as discussed at the February 13, 2018 Board meeting, the preliminary financial analyses of Company C's proposal as discussed at the February 16, 2018 meeting of the special committee, the preliminary financial analyses of the indications of interest made by Company B, Company C, Company D, Company E and Two Harbors as discussed with the special committee on March 14, 2018, the preliminary financial analyses of "each bid" as discussed at the April 5, 2018 Board meeting, and the preliminary financial analyses of the Proposed Transaction as discussed at the Board meeting on April 25, 2018. These preliminary analyses are important to stockholders, as they are indicative of whether the financial advisors revised their own estimates of the Company's value and whether another transaction offered better value to the stockholders.

54. As the special committee considered which parties should move forward in the sales process, it discussed “significant concessions” made by certain parties to the draft merger agreement as of April 4, 2018. However, the S-4 does not disclose which parties and what “significant concessions” were made. This information will help stockholders determine whether the special committee favored a transaction with Two Harbors or whether the Proposed Transaction provides the best value for stockholders.

55. Towards the end of the sales process, the Board discussed financial projections prepared by CYS’s management, specifically at meetings on April 13, 2018 and April 17, 2018. The S-4 does not disclose whether those projections had been provided to any of the parties in the sales process, whether the projections had changed and, if so how, between April 13 and April 17, 2018, and whether the projections deemed “reasonable on April 17, 2018 were the projections utilized by Barclays and Credit Suisse for their fairness opinions.

56. This information is necessary to provide Company stockholders a complete and accurate picture of the sales process and its fairness. Without this information, stockholders were not fully informed as to the defendants’ actions, including those that may have been taken in bad faith, and cannot fairly assess the process. And without all material information, CYS stockholders are unable to make a fully informed decision in connection with the Proposed Transaction and face irreparable harm, warranting the injunctive relief sought herein.

57. In addition, the Individual Defendants knew or recklessly disregarded that the S-4 omits the material information concerning the Proposed Transaction and contains the materially incomplete and misleading information discussed above.

58. Specifically, the Individual Defendants undoubtedly reviewed the contents of the S-4 before it was filed with the SEC. Indeed, as directors of the Company, they were required to

do so. The Individual Defendants thus knew or recklessly disregarded that the S-4 omits the material information referenced above and contains the incomplete and misleading information referenced above.

59. Further, the S-4 indicates that on April 25, 2018, Barclays and Credit Suisse reviewed with the Board their financial analyses of the Merger Consideration and delivered to the Board their oral opinions, which were confirmed by delivery of written opinions of the same date, to the effect that the Merger Consideration was fair, from a financial point of view, to CYS stockholders. Accordingly, the Individual Defendants undoubtedly reviewed or were presented with the material information concerning Barclays's and Credit Suisse's financial analyses which has been omitted from the S-4, and thus knew or should have known that such information has been omitted.

60. Plaintiff and the other members of the Class are immediately threatened by the wrongs complained of herein, and lack an adequate remedy at law. Accordingly, Plaintiff seeks injunctive and other equitable relief to prevent the irreparable injury that the Company's stockholders will continue to suffer absent judicial intervention.

#### CLAIMS FOR RELIEF

##### COUNT I

On Behalf of Plaintiff and the Class Against All Defendants for Violations of  
Section 14(a) of the Exchange Act and Rule 14a-9

61. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

62. Defendants have filed the S-4 with the SEC with the intention of soliciting CYS stockholder support for the Proposed Transaction. Each of the Individual Defendants reviewed and authorized the dissemination of the S-4, which fails to provide the material information



referenced above.

63. In so doing, Defendants made materially incomplete and misleading statements and/or omitted material information necessary to make the statements made not misleading. Each of the Individual Defendants, by virtue of their roles as officers and/or directors of CYS, were aware of the omitted information but failed to disclose such information, in violation of Section 14(a).

64. Rule 14a-9, promulgated by the SEC pursuant to Section 14(a) of the Exchange Act, provides that such communications with stockholders shall not contain “any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading.” 17 C.F.R. § 240.14a-9.

65. Specifically, and as detailed above, the S-4 violates Section 14(a) and Rule 14a-9 because it omits material facts concerning: (i) management’s financial projections; (ii) the value of CYS shares and the financial analyses performed by Barclays and Credit Suisse in support of their fairness opinions; and (iii) the sales process.

66. Moreover, in the exercise of reasonable care, the Individual Defendants knew or should have known that the S-4 is materially misleading and omits material information that is necessary to render it not misleading. The Individual Defendants undoubtedly reviewed and relied upon the omitted information identified above in connection with their decision to approve and recommend the Proposed Transaction; indeed, the S-4 states that Barclays and Credit Suisse reviewed and discussed their financial analyses with the Board during various meetings including on April 25, 2018, and further states that the Board relied upon Barclays’s and Credit Suisse’s financial analyses and fairness opinions in connection with approving the Proposed

Transaction. The Individual Defendants knew or should have known that the material information identified above has been omitted from the S-4, rendering the sections of the S-4 identified above to be materially incomplete and misleading.

67. The misrepresentations and omissions in the S-4 are material to Plaintiff and the Class, who will be deprived of their right to cast an informed vote if such misrepresentations and omissions are not corrected prior to the vote on the Proposed Transaction. Plaintiff and the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

COUNT II

On Behalf of Plaintiff and the Class against the Individual Defendants for Violations of  
Section 20(a) of the Exchange Act

68. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

69. The Individual Defendants acted as controlling persons of CYS within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers and/or directors of CYS and participation in and/or awareness of the Company's operations and/or intimate knowledge of the incomplete and misleading statements contained in the S-4 filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that Plaintiff contends are materially incomplete and misleading.

70. Each of the Individual Defendants was provided with or had unlimited access to copies of the S-4 and other statements alleged by Plaintiff to be misleading prior to the time the

S-4 was filed with the SEC and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

71. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the Exchange Act violations alleged herein, and exercised the same. The omitted information identified above was reviewed by the Board prior to voting on the Proposed Transaction. The S-4 at issue contains the unanimous recommendation of each of the Individual Defendants to approve the Proposed Transaction. They were, thus, directly involved in the making of the S-4.

72. In addition, as the S-4 sets forth at length, and as described herein, the Individual Defendants were involved in negotiating, reviewing, and approving the Merger Agreement. The S-4 purports to describe the various issues and information that the Individual Defendants reviewed and considered. The Individual Defendants participated in drafting and/or gave their input on the content of those descriptions.

73. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

74. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Individual Defendants' conduct, Plaintiff and the Class will be irreparably harmed.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands injunctive relief in her favor and in favor of the Class and against the Defendants jointly and severally, as follows:

A. Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class Representative and her counsel as Class Counsel;

B. Preliminarily and permanently enjoining Defendants and their counsel, agents, employees and all persons acting under, in concert with, or for them, from filing an amendment to the S-4 with the SEC or otherwise disseminating an amendment to the S-4 to CYS stockholders unless and until Defendants agree to include the material information identified above;

C. Preliminarily and permanently enjoining Defendants and their counsel, agents, employees and all persons acting under, in concert with, or for them, from proceeding with, consummating, or closing the Proposed Transaction, unless and until Defendants disclose the material information identified above which has been omitted from the S-4;

D. In the event that the transaction is consummated prior to the entry of this Court's final judgment, rescinding it or awarding Plaintiff and the Class rescissory damages;

E. Directing the Defendants to account to Plaintiff and the Class for all damages suffered as a result of their wrongdoing;

F. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and expert fees and expenses; and

G. Granting such other and further equitable relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: June 1, 2018

HUTCHINGSBARSAMIAN  
MANDELCORN, LLP

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

|  |   |                     |
|--|---|---------------------|
| JORDAN ROSENBLATT, Individually and<br>On Behalf of All Others Similarly Situated,   | ) |                     |
|  | ) |                     |
| Plaintiff,   | ) | Case No. _____      |
|  | ) |                     |
| v.   | ) | JURY TRIAL DEMANDED |
|  | ) |                     |
| CYS INVESTMENTS INC., KEVIN E.<br>GRANT, TANYA S. BEDER, KAREN<br>HAMMOND, STEPHEN P. JONAS,<br>RAYMOND A. REDLINGSHAFFER JR.,<br>DALE A. REISS, JAMES A. STERN,<br>DAVID A. TYSON, TWO HARBORS<br>INVESTMENT CORP., and EIGER<br>MERGER SUBSIDIARY LLC, | ) | CLASS ACTION        |
|  | ) |                     |
| Defendants.  | ) |                     |

COMPLAINT FOR VIOLATION OF THE SECURITIES EXCHANGE ACT OF 1934

Plaintiff, by his undersigned attorneys, for this complaint against defendants, alleges upon personal knowledge with respect to himself, and upon information and belief based upon, inter alia, the investigation of counsel as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. This action stems from a proposed transaction announced on April 26, 2018 (the "Proposed Transaction"), pursuant to which CYS Investments, Inc. ("CYS" or the "Company") will be acquired by Two Harbors Investment Corp. ("Parent") and Eiger Merger Subsidiary LLC ("Merger Sub," and collectively with Parent, "Two Harbors").

2. On April 25, 2018, CYS's Board of Directors (the "Board" or "Individual Defendants") caused the Company to enter into an agreement and plan of merger (the "Merger Agreement") with Two Harbors. Pursuant to the terms of the Merger Agreement, CYS stockholders will receive newly issued shares of Two Harbors common stock as well as



aggregate cash consideration of \$15,000,000, payable to CYS stockholders on a pro rata basis.

3. On May 25, 2018, defendants filed a Form S-4 Registration Statement (the "Registration Statement") with the United States Securities and Exchange Commission ("SEC") in connection with the Proposed Transaction.

4. The Registration Statement omits material information with respect to the Proposed Transaction, which renders the Registration Statement false and misleading. Accordingly, plaintiff alleges herein that defendants violated Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the "1934 Act") in connection with the Registration Statement.

#### JURISDICTION AND VENUE

5. This Court has jurisdiction over the claims asserted herein pursuant to Section 27 of the 1934 Act because the claims asserted herein arise under Sections 14(a) and 20(a) of the 1934 Act and Rule 14a-9.

6. This Court has jurisdiction over defendants because each defendant is either a corporation that conducts business in and maintains operations within this District, or is an individual with sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

7. Venue is proper under 28 U.S.C. § 1391(b) because a substantial portion of the transactions and wrongs complained of herein occurred in this District.

#### PARTIES

8. Plaintiff is, and has been continuously throughout all times relevant hereto, the owner of CYS common stock.

9. Defendant CYS is a Maryland corporation and maintains its principal executive offices at 500 Totten Pond Road, 6th Floor, Waltham, Massachusetts. CYS's common stock is



traded on the NYSE under the ticker symbol "CYS."

10. Defendant Kevin E. Grant ("Grant") has served as Chairman of the Board, Chief Executive Officer ("CEO"), and President of CYS since he founded the Company in January 2006.

11. Defendant Tanya S. Beder ("Beder") is a director of CYS.

12. Defendant Karen Hammond ("Hammond") is a director of CYS.

13. Defendant Stephen P. Jonas ("Jonas") is a director of CYS.

14. Defendant Raymond A. Redlingshafer Jr. ("Redlingshafer") is a director of CYS.

15. Defendant Dale A. Reiss ("Reiss") is a director of CYS.

16. Defendant James A. Stern ("Stern") is a director of CYS.

17. Defendant David A. Tyson ("Tyson") is a director of CYS.

18. The defendants identified in paragraphs 10 through 17 are collectively referred to herein as the "Individual Defendants."

19. Defendant Parent is a Maryland corporation and a party to the Merger Agreement.

20. Defendant Merger Sub is a Maryland limited liability company, a wholly-owned subsidiary of the Parent, and a party to the Merger Agreement.

#### CLASS ACTION ALLEGATIONS

21. Plaintiff brings this action as a class action on behalf of himself and the other public stockholders of CYS (the "Class"). Excluded from the Class are defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant.

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

23. The Class is so numerous that joinder of all members is impracticable. As of April 25, 2018, there were approximately 155,438,320 shares of CYS common stock

outstanding, held by hundreds, if not thousands, of individuals and entities scattered throughout the country.

24. Questions of law and fact are common to the Class, including, among others, whether defendants will irreparably harm plaintiff and the other members of the Class if defendants' conduct complained of herein continues.

25. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class and plaintiff has the same interests as the other members of the Class. Accordingly, plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

26. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for defendants, or adjudications that would, as a practical matter, be dispositive of the interests of individual members of the Class who are not parties to the adjudications or would substantially impair or impede those non-party Class members' ability to protect their interests.

27. Defendants have acted, or refused to act, on grounds generally applicable to the Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive relief on behalf of the Class is appropriate.

#### SUBSTANTIVE ALLEGATIONS

##### Background of the Company and the Proposed Transaction

28. CYS is a specialty finance company that invests on a leveraged basis primarily in residential mortgage pass-through certificates for which the principal and interest payments are

guaranteed by Fannie Mae, Freddie Mac, or Ginnie Mae. The Company has elected to be taxed as a real estate investment trust for federal income tax purposes.

29. On April 25, 2018, the Individual Defendants caused the Company to enter into the Merger Agreement with Two Harbors.

30. Pursuant to the terms of the Merger Agreement, CYS stockholders will receive newly issued shares of Two Harbors common stock as well as aggregate cash consideration of \$15,000,000, payable to CYS stockholders on a pro rata basis.

31. According to the press release announcing the Proposed Transaction:

Two Harbors Investment Corp. (NYSE: TWO) (“Two Harbors”), a leading hybrid mortgage real estate investment trust (“REIT”), and CYS Investments, Inc. (NYSE: CYS) (“CYS”), an Agency mortgage REIT, announced today that they have entered into a definitive merger agreement under which Two Harbors will acquire CYS.

In connection with the merger, CYS stockholders will exchange their shares of CYS common stock for newly issued shares of Two Harbors common stock as well as aggregate cash consideration of \$15,000,000. The number of Two Harbors shares issued will be based on an exchange ratio to be determined by dividing 96.75% of CYS’ adjusted book value per share by 94.20% of Two Harbors’ adjusted book value per share. For illustrative purposes, assuming the merger occurs and the exchange ratio was based on March 31, 2018 adjusted book value per share, CYS stockholders would receive \$7.79 of combined cash and stock consideration per share of CYS common stock owned, which represents a premium of approximately 17.7% over the CYS closing price per share on April 25, 2018. The actual exchange ratio for the merger will be publicly announced at least five business days prior to the required stockholder votes on the merger. . . .

#### About the Merger

Upon the closing of the merger, CYS stockholders will exchange their shares of CYS common stock for newly issued shares of Two Harbors common stock as well as aggregate cash consideration of \$15,000,000, payable to CYS stockholders on a pro rata basis.

The number of Two Harbors shares to be received by CYS stockholders will be based on an exchange ratio to be determined by dividing 96.75% of the CYS adjusted book value per share by 94.20% of the Two Harbors adjusted book value per share. As defined in the Merger Agreement, adjusted book value per share for

each company means (i) such company's total consolidated common stockholders' equity after giving pro forma effect to any dividends or other distributions for which the record date is after the exchange ratio determination date but prior to the closing of the merger and as modified for potential transaction-related adjustments, divided by (ii) each respective company's number of shares of common stock issued and outstanding, including shares issuable upon the vesting of restricted stock.

As of March 31, 2018, the adjusted book value per share for Two Harbors and CYS, on a pro forma basis, would have been \$15.63 and \$7.41, respectively, representing an exchange ratio of 0.4872x, with each share of CYS being exchanged for 0.4872 shares of Two Harbors. For illustrative purposes, under a pro forma exchange ratio, assuming the merger occurs and the exchange ratio was calculated as of March 31, 2018, CYS stockholders would receive approximately 75.7 million Two Harbors shares (representing approximately 30% of the Two Harbors' total outstanding shares immediately following the merger), which, in combination with the cash consideration of \$15,000,000, would value CYS at approximately \$7.79 per share of common stock. This valuation represents a premium of approximately 17.7% above the closing price per share of CYS common stock on the New York Stock Exchange on April 25, 2018.

The actual exchange ratio for the merger will be publicly announced at least five business days prior to the required stockholder votes on the merger.

In connection with the merger, PRCM Advisers LLC, Two Harbors' external manager, a subsidiary of Pine River Capital Management L.P., has agreed to reduce the base management fee it charges Two Harbors with respect to the additional equity under management resulting from the merger from 1.5% of Stockholders' Equity on an annualized basis to 0.75% through the first anniversary of the closing of the merger. PRCM Advisers LLC will also make a one-time downward adjustment of \$15,000,000 to the management fees payable by Two Harbors for the quarter in which the merger closes. PRCM Advisers has also agreed to a post-closing downward adjustment of up to \$3.3 million to reimburse Two Harbors for certain transaction related expenses.

In addition to the above consideration, Two Harbors would assume the existing notional \$75 million in CYS 7.75% Series A cumulative redeemable preferred stock and \$200 million in CYS 7.50% Series B cumulative redeemable preferred stock.

Following the closing of the transaction, all senior management positions will continue to be led by Two Harbors' personnel and Two Harbors Board of Directors will be expanded to include two additional independent directors from CYS Investments' current board, James Stern and Karen Hammond.

The completion of the merger is subject to the satisfaction of certain customary

conditions, and is subject to the approval of the stockholders of both Two Harbors and CYS. The companies expect the transaction to close in the third quarter of 2018.

32. The Merger Agreement contains a “no solicitation” provision that prohibits the Individual Defendants from soliciting alternative proposals and severely constrains their ability to communicate and negotiate with potential buyers who wish to submit or have submitted unsolicited alternative proposals. Sections 6.3(a) and (b) of the Merger Agreement provide:

6.3 No Solicitation by the Company.

(a) From and after the date of this Agreement until the Effective Time or if earlier, the termination of this Agreement in accordance with Article VIII, the Company will, and will cause its Subsidiaries and instruct its Representatives to (i) immediately cease, and cause to be terminated, any discussion or negotiations with any Person conducted heretofore by the Company or any of its Subsidiaries or Representatives with respect to a Company Competing Proposal (any such Persons and their Affiliates and Representatives being referred to as “Prior Company Bidders”) and (ii) use its reasonable best efforts to take such action as is necessary to enforce any confidentiality provisions or provisions of similar effect to which the Company or any of its Subsidiaries is a party or of which the Company or any of its Subsidiaries is a beneficiary.

The Company will promptly request that each Prior Company Bidder in possession of nonpublic information that was furnished by or on behalf of the Company or any Subsidiary of the Company in connection with its consideration of any potential Company Competing Proposal return or destroy all such nonpublic information heretofore furnished to such Prior Company Bidder and immediately terminate all physical and electronic data room access previously granted to any such Prior Company Bidder. The Company shall not, and shall not permit any of its Subsidiaries to, terminate, waive, amend or modify any provision of any standstill or confidentiality agreement to which the Company or any of its Subsidiaries is a party.

(b) Except as otherwise permitted by this Section 6.3, from and after the date of this Agreement until the Effective Time or if earlier, the termination of this Agreement in accordance with Article VIII, the Company will not, and will cause its Subsidiaries and will instruct its Representatives not to, directly or indirectly, (i) initiate, solicit or knowingly encourage the making of a Company Competing Proposal, (ii) engage in any discussions or negotiations with any Person with respect to a Company Competing Proposal, (iii) furnish any non-public information regarding the Company or its Subsidiaries, or access to the properties, assets or employees of the Company or its Subsidiaries, to any Person in

connection with or in response to a Company Competing Proposal, (iv) enter into any binding or nonbinding letter of intent or agreement in principle, or other agreement providing for a Company Competing Proposal (other than a confidentiality agreement as provided in Section 6.3(d)(ii)), (v) withdraw, modify or qualify, or propose publicly to withdraw, modify or qualify, in a manner adverse to Parent, the Company Board Recommendation or publicly recommend the approval or adoption of, or publicly approve or adopt, any Company Competing Proposal, (vi) fail to include the Company Board Recommendation in the Joint Proxy Statement or any amendment or supplement thereto or (vii) fail publicly to reaffirm without qualification the Company Board Recommendation within five Business Days after the written request of Parent following a Company Competing Proposal that has been publicly announced (or such fewer number of days as remain prior to the Company Stockholder Meeting, as it may be adjourned or postponed) (the taking of any action described in clauses (v), (vi) or (vii) of this Section 6.3(b) being referred to as a "Company Change of Recommendation").

33. Additionally, the Company must promptly advise Two Harbors of any proposals or inquiries received from other parties. Section 6.3(c) provides:

(c) From and after the date of this Agreement, the Company shall advise Parent of the receipt by the Company of any Company Competing Proposal made on or after the date of this Agreement or any request for non-public information or data relating to the Company or any of its Subsidiaries made by any Person in connection with a Company Competing Proposal or any request for discussions or negotiations with the Company or a Representative of the Company relating to a Company Competing Proposal (in each case within one Business Day thereof), and the Company shall provide to Parent (within such one Business Day time frame) either (i) a copy of any such Company Competing Proposal made in writing provided to the Company or any of its Subsidiaries or (ii) a written summary of the material terms of such Company Competing Proposal, if not made in writing. The Company shall keep Parent reasonably informed on a prompt and current basis with respect to the status and material terms of any such Company Competing Proposal and any material changes to the status of any such discussions or negotiations.

34. Moreover, the Merger Agreement contains a highly restrictive "fiduciary out" provision permitting the Board to change its recommendation of the Proposed Transaction under extremely limited circumstances, and grants Two Harbors a "matching right" with respect to any "Superior Proposal" made to the Company. Section 6.3(d) provides in relevant part:

(d) Notwithstanding anything in this Agreement to the contrary, the Company,

directly or indirectly through one or more of its Representatives, may:

(iii) prior to the receipt of the Company Stockholder Approval, in response to a bona fide written Company Competing Proposal from a third party that was not solicited at any time following the execution of this Agreement and did not arise from a material breach of the obligations set forth in this Section 6.3, if the Company Board so chooses, cause the Company to effect a Company Change of Recommendation or terminate this Agreement pursuant to Section 8.1(d)(i), if prior to taking such action (A) the Company Board determines in good faith after consultation with its financial advisors and outside legal counsel that such Company Competing Proposal is a Company Superior Proposal (taking into account any adjustment to the terms and conditions of the Merger proposed by Parent in response to such Company Competing Proposal), and (B) the Company shall have given notice to Parent that the Company has received such proposal in accordance with Section 6.3(c), specifying the material terms and conditions of such proposal, and, that the Company intends to take such action, and either (1) Parent shall not have proposed revisions to the terms and conditions of this Agreement prior to the earlier to occur of the scheduled time for the Company Stockholders Meeting and the third Business Day after the date on which such notice is given to Parent, or (2) if Parent within the period described in the foregoing clause (1) shall have proposed revisions to the terms and conditions of this Agreement, the Company Board, after consultation with its financial advisors and outside legal counsel, shall have determined in good faith that the Company Competing Proposal remains a Company Superior Proposal with respect to Parent's revised proposal; provided, however, that each time material modifications to the financial terms of a Company Competing Proposal determined to be a Company Superior Proposal are made, the time period set forth in this clause (B) prior to which the Company may effect a Company Change of Recommendation or terminate this Agreement shall be extended for two Business Days after notification of such change to Parent[.]

35. The Merger Agreement also provides for a "termination fee" of \$43,200,000 payable by the Company to Two Harbors if the Individual Defendants cause the Company to terminate the Merger Agreement. The Company may also be required to reimburse Two Harbors' expenses in the amount of \$8,600,000.

The Registration Statement Omits Material Information, Rendering It False and Misleading

36. Defendants filed the Registration Statement with the SEC in connection with the Proposed Transaction.

37. The Registration Statement omits material information with respect to the

Proposed Transaction, which renders the Registration Statement false and misleading.

38. First, the Registration Statement omits material information regarding the Company's financial projections, Two Harbors' financial projections, and the valuation analyses performed by the Company's financial advisors in connection with the Proposed Transaction, Barclays Capital Inc. ("Barclays") and Credit Suisse Securities (USA) LLC ("Credit Suisse").

39. With respect to the Company's financial projections, the Registration Statement fails to disclose: (i) the line items used to calculate core earnings per common share ("Core EPS"); (ii) a reconciliation of Core EPS to the most comparable GAAP metric; (iii) projected cash flows and the underlying line items; and (iv) projected dividends.

40. With respect to Two Harbors' financial projections, the Registration Statement fails to disclose: (i) the line items used to calculate Core EPS; (ii) a reconciliation of Core EPS to the most comparable GAAP metric; (iii) projected cash flows and the underlying line items; and (iv) projected dividends.

41. The Registration Statement fails to disclose financial projections for the combined company.

42. With respect to Barclays' Dividend Discount Analyses, the Registration Statement fails to disclose: (i) the estimated projected dividends for CYS and Two Harbors; (ii) the inputs and assumptions underlying the discount rates applied by Barclays; and (iii) Barclays' basis for applying terminal values of 0.80x to 1.00x and 0.85x to 1.00x tangible book value.

43. With respect to Barclays' Selected Comparable Company Analyses, the Registration Statement fails to disclose the individual multiples and financial metrics for the companies observed by Barclays in its analyses.

44. With respect to Barclays' Selected Precedent Transaction Analysis, the



Registration Statement fails to disclose the individual multiples and financial metrics for the transactions observed by Barclays in its analysis.

45. With respect to Credit Suisse's Dividend Discount Analyses, the Registration Statement fails to disclose: (i) CYS's and Two Harbors' projected distributed cash flows; (ii) Credit Suisse's basis for applying terminal values of 0.80x to 1.00x and 0.9x to 1.10x tangible book value; (iii) the inputs and assumptions underlying the discount rates applied by Credit Suisse; and (iv) the total number of fully diluted shares of CYS and Two Harbors common stock estimated by the managements of CYS and Two Harbors to be outstanding.

46. With respect to Credit Suisse's Selected Public Companies Analyses, the Registration Statement fails to disclose the individual multiples and financial metrics for the companies observed by Credit Suisse in its analyses.

47. With respect to Credit Suisse's Selected Precedent Transactions Analysis, the Registration Statement fails to disclose the individual multiples and financial metrics for the transactions observed by Credit Suisse in its analysis.

48. The disclosure of projected financial information is material because it provides stockholders with a basis to project the future financial performance of a company, and allows stockholders to better understand the financial analyses performed by the company's financial advisor in support of its fairness opinion. Further, when a banker's endorsement of the fairness of a transaction is touted to shareholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed.

49. Second, the Registration Statement omits material information regarding potential conflicts of interest of Barclays.

50. The Registration Statement provides that “Barclays has performed various investment banking services for CYS and Two Harbors in the past, and expects to perform such services in the future, and has received, and expects to receive, customary fees for such services.” However, the Registration Statement fails to disclose the timing and nature of such past services, as well as the amount of compensation Barclays received for such services.

51. The Registration Statement fails to disclose whether Credit Suisse has performed past services for CYS or its affiliates, and if so, the timing and nature of such services and the amount of compensation Credit Suisse received for such services.

52. The Registration Statement fails to disclose how CYS will determine the amount of “additional compensation” payable to Barclays.

53. Full disclosure of investment banker compensation and all potential conflicts is required due to the central role played by investment banks in the evaluation, exploration, selection, and implementation of strategic alternatives.

54. Third, the Registration Statement fails to disclose whether the Company executed any confidentiality agreements that contained “don’t ask, don’t waive” provisions that prevented the counterparties from requesting waivers of standstill provisions to submit superior offers to acquire the Company, as well as whether any parties that executed confidentiality agreements are still subject to standstill provisions.

55. Without this information, stockholders may have the mistaken belief that, if these potentially interested parties wished to come forward with a superior offer, they are or were permitted to do so, when in fact they are or were contractually prohibited from doing so.

56. Fourth, the Registration Statement fails to disclose the terms and values of all indications of interest and proposals submitted to CYS.

57. The omission of the above-referenced material information renders the Registration Statement false and misleading, including, inter alia, the following sections of the Registration Statement: (i) Background of the Merger; (ii) Recommendation of the CYS Board and Its Reasons for the Merger; (iii) Opinion of CYS's Financial Advisor, Barclays Capital Inc.; (iv) Opinion of CYS's Financial Advisor, Credit Suisse Securities (USA) LLC; and (v) Certain CYS Unaudited Prospective Financial Information.

58. The above-referenced omitted information, if disclosed, would significantly alter the total mix of information available to the Company's stockholders.

COUNT I

Claim for Violation of Section 14(a) of the 1934 Act and Rule 14a-9 Promulgated Thereunder Against the Individual Defendants and CYS

59. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

60. The Individual Defendants disseminated the false and misleading Registration Statement, which contained statements that, in violation of Section 14(a) of the 1934 Act and Rule 14a-9, in light of the circumstances under which they were made, omitted to state material facts necessary to make the statements therein not materially false or misleading. CYS is liable as the issuer of these statements.

61. The Registration Statement was prepared, reviewed, and/or disseminated by the Individual Defendants. By virtue of their positions within the Company, the Individual Defendants were aware of this information and their duty to disclose this information in the Registration Statement.

62. The Individual Defendants were at least negligent in filing the Registration Statement with these materially false and misleading statements.

63. The omissions and false and misleading statements in the Registration Statement

are material in that a reasonable stockholder will consider them important in deciding how to vote on the Proposed Transaction. In addition, a reasonable investor will view a full and accurate disclosure as significantly altering the total mix of information made available in the Registration Statement and in other information reasonably available to stockholders.

64. The Registration Statement is an essential link in causing plaintiff and the Company's stockholders to approve the Proposed Transaction.

65. By reason of the foregoing, defendants violated Section 14(a) of the 1934 Act and Rule 14a-9 promulgated thereunder.

66. Because of the false and misleading statements in the Registration Statement, plaintiff and the Class are threatened with irreparable harm.

#### COUNT II

##### Claim for Violation of Section 20(a) of the 1934 Act Against the Individual Defendants and Two Harbors

67. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

68. The Individual Defendants and Two Harbors acted as controlling persons of CYS within the meaning of Section 20(a) of the 1934 Act as alleged herein. By virtue of their positions as officers and/or directors of CYS and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false statements contained in the Registration Statement, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that plaintiff contends are false and misleading.

69. Each of the Individual Defendants and Two Harbors was provided with or had unlimited access to copies of the Registration Statement alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the

issuance of the statements or cause them to be corrected.

70. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control and influence the particular transactions giving rise to the violations as alleged herein, and exercised the same. The Registration Statement contains the unanimous recommendation of the Individual Defendants to approve the Proposed Transaction. They were thus directly involved in the making of the Registration Statement.

71. Two Harbors also had direct supervisory control over the composition of the Registration Statement and the information disclosed therein, as well as the information that was omitted and/or misrepresented in the Registration Statement.

72. By virtue of the foregoing, the Individual Defendants and Two Harbors violated Section 20(a) of the 1934 Act.

73. As set forth above, the Individual Defendants and Two Harbors had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) of the 1934 Act and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the 1934 Act. As a direct and proximate result of defendants' conduct, plaintiff and the Class are threatened with irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment and relief as follows:

- A. Preliminarily and permanently enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction;
- B. In the event defendants consummate the Proposed Transaction, rescinding it and

setting it aside or awarding rescissory damages;

C. Directing the Individual Defendants to disseminate a Registration Statement that does not contain any untrue statements of material fact and that states all material facts required in it or necessary to make the statements contained therein not misleading;

D. Declaring that defendants violated Sections 14(a) and/or 20(a) of the 1934 Act, as well as Rule 14a-9 promulgated thereunder;

E. Awarding plaintiff the costs of this action, including reasonable allowance for plaintiff's attorneys' and experts' fees; and

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

JURY DEMAND

Plaintiff respectfully requests a trial by jury on all issues so triable.

Dated: June 11, 2018

HUTCHINGS BARSAMIAN  
MANDELCORN, LLP

By: /s/Theodore M. Hess-Mahan

OF COUNSEL:

RIGRODSKY & LONG, P.A.  
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Attorneys for Plaintiff

RM LAW, P.C.  
1055 Westlakes Drive, Suite 300  
Berwyn, PA 19312  
Tel.: (484) 324-6800  
Fax: (484) 631-1305

**CERTIFICATION OF PLAINTIFF**

I, Jordan Rosenblatt ("Plaintiff"), hereby declare as to the claims asserted under the federal securities laws that:

1. Plaintiff has reviewed the complaint and authorizes its filing.
2. Plaintiff did not purchase the security that is the subject of this action at the direction of Plaintiff's counsel or in order to participate in any private action.
3. Plaintiff is willing to serve as a representative party on behalf of the class, either individually or as part of a group, and I will testify at deposition or trial, if necessary. I understand that this is not a claim form and that I do not need to execute this Certification to share in any recovery as a member of the class.
4. Plaintiff's purchase and sale transactions in the CYS Investments, Inc. (NYSE: CYS) security that is the subject of this action during the class period is/are as follows:

**PURCHASES**

| <b>Buy Date</b> | <b>Shares</b> | <b>Price per Share</b> |
|-----------------|---------------|------------------------|
| 3/29/18         | 59            | \$6.74                 |
|                 |               |                        |
|                 |               |                        |
|                 |               |                        |

**SALES**

| <b>Sell Date</b> | <b>Shares</b> | <b>Price per Share</b> |
|------------------|---------------|------------------------|
|                  |               |                        |
|                  |               |                        |
|                  |               |                        |
|                  |               |                        |

*Please list additional transactions on separate sheet of paper, if necessary.*

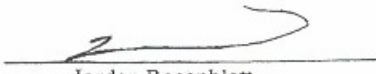
5. Plaintiff has complete authority to bring a suit to recover for investment losses on behalf of purchasers of the subject securities described herein (including Plaintiff, any co-owners, any corporations or other entities, and/or any beneficial owners).
-

6. During the three years prior to the date of this Certification, Plaintiff has not moved to serve as a representative party for a class in an action filed under the federal securities laws.

7. Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond Plaintiff's *pro rata* share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the Court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 31<sup>st</sup> day of May, 2018.

  
Jordan Rosenblatt



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Jordan Rosenblatt, Individually And On Behalf Of All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff Out of state (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Hutchings Barsamian Mandelcorn, LLP
110 Cedar Street, Suite 250, Wellesley Hills, MA 02481
781-431-2231

DEFENDANTS

CYS Investments Inc., Kevin E. Grant, Tanya S. Beder, Karen Hammond, Stephen P. Jonas, Raymond A. Redlingshafer Jr., Dale A. Reiss, James A. Stern, David A. Tyson, Two Harbors Investment Corp

County of Residence of First Listed Defendant Middlesex County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. §§ 78n(a), 78t(a), and 17 C.F.R. 240.14a-9
Violations of Section 14(a) and 20(a) of the Securities Exchange Act of 1934, and SEC Rule 14a-9

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMANDS CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [ ] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Denise J. Casper DOCKET NUMBER 18-cv-11156-DJC

DATE 06/11/2018 SIGNATURE OF ATTORNEY OF RECORD /s/Theodore M. Hess-Mahan

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Jordan Rosenblatt v. CYS Investments Inc. et al.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 410, 441, 470, 535, 830\*, **835\***, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820\*, 840\*, 850, 870, 871.
- III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, **376**, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, **899**, 950.

\*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

Fran Stone v. CYS Investments Inc. et al., Civil Action No. 18-cv-11156-DJC (D. Mass.)

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES  NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES  NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES  NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES  NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES  NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division  Central Division  Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division  Central Division  Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES  NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Theodore M. Hess-Mahan

ADDRESS Hutchings Barsamian Mandelcorn, LLP, 110 Cedar Street, Suite 250, Wellesley Hills, MA 02481

TELEPHONE NO. 781-431-2231



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

PETER ENZINNA, on Behalf of Himself and  
All Others Similarly Situated,

Plaintiff,

vs.

CYS INVESTMENTS, INC.,  
KEVIN E. GRANT, TANYA S. BEDER,  
KAREN HAMMOND, RAYMOND A.  
REDLINGSHAFFER, JR., DALE A. REISS,  
and JAMES A. STERN,

Defendants.

) Case No. 1:18-cv-11238

) CLASS ACTION

) CLASS ACTION COMPLAINT  
) FOR VIOLATIONS OF THE  
) FEDERAL SECURITIES LAWS

) JURY TRIAL DEMANDED

Plaintiff Peter Enzinna (“Plaintiff”), by and through his undersigned counsel, for his complaint against defendants, alleges upon personal knowledge with respect to himself, and upon information and belief based upon, inter alia, the investigation of counsel as to all other allegations herein, as follows:

NATURE AND SUMMARY OF THE ACTION

1. This is a stockholder class action brought by Plaintiff on behalf of himself and all other public stockholders of CYS Investments, Inc. (“CYS” or the “Company”) against CYS and the members of CYS’ Board of Directors (the “Board” or the “Individual Defendants”) for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78n(a) and U.S. Securities and Exchange Commission (“SEC”) Rule 14a-9, 17 C.F.R. § 240.14a-9 and to enjoin the vote on a proposed transaction, pursuant to which CYS

will be acquired by Two Harbors Investment Corp. (“Two Harbors”) through its wholly owned subsidiary Eiger Merger Subsidiary LLC (“Merger Sub”) (the “Proposed Transaction”).

2. On April 26, 2018, CYS and Two Harbors issued a joint press release announcing their entry into an Agreement and Plan of Merger (the “Merger Agreement”) to sell CYS to Two Harbors. Under the terms of the Merger Agreement, CYS stockholders will receive:

- (a) a number of shares of Two Harbors common stock determined by dividing (i) CYS’ adjusted book value per share, multiplied by 96.75%, by (ii) Two Harbors’ adjusted book value per share, multiplied by 94.20%; and
- (b) \$15,000,000 divided by the sum of (i) the number of shares of CYS common stock issued and outstanding as of the effective time, and (ii) the number of shares of CYS common stock issuable upon the vesting of outstanding Company restricted stock (the “Merger Consideration”).

Based on the March 31, 2018 adjusted book value per share of each company, CYS stockholders would receive \$7.79 of combined cash and stock per CYS share of common stock.

3. On May 25, 2018, Two Harbors filed a Form S-4 Registration Statement (the “Registration Statement”) with the SEC containing a joint proxy statement/prospectus. The Registration Statement, which recommends that CYS stockholders vote in favor of the Proposed Transaction, omits or misrepresents material information concerning, among other things: (i) CYS’ and Two Harbors’ financial projections, relied upon by CYS’ financial advisors Barclays and Credit Suisse Securities (USA) LLC (“Credit Suisse”); (ii) the data and inputs underlying the financial valuation analyses that support the fairness opinions provided by Barclays and Credit Suisse; (iii) the background process leading to the Proposed Transaction; and (iv) potential conflicts of interest of Barclays. The failure to adequately disclose such material information

constitutes a violation of Sections 14(a) and 20(a) of the Exchange Act as CYS stockholders need such information in order to make a fully informed decision whether to vote in favor of the Proposed Transaction.

4. In short, unless remedied, CYS' public stockholders will be forced to make a voting decision on the Proposed Transaction without full disclosure of all material information concerning the Proposed Transaction being provided to them. Plaintiff seeks to enjoin the stockholder vote on the Proposed Transaction unless and until such Exchange Act violations are cured.

#### JURISDICTION AND VENUE

5. This Court has jurisdiction over the claims asserted herein for violations of Sections 14(a) and 20(a) of the Exchange Act and SEC Rule 14a-9 promulgated thereunder pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331 (federal question jurisdiction).

6. This Court has jurisdiction over the defendants because each defendant is either a corporation that conducts business in and maintains operations within this District, or is an individual with sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Plaintiff's claims arose in this District, where a substantial portion of the actionable conduct took place, most of the documents are electronically stored, and the evidence exists. CYS is incorporated in Maryland and is headquartered in this District. Moreover, each of the Individual Defendants, as Company officers or directors, either resides in this District or has extensive contacts within this District.

THE PARTIES

8. Plaintiff is, and has been at all times relevant hereto, a continuous stockholder of CYS.

9. Defendant CYS is a Maryland corporation with its principal executive offices located at 500 Totten Pond Road, 6<sup>th</sup> Floor, Waltham, Massachusetts 02451. CYS is a specialty finance company that invests primarily in residential mortgage pass-through certificates guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae. CYS trades on the New York Stock Exchange under the ticker symbol "CYS."

10. Defendant Kevin E. Grant ("Grant") has been Chairman of the Board, President and Chief Executive Officer ("CEO") of the Company since he founded it in January 2006. Defendant Grant has also served as Chief Investment Officer of the Company since 2011.

11. Defendant Tanya S. Beder ("Beder") has been a director of the Company since May 2012.

12. Defendant Karen Hammond ("Hammond") has been a director of the Company since October 2014.

13. Defendant Raymond A. Redlingshafer Jr. ("Redlingshafer") has been a director of the Company since November 2006.

14. Defendant Dale A. Reiss ("Reiss") has been a director of the Company since January 2015.

15. Defendant James A. Stern ("Stern") has been a director of the Company since February 2006.

16. Defendants identified in paragraphs 10 through 15 are referred to herein as the "Board" or the "Individual Defendants."

OTHER RELEVANT ENTITIES

17. Two Harbors is a Maryland corporation with its principal executive offices located at 575 Lexington Avenue, Suite 2930, New York, New York 10022. Two Harbors is a real estate investment trust (“REIT”) that invests in residential mortgage-backed securities, mortgage servicing rights and other financial assets. Two Harbors trades on the New York Stock Exchange under the ticker symbol “TWO.”

18. Merger Sub is a Maryland limited liability company and an indirect wholly-owned subsidiary of Two Harbors.

CLASS ACTION ALLEGATIONS

19. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons and entities that own CYS common stock (the “Class”). Excluded from the Class are defendants and their affiliates, immediate families, legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

20. Plaintiff’s claims are properly maintainable as a class action under Rule 23 of the Federal Rules of Civil Procedure.

21. The Class is so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through discovery, Plaintiff believes that there are thousands of members in the Class. As of April 25, 2018, there were approximately 155,438,320 shares of Company common stock issued and outstanding. All members of the Class may be identified from records maintained by CYS or its transfer agent and may be notified of the pendency of this action by mail, using forms of notice similar to those customarily used in securities class actions.



22. Questions of law and fact are common to the Class and predominate over questions affecting any individual Class member, including, inter alia:

(a) Whether defendants have violated Section 14(a) of the Exchange Act and Rule 14a-9 promulgated thereunder;

(b) Whether the Individual Defendants have violated Section 20(a) of the Exchange Act; and

(c) Whether Plaintiff and the other members of the Class would suffer irreparable injury were the Proposed Transaction consummated.

23. Plaintiff will fairly and adequately protect the interests of the Class, and has no interests contrary to or in conflict with those of the Class that Plaintiff seeks to represent. Plaintiff has retained competent counsel experienced in litigation of this nature.

24. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

25. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

#### SUBSTANTIVE ALLEGATIONS

##### Company Background

26. CYS, incorporated in Maryland in 2006, is a specialty finance company taxed as a REIT. The Company primarily invests in agency residential mortgage-backed securities (“Agency RMBS”) guaranteed by fixed rate mortgage loans, adjustable-rate mortgages (“ARMs”), or hybrid ARMs. CYS also invests in debt securities issued by the U.S. Department of Treasury. The

Company's income is generated primarily from the difference between the interest income it earns on its investment portfolio and the cost of its borrowings and hedging activities ("net spread").

27. CYS' financial performance and growth prospects remained strong throughout 2017. During the Company's October 26, 2017 third quarter of 2017 earnings call, CYS' Chief Financial Officer ("CFO") Jack DeCicco ("DeCicco") highlighted the Company's solid financial results, stating, "we feel very good about the third quarter and expect the asset and hedge portfolio repositioning that took place during the quarter to benefit future quarters and to enhance book value protection to the extent we experience a backup in rates." DeCicco also noted that the third quarter of 2017 marked the sixth consecutive quarter that the Company paid a \$0.25 dividend per share. Net income for the quarter was \$83 million, or \$0.54 per share, compared to \$45 million, or \$0.30 per share, in the second quarter of 2017.

28. On February 14, 2018, CYS announced its fourth quarter and year ended 2017 financial results. The Company maintained its consistent \$0.25 per common share quarterly dividend. CYS' debt securities portfolio increased to approximately \$13.1 billion at December 31, 2017, from \$12.9 billion at September 31, 2017. Despite a challenging environment, in CYS' February 15, 2018 earnings call, defendant Grant highlighted CYS' total stockholder return of 12.6% and market return of 17%, explaining "[t]his is a good result for an environment where the Fed raised short rates three times, clearly messaged that they'd be continuing to raise rates and also announced their plans to reduce their asset purchases going forward." DeCicco also noted, "we are pleased with our annual results and have taken a more defensive position in anticipation of the current environment. . . ."

#### The Sale Process

29. On February 8, 2018, defendant Grant received an unsolicited proposal to acquire CYS in a stock-for-stock merger from a mortgage REIT referred to in the Registration Statement

as Company C. Thereafter, the independent members of the Board formed a special committee (the "Special Committee") comprised of defendants Stern (chairman), Hammond and Beder. The Board subsequently engaged Barclays and Credit Suisse to act as its advisors.

30. On February 21, 2018, defendant Grant received an unsolicited proposal to acquire CYS from another mortgage REIT referred to in the Registration Statement as Company B. Company B had previously expressed an interest in exploring a potential acquisition of CYS in July 2016, executed a non-disclosure agreement and engaged in due diligence before withdrawing its indication of interest in September 2016.

31. On February 27, 2018, the Special Committee met and authorized Barclays and Credit Suisse to contact six additional potential bidders to determine whether they would be interested in submitting an offer to enter into a business combination or strategic transaction with CYS.

32. Following the outreach, CYS entered into non-disclosure agreements containing standstill provisions with seven of the eight potential bidders (including Two Harbors, Company B, Company C, a mortgage REIT that previously expressed interest in exploring a potential acquisition of CYS in April 2016, referred to in the Registration Statement as Company A, a publicly traded mortgage REIT referred to in the Registration Statement as Company D and a publicly traded mortgage REIT referred to in the Registration Statement as Company E). The Registration Statement fails to disclose whether the standstill provisions contained in the non-disclosure agreements are still in effect and operate to preclude the six potential bidders (not including Two Harbors) from making a topping bid for the Company.

33. Barclays and Credit Suisse invited bidders other than Company C (who had already submitted an initial indication of interest) to submit preliminary indications of interest by March

12, 2018. The parties were subsequently invited to submit indications of interest incorporating CYS' transaction expense assumptions by March 16, 2018.

34. On March 19, 2018, the Special Committee met to review the revised bids, which reflected the following proposed purchase prices per share of CYS common stock: (i) Company B - \$7.27 per share; (ii) Company C - a range of \$7.33 to \$7.47 per share; (iii) Two Harbors - \$7.33 per share; (iv) Company D - \$7.42 per share and (v) Company E - \$7.15 per share.

35. Following the March 21, 2018 Board and Special Committee meetings, the Special Committee determined to invite Company C, Company D and Two Harbors to participate in the second round of the process. As Company B was unwilling to participate on CYS' proposed timeline, the Special Committee also determined to invite Company E to participate in the second round. The parties received access to a virtual data room and were asked to submit a markup of a draft merger agreement.

36. On April 3, 2018, the four parties submitted third round indications of interest, with Company C revising its proposed purchase price to \$7.46 per share. Also on April 3, following a meeting with the Special Committee's legal counsel, Two Harbors agreed to make certain changes to its proposed markup of the draft merger agreement, including PRCM Advisers LLC, Two Harbors' external manager and a subsidiary of Pine River Capital Management L.P, agreeing to contribute \$10 million in cash as part of the merger consideration. This amount was later increased to \$15 million.

37. On April 5, 2018, the Board met and, following discussion, instructed the Special Committee to continue negotiations with Two Harbors and Company C.

38. On April 11, 2018, Company C delivered a revised draft of the merger agreement that included adjustments to the offer price and purchase price mechanics which purportedly

resulted in at least a \$0.11 per share reduction in Company C's per share offer price. Following Company C's refusal to increase its bid, the Special Committee proceeded to negotiate the final terms of the Proposed Transaction with Two Harbors.

39. On April 18, 2018, CYS and Two Harbors executed an exclusivity agreement, providing for exclusivity regarding a strategic transaction until April 25, 2018.

40. On April 25, 2018, Barclays and Credit Suisse rendered their fairness opinions and the Board approved the Merger Agreement. The next day, the parties executed the Merger Agreement, which was dated effective as of April 25, 2018.

#### The Proposed Transaction

41. On April 26, 2018, CYS and Two Harbor issued a joint press release announcing the Proposed Transaction, which states, in relevant part:

NEW YORK-- Two Harbors Investment Corp. (NYSE: TWO) ("Two Harbors"), a leading hybrid mortgage real estate investment trust ("REIT"), and CYS Investments, Inc. (NYSE: CYS) ("CYS"), an Agency mortgage REIT, announced today that they have entered into a definitive merger agreement under which Two Harbors will acquire CYS.

In connection with the merger, CYS stockholders will exchange their shares of CYS common stock for newly issued shares of Two Harbors common stock as well as aggregate cash consideration of \$15,000,000. The number of Two Harbors shares issued will be based on an exchange ratio to be determined by dividing 96.75% of CYS' adjusted book value per share by 94.20% of Two Harbors' adjusted book value per share. For illustrative purposes, assuming the merger occurs and the exchange ratio was based on March 31, 2018 adjusted book value per share, CYS stockholders would receive \$7.79 of combined cash and stock consideration per share of CYS common stock owned, which represents a premium of approximately 17.7% over the CYS closing price per share on April 25, 2018. The actual exchange ratio for the merger will be publicly announced at least five business days prior to the required stockholder votes on the merger.

\* \* \*

The actual exchange ratio for the merger will be publicly announced at least five business days prior to the required stockholder votes on the merger.

In connection with the merger, PRCM Advisers LLC, Two Harbors' external manager, a subsidiary of Pine River Capital Management L.P., has agreed to reduce the base management fee it charges Two Harbors with respect to the additional equity under management resulting from the merger from 1.5% of Stockholders' Equity on an annualized basis to 0.75% through the first anniversary of the closing of the merger. PRCM Advisers LLC will also make a one-time downward adjustment of \$15,000,000 to the management fees payable by Two Harbors for the quarter in which the merger closes. PRCM Advisers has also agreed to a post-closing downward adjustment of up to \$3.3 million to reimburse Two Harbors for certain transaction related expenses.

In addition to the above consideration, Two Harbors would assume the existing notional \$75 million in CYS 7.75% Series A cumulative redeemable preferred stock and \$200 million in CYS 7.50% Series B cumulative redeemable preferred stock.

Following the closing of the transaction, all senior management positions will continue to be led by Two Harbors' personnel and Two Harbors Board of Directors will be expanded to include two additional independent directors from CYS Investments' current board, James Stern and Karen Hammond.

The completion of the merger is subject to the satisfaction of certain customary conditions, and is subject to the approval of the stockholders of both Two Harbors and CYS. The companies expect the transaction to close in the third quarter of 2018.

**Insiders' Interests in the Proposed Transaction**

42. CYS and Two Harbors insiders are the primary beneficiaries of the Proposed Transaction, not the Company's public stockholders. The Board and the Company's executive officers are conflicted because they will have secured unique benefits for themselves from the Proposed Transaction not available to Plaintiff and the public stockholders of CYS.

43. CYS' directors and executive officers stand to reap substantial financial benefits for securing the deal with Two Harbors. Pursuant to the Merger Agreement, all outstanding shares of Company restricted stock will vest and be converted into the right to receive the Merger Consideration. The following table sets forth the value of restricted stock that the Company's directors and executive officers will receive upon consummation of the Proposed Transaction:

| <u>Number of<br/>Shares of CYS</u> | <u>Value of<br/>Accelerated</u> |
|------------------------------------|---------------------------------|
|------------------------------------|---------------------------------|

| Executive Name                | Restricted Stock to be Accelerated (#) | Shares of CYS Restricted Stock (\$) |
|-------------------------------|--|-------------------------------------|
| Kevin E Grant                 | 501,840                                | 3,793,425                           |
| Jack DeCicco                  | 93,936                                 | 710,065                             |
| Richard E. Cleary             | 86,818                                 | 656,260                             |
| Thomas A. Rosenbloom          | 96,918                                 | 732,606                             |
| Director Name                 |  | —                                   |
| Tanya S. Beder                | 3,206                                  | 24,234                              |
| Karen Hammond                 | 3,206                                  | 24,234                              |
| Raymond A. Redlingshafer, Jr. | 3,206                                  | 24,234                              |
| Dale A. Reiss                 | 3,206                                  | 24,234                              |
| James A. Stern                | 3,206                                  | 24,234                              |

44. Moreover, if they are terminated in connection with the Proposed Transaction, the Company's named executive officers stand to receive substantial cash severance payments in the form of golden parachute compensation, as set forth in the following table:

| Name                 | Cash \$(1) | Equity \$(2) | Benefits \$(3) | Total \$(6) |
|----------------------|------------|--------------|----------------|-------------|
| Kevin E. Grant       | 9,136,458  | 3,793,425    | 48,314         | 12,978,197  |
| Jack DeCicco         | 1,325,833  | 710,065      | 64,157         | 2,100,055   |
| Richard E. Cleary    | 1,129,083  | 656,260      | 64,157         | 1,849,500   |
| Thomas A. Rosenbloom | 1,200,000  | 732,606      | 64,157         | 1,996,764   |

#### The Registration Statement Contains Material Misstatements or Omissions

45. The defendants filed a materially incomplete and misleading Registration Statement with the SEC and disseminated it to CYS' stockholders. The Registration Statement misrepresents or omits material information that is necessary for the Company's stockholders to make an informed voting decision in connection with the Proposed Transaction.

46. Specifically, as set forth below, the Registration Statement fails to provide Company stockholders with material information or provides them with materially misleading information concerning: (i) CYS' and Two Harbors' financial projections, relied upon by CYS' financial advisors Barclays and Credit Suisse; (ii) the data and inputs underlying the financial

valuation analyses that support the fairness opinions provided by Barclays and Credit Suisse; (iii) the background process leading to the Proposed Transaction; and (iv) potential conflicts of interest of Barclays. Accordingly, CYS stockholders are being asked to make a voting decision in connection with the Proposed Transaction without all material information at their disposal.

***Material Omissions Concerning CYS' and Two Harbors' Financial Projections***

47. The Registration Statement is materially deficient because it fails to disclose material information relating to the Company's intrinsic value and prospects going forward.

48. First, the Registration Statement omits material information regarding CYS management's financial projections and the financial projections of Two Harbors.

49. For example, the Registration Statement fails to disclose for CYS over the projection period of December 31, 2018 through December 31, 2020: (i) tangible book value per share ("TBVPS"); (ii) dividend yield; (iii) dividends; and (iv) distributed cash flows.

50. Additionally, the Registration Statement fails to disclose for Two Harbors over the projection period of December 31, 2018 through December 31, 2020: (i) TBVPS; (ii) dividend yield; (iii) dividends; and (iv) distributed cash flows.

51. Moreover, the Registration Statement sets forth that in connection with rendering their fairness opinions, both Barclays and Credit Suisse reviewed and analyzed financial and operating information with respect to the business, operations and prospects of the pro forma combined company, including financial projections of Pro Forma Two Harbors prepared and furnished to Barclays and Credit Suisse by Two Harbors, and relied upon by Barclays and Credit Suisse upon the advice and at the direction of CYS ("Pro Forma Projections"). Yet, the Registration Statement wholly omits the Pro Forma Projections relied upon by both Barclays and Credit Suisse in their financial analyses.



52. The omission of this information renders the statements in the “Certain Two Harbors Unaudited Prospective Financial Information,” “Certain CYS Unaudited Prospective Financial Information,” “Opinion of CYS’s Financial Advisor, Barclays Capital Inc.” and “Opinion of CYS’s Financial Advisor, Credit Suisse Securities (USA) LLC” sections of the Registration Statement false and/or materially misleading in contravention of the Exchange Act.

***Material Omissions Concerning Barclays’ and Credit Suisse’s Financial Analyses***

53. The Registration Statement describes Barclays’ and Credit Suisse’s fairness opinions and the various valuation analyses performed in support of their opinions. However, the description of Barclays’ and Credit Suisse’s fairness opinions and analyses fails to include key inputs and assumptions underlying these analyses. Without this information, as described below, CYS’ public stockholders are unable to fully understand these analyses and, thus, are unable to determine what weight, if any, to place on Barclays’ and Credit Suisse’s fairness opinions in determining whether to vote in favor of the Proposed Transaction. This omitted information, if disclosed, would significantly alter the total mix of information available to CYS’ stockholders.

54. With respect to Barclays’ Dividend Discount Analysis of CYS, the Registration Statement fails to disclose: (i) the estimated dividends expected to be paid by CYS to holders of CYS common stock during the last three quarters of the calendar year ending December 31, 2018 through the calendar year ending December 31, 2020; (ii) CYS’ tangible book value on December 31, 2020; and (iii) quantification of the inputs and the assumptions underlying the discount rates based on the cost of equity of CYS of 7.5% to 9.5% used in the analysis.

55. With respect to Barclays’ Dividend Discount Analysis of Two Harbors, the Registration Statement fails to disclose: (i) the estimated dividends expected to be paid by Pro Forma Two Harbors to holders of Two Harbors common stock during the last two quarters of the

calendar year ending December 31, 2018 through the calendar year ending December 31, 2020; (ii) Two Harbors' tangible book value on December 31, 2020; and (iii) quantification of the inputs and the assumptions underlying the discount rates based on the cost of equity of Pro Forma Two Harbors of 8.0% to 10.0% used in the analysis.

56. With respect to Barclays' Selected Comparable Company Analysis, the Registration Statement fails to disclose: (i) the individual multiples and financial metrics for each of the selected comparable companies observed by Barclays in the analysis; and (ii) any benchmarking analyses for CYS and Two Harbors in relation to the selected companies analyzed by Barclays.

57. With respect to Barclays' Selected Precedent Transactions Analysis, the Registration Statement fails to disclose the individual multiples and financial metrics for each of the selected transactions analyzed by Barclays in the analysis.

58. With respect to Credit Suisse's Dividend Discount Analysis of CYS, the Registration Statement fails to disclose: (i) the distributed cash flows that CYS was forecasted to generate during the last three quarters of CYS' fiscal year ending December 31, 2018 through the full fiscal year ending December 31, 2020; (ii) CYS' TBVPS as of December 31, 2020; and (iii) quantification of the inputs and the assumptions underlying the discount rates ranging from 7.25% to 13.75% used in the analysis.

59. With respect to Credit Suisse's Dividend Discount Analysis of Two Harbors, the Registration Statement fails to disclose: (i) the distributed cash flows that Two Harbors was forecasted to generate during the last three quarters of Two Harbors' fiscal year ending December 31, 2018 through the full fiscal year ending December 31, 2020; (ii) Two Harbors' TBVPS as of

December 31, 2020; and (iii) quantification of the inputs and the assumptions underlying the discount rates ranging from 7.0% to 15.0% used in the analysis.

60. With respect to Credit Suisse's Selected Public Companies Analysis, the Registration Statement fails to disclose: (i) the individual multiples and financial metrics for each of the selected comparable companies observed by Credit Suisse in the analysis; and (ii) any benchmarking analyses for CYS and Two Harbors in relation to the selected companies analyzed by Credit Suisse.

61. With respect to Credit Suisse's Selected Precedent Transactions Analysis, the Registration Statement fails to disclose the individual multiples and financial metrics for each of the selected transactions analyzed by Credit Suisse in the analysis.

62. When a banker's endorsement of the fairness of a transaction is touted to stockholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed.

63. The omission of this information renders the statements in the "Opinion of CYS's Financial Advisor, Barclays Capital Inc." and "Opinion of CYS's Financial Advisor, Credit Suisse Securities (USA) LLC" sections of the Registration Statement false and/or materially misleading in contravention of the Exchange Act.

#### Material Omissions Concerning the Background Process of the Proposed Transaction

64. The Registration Statement omits material information relating to the sale process leading up to the Proposed Transaction.

65. The Registration Statement fails to expressly indicate whether the non-disclosure agreements that CYS entered into with prospective bidders are still in effect and/or contain "don't

ask, don't waive" ("DADW") standstill provisions that are presently precluding each and every one of these prospective bidders from making a topping bid for the Company.

66. The disclosure of the specific terms of the non-disclosure agreements CYS entered into with other parties is crucial to CYS stockholders being fully informed of whether their fiduciaries have put in place restrictive devices to foreclose a topping bid for the Company.

67. The omission of this information renders the statements in the "Background of the Merger" section of the Registration Statement false and/or materially misleading in contravention of the Exchange Act.

*Material Omissions Concerning Barclays' and Credit Suisse's Potential Conflicts of Interest*

68. Further, the Registration Statement fails to disclose material information concerning potential conflicts of interest faced by the Company's financial advisors, Barclays and Credit Suisse.

69. The Registration Statement sets forth that "Barclays has performed various investment banking services for CYS and Two Harbors in the past, and expects to perform such services in the future, and has received, and expects to receive, customary fees for such services." Registration Statement at 100. The Registration Statement fails, however, to disclose the past services and past fees for these services received by Barclays.

70. Moreover, the Registration Statement fails to disclose whether Credit Suisse has performed past work for CYS and, if so, the amount of any compensation Credit Suisse has received in connection with such services.

71. Full disclosure of investment banker compensation and all potential conflicts is required due to the central role played by investment banks in the evaluation, exploration, selection, and implementation of strategic alternatives. CYS stockholders need to be provided with a description of the services and the fees received for these services performed by Barclays

on behalf of CYS and Two Harbors to compare these services and fees and assess whether Barclays had a strong historical relationship with Two Harbors that could have impacted its advice provided to CYS.

72. The omission of this information renders the statements in the “Opinion of CYS’s Financial Advisor, Barclays Capital Inc.” and “Opinion of CYS’s Financial Advisor, Credit Suisse Securities (USA) LLC” sections of the Registration Statement false and/or materially misleading in contravention of the Exchange Act.

73. The Individual Defendants were aware of their duty to disclose this information and acted negligently (if not deliberately) in failing to include this information in the Registration Statement. Absent disclosure of the foregoing material information prior to the stockholder vote on the Proposed Transaction, Plaintiff will be unable to make a fully-informed decision whether to vote in favor of the Proposed Transaction and is thus threatened with irreparable harm warranting the injunctive relief sought herein.

#### CLAIMS FOR RELIEF

##### COUNT I

##### Class Claims Against All Defendants for Violations of Section 14(a) of the Exchange Act and Rule 14a-9 Promulgated Thereunder

74. Plaintiff repeats all previous allegations as if set forth in full.

75. During the relevant period, defendants disseminated the false and misleading Registration Statement specified above, which failed to disclose material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading in violation of Section 14(a) of the Exchange Act and SEC Rule 14a-9 promulgated thereunder.

76. By virtue of their positions within the Company, the defendants were aware of this information and of their duty to disclose this information in the Registration Statement. The

Registration Statement was prepared, reviewed, and/or disseminated by the defendants. It misrepresented and/or omitted material facts, including material information about the actual intrinsic standalone value of the Company, the financial analyses performed by the Company's financial advisors, the background process leading to the Proposed Transaction and potential conflicts of interest faced by the Company's financial advisors. The defendants were at least negligent in filing the Registration Statement with these materially false and misleading statements.

77. The omissions and false and misleading statements in the Registration Statement are material in that a reasonable stockholder would consider them important in deciding how to vote on the Proposed Transaction.

78. By reason of the foregoing, the defendants have violated Section 14(a) of the Exchange Act and SEC Rule 14a-9(a) promulgated thereunder.

79. Because of the false and misleading statements in the Registration Statement, Plaintiff and the Class are threatened with irreparable harm, rendering money damages inadequate. Therefore, injunctive relief is appropriate to ensure defendants' misconduct is corrected.

#### COUNT II

##### Class Claims Against the Individual Defendants for Violations of Section 20(a) of the Exchange Act

80. Plaintiff repeats all previous allegations as if set forth in full.

81. The Individual Defendants acted as controlling persons of CYS within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers and/or directors of CYS, and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false statements contained in the Registration Statement filed with the SEC, they had the power to influence and control and did influence and control, directly or

indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading.

82. Each of the Individual Defendants was provided with or had unlimited access to copies of the Registration Statement and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

83. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same. The Registration Statement at issue contains the unanimous recommendation of each of the Individual Defendants to approve the Proposed Transaction. They were, thus, directly involved in the making of the Registration Statement.

84. In addition, as the Registration Statement sets forth at length, and as described herein, the Individual Defendants were each involved in negotiating, reviewing, and approving the Proposed Transaction. The Registration Statement purports to describe the various issues and information that they reviewed and considered—descriptions the Company directors had input into.

85. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

86. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) and SEC Rule 14a-9, promulgated thereunder, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the

Exchange Act. As a direct and proximate result of defendants' conduct, CYS' stockholders will be irreparably harmed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and preliminary and permanent relief, including injunctive relief, in his favor on behalf of CYS, and against defendants, as follows:

- A. Ordering that this action may be maintained as a class action and certifying Plaintiff as the Class representative and Plaintiff's counsel as Class counsel;
- B. Preliminarily and permanently enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction and any vote on the Proposed Transaction, unless and until defendants disclose and disseminate the material information identified above to CYS stockholders;
- C. In the event defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages to Plaintiff and the Class;
- D. Declaring that defendants violated Sections 14(a) and/or 20(a) of the Exchange Act, as well as SEC Rule 14a-9 promulgated thereunder;
- E. Awarding Plaintiff the costs of this action, including reasonable allowance for Plaintiff's attorneys' and experts' fees; and
- F. Granting such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: June 13, 2018

/s/ Mitchell J. Matorin  
\_\_\_\_\_  
Mitchell J. Matorin (BBO# 649304)  
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Attorneys for Plaintiff





2405 York Road, Suite 201 )  
Lutherville Timonium, MD 21093 )  
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 )  
Defendants. )  
 )

Plaintiff Arthur Ruscher ("Plaintiff"), by and through his undersigned attorneys, brings this action against CYS Investments, Inc. ("CYS" or the "Company"), the members of the Company's board of directors (collectively referred to as the "Board" or the "Individual Defendants," and, together with CYS, the "Defendants") for violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78n(a), 78t(a), and SEC Rule 14a-9, 17 C.F.R. 240.14a-9, in connection with the proposed merger (the "Proposed Transaction") by and among CYS, Two Harbors Investment Corp. ("Parent"), and Eiger Merger Subsidiary LLC ("Merger Sub," and collectively with Parent, "Two Harbors"). Plaintiff alleges the following based upon personal knowledge as to himself, and upon information and belief, including the investigation of Counsel, as to all other matters.

NATURE OF THE ACTION

1. On April 25, 2018, CYS entered into an Agreement and Plan of Merger ("Merger Agreement") with Two Harbors, pursuant to which Two Harbors will acquire all outstanding stock of CYS. As part of the Proposed Transaction, CYS common stock will be exchanged for stock in Two Harbors and total cash of \$15,000,000 divided among outstanding shares of CYS common stock. Each outstanding share of CYS common stock will receive an amount of Two Harbors stock calculated by dividing (i) CYS's adjusted book value per share, multiplied by 96.75%, by (ii) Two Harbors' adjusted book value per share, multiplied by 94.20%. The actual exchange ratio

will be publicly announced at least five business days before the special meeting of CYS stockholders held to approve the Proposed Transaction.

2. Defendants have violated the above-referenced Sections of the Exchange Act by causing a materially incomplete and misleading Form S-4 Registration Statement (the "Registration Statement") to be filed with the SEC on May 25, 2018. As part of the Registration Statement, the CYS Board recommends that CYS stockholders vote in favor of the Proposed Transaction at the upcoming stockholder special meeting (the "Stockholder Vote"), scheduled for July 27, 2018, and agree to exchange their shares pursuant to the terms of the Merger Agreement based among other things on internal and external factors examined by the Board to make its recommendation and an opinion rendered by the Company's financial advisors, Barclays Capital, Inc. ("Barclays") and Credit Suisse Securities (USA) LLC ("Credit Suisse").

3. Specifically, the Registration Statement contains materially incomplete and misleading information concerning: (i) the Company's financial projections; (ii) the valuation analyses performed by the Company's financial advisors; (iii) the background process leading up to the Proposed Transaction; and (iv) the potential conflicts of interest faced by the Company's financial advisors.

4. The special meeting of CYS stockholders to vote on the Proposed Transaction is forthcoming on July 27, 2018. Therefore, it is imperative that the material information omitted from the Registration Statement is disclosed to the Company's shareholders prior to the Stockholder Vote so that they can properly exercise their corporate suffrage rights.

5. For these reasons and as set forth in detail herein, Plaintiff seeks to enjoin Defendants from consummating the Proposed Transaction unless and until the material information discussed below is disclosed to CYS's stockholders or, in the event the Proposed

Transaction is consummated, to recover damages resulting from the Defendants' violations of the Exchange Act.

PARTIES

6. Plaintiff is, and at all relevant times has been, a stockholder of CYS.

7. Defendant CYS is a Maryland corporation and maintains its principal executive offices at 500 Totten Pond Road, 6th Floor, Waltham, Massachusetts, 02451. CYS's common stock is listed on the New York Stock Exchange under the ticker symbol "CYS".

8. Defendant Kevin E. Grant has served as President, CEO, Chairman, and as a director of the Company since 2006, when he founded the Company.

9. Defendant Tanya S. Beder has been a director of the Company since 2012.

10. Defendant Karen Hammond has served as a director of the Company since 2014.

11. Defendant Raymond A. Redlingshafer, Jr. has served as a director of the Company since 2006.

12. Defendant Dale A. Reiss has served as a director of the Company since 2015.

13. Defendant James A. Stern has served as a director of the Company since 2006.

14. The parties in paragraphs 8 through 13 are referred to herein as the "Individual Defendants" and/or the "Board," collectively with CYS the "Defendants."

15. Non-party Two Harbors is a Maryland corporation and a party to the Merger Agreement. Two Harbors is headquartered at 575 Lexington Avenue, Suite 2930, New York, New York, 10022. Two Harbors common stock is listed on the New York Stock Exchange under the ticker symbol "TWO."

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange

Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges violations of Section 14(a) and 20(a) of the Exchange Act.

17. Personal jurisdiction exists over each Defendant either because the Defendant is incorporated in or maintains operations in this District, or is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over Defendant by this Court permissible under traditional notions of fair play and substantial justice.

18. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because: (i) the conduct at issue took effect under the laws in this District; (ii) CYS is incorporated in this District and each of the Individual Defendants, and Company officers or directors, either resides in this District or has extensive contacts within this District; (iii) a substantial portion of the transactions and wrongs complained of herein, occurred under the laws of this District; (iv) relevant documents pertaining to Plaintiff's claims are stored (electronically and otherwise), and evidence exists, in this District; and (v) Defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

#### SUBSTANTIVE ALLEGATIONS

##### Company Background and the Proposed Transaction

19. CYS is a finance company that invests in agency residential mortgage-backed securities ("RMBS") collateralized by single-family residential mortgages, as well as U.S. Treasury debt securities. The Company is organized under the laws of Maryland and is taxed as a real estate investment trust ("REIT") for federal income tax purposes.

20. On April 26, 2018, Two Harbors announced the Proposed Transaction by press

release, which states in relevant part:

NEW YORK--(BUSINESS WIRE)-- Two Harbors Investment Corp. (NYSE: TWO) ("Two Harbors"), a leading hybrid mortgage real estate investment trust ("REIT"), and CYS Investments, Inc. (NYSE: CYS) ("CYS"), an Agency mortgage REIT, announced today that they have entered into a definitive merger agreement under which Two Harbors will acquire CYS.

In connection with the merger, CYS stockholders will exchange their shares of CYS common stock for newly issued shares of Two Harbors common stock as well as aggregate cash consideration of \$15,000,000. The number of Two Harbors shares issued will be based on an exchange ratio to be determined by dividing 96.75% of CYS' adjusted book value per share by 94.20% of Two Harbors' adjusted book value per share. For illustrative purposes, assuming the merger occurs and the exchange ratio was based on March 31, 2018 adjusted book value per share, CYS stockholders would receive \$7.79 of combined cash and stock consideration per share of CYS common stock owned, which represents a premium of approximately 17.7% over the CYS closing price per share on April 25, 2018. The actual exchange ratio for the merger will be publicly announced at least five business days prior to the required stockholder votes on the merger.

Two Harbors and CYS will hold a joint conference call at 9:00 A.M. Eastern Time on April 26, 2018 to discuss the merger. To participate in the teleconference, please call toll-free (877) 868-1835, Conference Code 7197703, (or (914) 495-8581 for international callers) approximately 10 minutes prior to the above start time. You may also listen to the teleconference live via the Internet and review related materials at [www.twoharborsinvestment.com](http://www.twoharborsinvestment.com) in the Investor Relations section under the Events and Presentations link.

#### Anticipated Benefits to Two Harbors Stockholders from the Merger

- Additional capital supports continued growth in target assets: A larger capital base will support the continued growth across Two Harbors' target assets, and positions Two Harbors to take advantage of market opportunities as they arise.
- Improved cost structure: Expect that the combination of Two Harbors and CYS will create cost efficiencies and decrease Two Harbors' other operating expense ratio by 30 to 40 basis points. Additionally PRCM Advisers' agreement to reduce its base management fee on the new CYS equity will further enhance operating cost efficiencies in the year following the close of the transaction.
- Expect to maintain \$0.47 per share quarterly dividend: Following the close of the transaction, Two Harbors anticipates that its current quarterly dividend of \$0.47 will be sustainable through 2018, subject to market



conditions and the discretion and approval of Two Harbors' Board of Directors.

- Enhanced scale and liquidity with potential for premium valuation: With a pro forma equity base of nearly \$5.0 billion, Two Harbors stockholders will benefit from the scale, liquidity and capital alternatives of a larger combined company. Additionally, larger capitalized mortgage REITs have historically carried premium valuations.
- Anticipate improved Agency spreads in 2018: If so, Two Harbors believes this deal will be accretive to earnings and endorses the capital raising attendant to this transaction.

#### Anticipated Benefits to CYS Stockholders from the Merger

- Enhanced scale and liquidity: CYS stockholders will benefit from increased operating scale, liquidity and capital alternatives available to a larger combined company.
- Meaningful premium to CYS stockholders: Based on March 31, 2018 adjusted book values per share, CYS stockholders would receive \$7.79 of combined cash and stock consideration per share of CYS common stock, which represents a premium of approximately 17.7% over the CYS closing price per share on April 25, 2018.
- Benefit from a more diversified business model: Two Harbors' hybrid business model is positioned to withstand periods of market volatility and is comprised of a mix of asset classes and a platform that is challenging to replicate. Two Harbors' portfolio includes a Rates strategy comprised of Agency RMBS paired with mortgage servicing rights ("MSR"), and a Credit strategy, comprised primarily of deeply discounted, legacy non-Agency RMBS.
- Strong stewards of capital: Two Harbors has a history of being strong stewards of its stockholders' capital. Since 2009, Two Harbors has outperformed its peer group and has grown its book value with less volatility. Additionally, Two Harbors has a stock repurchase program in place to support its stock.

#### About the Merger

Upon the closing of the merger, CYS stockholders will exchange their shares of CYS common stock for newly issued shares of Two Harbors common stock as well as aggregate cash consideration of \$15,000,000, payable to CYS stockholders on a pro rata basis.

The number of Two Harbors shares to be received by CYS stockholders will be

based on an exchange ratio to be determined by dividing 96.75% of the CYS adjusted book value per share by 94.20% of the Two Harbors adjusted book value per share. As defined in the Merger Agreement, adjusted book value per share for each company means (i) such company's total consolidated common stockholders' equity after giving pro forma effect to any dividends or other distributions for which the record date is after the exchange ratio determination date but prior to the closing of the merger and as modified for potential transaction-related adjustments, divided by (ii) each respective company's number of shares of common stock issued and outstanding, including shares issuable upon the vesting of restricted stock.

As of March 31, 2018, the adjusted book value per share for Two Harbors and CYS, on a pro forma basis, would have been \$15.63 and \$7.41, respectively, representing an exchange ratio of 0.4872x, with each share of CYS being exchanged for 0.4872 shares of Two Harbors. For illustrative purposes, under a pro forma exchange ratio, assuming the merger occurs and the exchange ratio was calculated as of March 31, 2018, CYS stockholders would receive approximately 75.7 million Two Harbors shares (representing approximately 30% of the Two Harbors' total outstanding shares immediately following the merger), which, in combination with the cash consideration of \$15,000,000, would value CYS at approximately \$7.79 per share of common stock. This valuation represents a premium of approximately 17.7% above the closing price per share of CYS common stock on the New York Stock Exchange on April 25, 2018.

The actual exchange ratio for the merger will be publicly announced at least five business days prior to the required stockholder votes on the merger.

In connection with the merger, PRCM Advisers LLC, Two Harbors' external manager, a subsidiary of Pine River Capital Management L.P., has agreed to reduce the base management fee it charges Two Harbors with respect to the additional equity under management resulting from the merger from 1.5% of Stockholders' Equity on an annualized basis to 0.75% through the first anniversary of the closing of the merger. PRCM Advisers LLC will also make a one-time downward adjustment of \$15,000,000 to the management fees payable by Two Harbors for the quarter in which the merger closes. PRCM Advisers has also agreed to a post-closing downward adjustment of up to \$3.3 million to reimburse Two Harbors for certain transaction related expenses.

In addition to the above consideration, Two Harbors would assume the existing notional \$75 million in CYS 7.75% Series A cumulative redeemable preferred stock and \$200 million in CYS 7.50% Series B cumulative redeemable preferred stock.

Following the closing of the transaction, all senior management positions will continue to be led by Two Harbors' personnel and Two Harbors Board of Directors will be expanded to include two additional independent directors from CYS Investments' current board, James Stern and Karen Hammond.

The completion of the merger is subject to the satisfaction of certain customary conditions, and is subject to the approval of the stockholders of both Two Harbors and CYS. The companies expect the transaction to close in the third quarter of 2018.

“We are pleased to announce the acquisition of CYS Investments, which we believe represents a unique opportunity to create value for our stockholders,” stated Thomas Siering, Two Harbors’ President and Chief Executive Officer. “This transaction offers Two Harbors stockholders the opportunity to benefit from additional capital, supporting continued growth in our target assets, as well as an improved cost structure. The combination of the two companies also supports the potential for the premium valuation of a pro forma Two Harbors.”

“We are excited about the opportunity to merge with Two Harbors and believe that our stockholders will benefit from the increased scale, diversification and liquidity of the combined companies,” stated Kevin Grant, CYS Investments’ Chairman, Chief Executive Officer, President and Chief Investment Officer. “Two Harbors has a long history of being strong stewards of capital and we believe this transaction should enhance value for our stockholders over the long-term.”

JMP Securities LLC is serving as financial advisor, and Sidley Austin LLP is serving as legal advisor to Two Harbors. Barclays Capital Inc. and Credit Suisse Securities (USA) LLC are serving as financial advisors, and Vinson & Elkins LLP is serving as legal advisor to CYS.

#### The Registration Statement is Materially Incomplete and Misleading

21. On May 25, 2018, in order to convince the stockholders of Two Harbors and CYS to vote in favor of the Proposed Transaction, Defendants authorized the filing of a materially incomplete and misleading Registration Statement containing the recommendation of the Board. The Registration Statement solicits the Company’s stockholders to vote in favor of the Proposed Transaction. Defendants were obligated to carefully review the Registration Statement before it was filed with the SEC and disseminated to the Company’s stockholders to ensure that it did not contain any material misrepresentations or omissions. However, the Registration Statement misrepresents and/or omits material information that is necessary for the Company’s stockholders to make an informed decision concerning whether to vote in favor of the Proposed Transaction, in violation of Sections 14(a) and 20(a) of the Exchange Act.

Barclays' Valuation Analyses and Fairness Opinion

22. The Registration Statement describes Barclays' fairness opinion and the various valuation analyses it performed in support of its opinion. However, the description of Barclays' fairness opinion and analyses fails to include key inputs and assumptions underlying these analyses. Without this information, as described below, CYS's stockholders are unable to fully understand these analyses and, thus, are unable to determine what weight, if any, to place on Barclays' fairness opinion in determining how to cast their vote on the Proposed Transaction. This omitted information, if disclosed, would significantly alter the total mix of information available to CYS's stockholders.

23. With respect to Barclays' Dividend Discount Analysis, the Registration Statement omits the projected dividends for both CYS and Two harbors provided by the Company's management.

24. With respect to Barclays' Selected Comparable Company Analysis and Selected Precedent Transaction Analysis, the Registration Statement fails to disclose the individual multiples Barclays calculated for each company and transaction utilized in the analyses. The omission of these multiples renders the summary of the analysis and the implied values materially misleading. A fair summary of the analyses requires the disclosure of the individual multiples; merely providing the range that a banker applied is insufficient, as CYS stockholders are unable to assess whether Barclays applied appropriate multiples, or, instead, applied unreasonably low multiples in order to drive down the Company's valuation.

Credit Suisse's Valuation Analyses and Fairness Opinion

25. The Registration Statement also describes Credit Suisse's fairness opinion and the various valuation analyses it performed in support of its opinion. However, the description of Credit Suisse's fairness opinion and analyses fails to include key inputs and assumptions underlying these analyses. Without this information, as described below, CYS's stockholders are unable to fully understand these analyses and, thus, are unable to determine what weight, if any, to place on Credit Suisse's fairness opinion in determining how to cast their vote on the Proposed

Transaction. This omitted information, if disclosed, would significantly alter the total mix of information available to CYS's stockholders.

26. With respect to Credit Suisse's Dividend Discount Analysis, the Registration Statement omits the projected dividends for both CYS and Two harbors provided by the Company's management, as well as the inputs and assumptions underlying the discount rates applied by Credit Suisse.

27. With respect to Credit Suisse's Selected Comparable Company Analysis and Selected Precedent Transaction Analysis, the Registration Statement fails to disclose the individual multiples Credit Suisse calculated for each company and transaction utilized in the analyses. The omission of these multiples renders the summary of the analysis and the implied values materially misleading. A fair summary of the analyses requires the disclosure of the individual multiples; merely providing the range that a banker applied is insufficient, as CYS stockholders are unable to assess whether Credit Suisse applied appropriate multiples, or, instead, applied unreasonably low multiples in order to drive down the Company's valuation.

#### Material Omissions Concerning the Sales Process

28. The Registration Statement also fails to disclose or misstate material information relating to the sale process leading up to the Proposed Transaction.

29. The Registration Statement discloses that CYS entered into nondisclosure agreements that contained "customary standstill provisions" with six potential bidders other than Two Harbors. However, the Registration Statement omits whether these standstill provisions expired upon announcement of the Proposed Transaction or contain so-called "don't-ask-don't-waive" ("DADW") provisions that preclude these parties from making a topping bid for the Company. A DADW provision prevents a party from approaching the Company's Board privately

to request a waiver of the standstill provision in order to submit a superior proposal. This omission is particularly notable because the Registration Statement discloses that the Merger Agreement prohibits CYS or its subsidiaries from terminating, waiving, amending, or modifying any provision of the standstill provisions. Thus the Board has potentially willfully blind itself to any superior offers from these six parties. Such information is material to CYS stockholders as a reasonable CYS stockholder would find it material and important to their voting decision whether or not parties that had previously been interested in a potential acquisition of the Company are now foreclosed from submitting superior proposals.

30. Defendants' failure to provide CYS stockholders with the foregoing material information renders the statements in the Background of the Merger section of the Registration Statement false and/or materially misleading.

Material Omissions Concerning the Potential Conflicts of Interest Faced by Barclays

31. The Registration Statement also fails to disclose or misstate material information relating to previous engagements between Barclays and the Company or Two Harbors.

32. The Registration Statement discloses that Barclays "has performed various investment banking services for CYS and Two Harbors in the past, and expects to perform such services in the future, and has received, and expects to receive, customary fees for such services." However, the Registration Statement fails to disclose the amount of compensation that Barclays has received in the past from either party, or the details of any of the services performed. This omission is in clear violation of Item 1015 of SEC Regulation M-A, which requires disclosure of "any compensation received [in the past two years] or to be received as a result of the relationship . . . ." 17 C.F.R. § 229.1015.

33. This key omission materially misleads CYS stockholders as to incentives facing Barclays, including the repayment for past engagements through the fee paid for the Proposed Transaction, and the prospect of future engagements and compensation from affiliates of Two Harbors following the financial advisor's blessing of the Proposed Transaction. Without this information, CYS stockholders have received a materially misleading statement as to the objectivity and accuracy of the financial advisors' fairness opinions.

34. In sum, the omission of the above-referenced information renders statements in the Registration Statement materially incomplete and misleading in contravention of the Exchange Act. Absent disclosure of the foregoing material information prior to the special shareholder meeting to vote on the Proposed Transaction, Plaintiff will be unable to make a fully-informed decision regarding whether to vote in favor of the Proposed Transaction, and is thus threatened with irreparable harm, warranting the injunctive relief sought herein.

COUNT I

(Against All Defendants for Violations of Section 14(a) of the Exchange Act  
and Rule 14a-9 Promulgated Thereunder)

35. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

36. Section 14(a)(1) of the Exchange Act makes it "unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 78l of this title." 15 U.S.C. § 78n(a)(1).

37. Rule 14a-9, promulgated by the SEC pursuant to Section 14(a) of the Exchange Act, provides that registration statement communications with shareholders shall not contain “any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading.” 17 C.F.R. § 240.14a-9.

38. The omission of information from a registration statement will violate Section 14(a) and Rule 14a-9 if other SEC regulations specifically require disclosure of the omitted information.

39. Defendants have issued the Registration Statement with the intention of soliciting stockholder support for the Proposed Transaction. Each of the Defendants reviewed and authorized the dissemination of the Registration Statement, which fails to provide critical information regarding, amongst other things: (i) the valuation analyses performed by the Company’s financial advisors, Barclays and Credit Suisse; (ii) the background process leading up to the Proposed Transaction; and (iii) the potential conflicts of interest faced by Barclays in advising the Board.

40. In so doing, Defendants made untrue statements of fact and/or omitted material facts necessary to make the statements made not misleading. Each of the Individual Defendants, by virtue of their roles as officers and/or directors, were aware of the omitted information but failed to disclose such information, in violation of Section 14(a). The Individual Defendants were therefore negligent, as they had reasonable grounds to believe material facts existed that were misstated or omitted from the Registration Statement, but nonetheless failed to obtain and disclose such information to CYS common stockholders although they could have done so without extraordinary effort.

41. The Individual Defendants knew or were negligent in not knowing that the



Registration Statement is materially misleading and omits material facts that are necessary to render it not misleading. The Individual Defendants undoubtedly reviewed and relied upon most if not all of the omitted information identified above in connection with their decision to approve and recommend the Proposed Transaction; indeed, the Registration Statement states that Barclays and Credit Suisse reviewed and discussed their financial analyses with the Board, and further states that the Board considered the financial analyses provided by Barclays and Credit Suisse, as well as its fairness opinion and the assumptions made and matters considered in connection therewith. Further, the Individual Defendants were privy to and had knowledge of the projections for the Company and the details surrounding the process leading up to the signing of the Merger Agreement. The Individual Defendants knew or were negligent in not knowing that the material information identified above has been omitted from the Registration Statement, rendering the sections of the Registration Statement identified above to be materially incomplete and misleading. Indeed, the Individual Defendants were required to, separately, review Barclays' and Credit Suisse's analyses in connection with their receipt of the fairness opinion, question the advisors as to the derivation of fairness, and be particularly attentive to the procedures followed in preparing the Registration Statement, and review it carefully before it was disseminated, to corroborate that there are no material misstatements or omissions.

42. The Individual Defendants were, at the very least, negligent in preparing and reviewing the Registration Statement. The preparation of a registration statement by corporate insiders containing materially false or misleading statements or omitting a material fact constitutes negligence. The Individual Defendants were negligent in choosing to omit material information from the Registration Statement or failing to notice the material omissions in the Registration Statement upon reviewing it, which they were required to do carefully as the Company's directors.

Indeed, the Individual Defendants were intricately involved in the process leading up to the signing of the Merger Agreement and the preparation of the Company's financial projections.

43. CYS is also deemed negligent as a result of the Individual Defendants' negligence in preparing and reviewing the Registration Statement.

44. The misrepresentations and omissions in the Registration Statement are material to Plaintiff and the CYS stockholders, who will be deprived of their right to cast an informed vote if such misrepresentations and omissions are not corrected prior to the vote on the Proposed Transaction. Plaintiff and the CYS stockholders have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the CYS stockholders be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

#### COUNT II

(Against the Individual Defendants for Violations of Section 20(a) of the Exchange Act)

45. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

46. The Individual Defendants acted as controlling persons of CYS within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as directors of CYS, and participation in and/or awareness of the Company's operations and/or intimate knowledge of the incomplete and misleading statements contained in the Registration Statement filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of CYS, including the content and dissemination of the various statements that Plaintiff contends are materially incomplete and misleading.

47. Each of the Individual Defendants was provided with or had unlimited access to copies of the Registration Statement and other statements alleged by Plaintiff to be misleading

prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

48. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of CYS, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the Exchange Act violations alleged herein, and exercised the same. The omitted information identified above was reviewed by the Board prior to voting on the Proposed Transaction. The Registration Statement at issue contains the unanimous recommendation of the Board to approve the Proposed Transaction. The Individual Defendants were thus directly involved in the making of the Registration Statement.

49. In addition, as the Registration Statement sets forth at length, and as described herein, the Individual Defendants were involved in negotiating, reviewing, and approving the Merger Agreement. The Registration Statement purports to describe the various issues and information that the Individual Defendants reviewed and considered. The Individual Defendants participated in drafting and/or gave their input on the content of those descriptions.

50. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

51. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Individual Defendants' conduct, Plaintiff and the CYS stockholders will be irreparably harmed.

52. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's

equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

- A. Enjoining Defendants, their agents, counsel, employees, and all persons acting in concert with them from consummating the Proposed Transaction, unless and until the Company discloses the material information discussed above which has been omitted from the Registration Statement;
- B. Directing the Individual Defendants to account to Plaintiff for all damages suffered as a result of the Individual Defendants wrongdoing;
- C. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and
- D. Granting such other and further equitable relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: June 14, 2018

LEVI & KORSINSKY LLP

By: /s/ Donald J. Enright  
Donald J. Enright (Bar No. 13551)  
Elizabeth K. Tripodi  
1101 30<sup>th</sup> Street, N.W., Suite 115  
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etripodi@zlk.com

Attorneys for Plaintiff



WALTER PENCHUK  
2912 Sweet Brair St.  
Grapevine, TX 76051

Individually and On Behalf of All Others  
Similarly Situated,

Plaintiff,

v.

CYS INVESTMENTS, INC.  
500 Totten Pond Road  
6<sup>th</sup> Floor  
Waltham, Massachusetts  
02451

Serve on the Resident Agent:

The Corporation Trust Incorporated  
2405 York Road  
Suite 201  
Lutherville Timonium, Maryland  
21093-2264,

KEVIN E. GRANT, CFA  
500 Totten Pond Road  
6<sup>th</sup> Floor  
Waltham, Massachusetts  
02451

TANYA S. BEDER  
500 Totten Pond Road  
6<sup>th</sup> Floor  
Waltham, Massachusetts  
02451

KAREN HAMMOND, CFA  
500 Totten Pond Road  
6<sup>th</sup> Floor  
Waltham, Massachusetts  
02451

Date-Stamp  
and Return

IN THE

CIRCUIT COURT

FOR

MONTGOMERY COUNTY,  
MARYLAND

Case No. V449557

**RECEIVED**

**JUN 14 2018**

**Clerk of the Circuit Court  
Montgomery County, Md.**

STEPHEN P. JONAS  
500 Totten Pond Road  
6<sup>th</sup> Floor  
Waltham, Massachusetts  
02451

RAYMOND A. REDLINGSHAFFER, JR.  
500 Totten Pond Road  
6<sup>th</sup> Floor  
Waltham, Massachusetts  
02451

DALE A. REISS  
500 Totten Pond Road  
6<sup>th</sup> Floor  
Waltham, Massachusetts  
02451

JAMES A. STERN  
500 Totten Pond Road  
6<sup>th</sup> Floor  
Waltham, Massachusetts  
02451

and

DAVID A. TYSON, PHD., CFA  
500 Totten Pond Road  
6<sup>th</sup> Floor  
Waltham, Massachusetts  
02451

Defendants.

**STOCKHOLDER CLASS ACTION COMPLAINT**

Plaintiff Walter Penchuk ("Plaintiff"), by his undersigned counsel, brings the following stockholder class action individually and behalf of all stockholders of CYS Investments, Inc. ("CYS" or the "Company") against CYS and the members of the Company's board of directors (collectively referred to as the "Board" or the "Individual Defendants," and, together with CYS, the "Defendants") for breaching their fiduciary duties in connection with the acquisition of CYS

by Two Harbors Investment Corp. (“Two Harbors”) through a transaction as alleged in detail herein. The allegations in this complaint are based on information and belief, including investigation of counsel and a review of publicly-available information, except for Plaintiff’s own acts, which are alleged on personal knowledge.

**NATURE AND SUMMARY OF THE ACTION**

1. CYS is a publicly traded specialty finance company created with the objective of achieving consistent risk-adjusted investment income. The Company seeks to achieve this objective by investing, on a leveraged basis, in residential mortgage pass-through securities for which the principal and interest payments are guaranteed by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or the Government National Mortgage Association, and collateralized by single-family residential mortgage loans. The Company is headquartered in Waltham, Massachusetts.

2. On April 25, 2018, CYS, Two Harbors, and Eiger Merger Subsidiary LLC, a Maryland limited liability company and an indirect, wholly owned subsidiary of Two Harbors (“Merger Sub”), entered into an Agreement and Plan of Merger (the “Merger Agreement”), pursuant to which, subject to the terms and conditions therein, Merger Sub will be merged with and into CYS, with CYS continuing as the surviving corporation and as an indirect, wholly owned subsidiary of Two Harbors (the “Proposed Transaction”).

3. Pursuant to the terms of the Merger Agreement, each outstanding share of CYS commons stock will be converted into the right to receive from Two Harbors (a) a number of shares of Two Harbors common stock equal to the “Exchange Ratio,” determined (to the nearest one-ten-thousandth) by dividing (i) CYS’s adjusted book value per share, multiplied by 96.75%, by (ii) Two Harbors’ adjusted book value per share, multiplied by 94.20%, each as calculated at a



time and pursuant to certain calculation principles set forth in the Merger Agreement, and (b) \$15,000,000 divided by the sum of the number of shares of CYS common stock issued and outstanding immediately prior to the effective time of the Proposed Transaction (excluding any cancelled shares), including outstanding CYS restricted stock that will vest upon completion of the Proposed Transaction pursuant to the Merger Agreement (less any shares surrendered for income tax purposes) (the "Merger Consideration").<sup>1</sup>

4. The Exchange Ratio is not "fixed,"<sup>2</sup> thus, is subject to fluctuation until at least five business days prior to the special meetings of Two Harbors and CYS common stockholders. Had the Board negotiated a "fixed" exchange ratio, Plaintiff and CYS stockholders would have been provided protection against fluctuations in stock price. The deal is expected to close by the end of the third quarter of 2018.

5. As described below, both the consideration CYS' stockholders stand to receive in connection with the Proposed Transaction and the process by which Defendants propose to consummate the Proposed Transaction are fundamentally unfair to Plaintiff and all other public stockholders of the Company.

6. First, the Merger Consideration is inadequate in light of CYS' strong historical financial performance and potential for significant future growth. For example, on October 25, 2017, CYS announced its Third Quarter 2017 Financial Results. Notably, the Company reported

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<sup>1</sup> As of March 31, 2018, the adjusted book values per share for Two Harbors and CYS, on a pro forma basis, would have been \$15.63 and \$7.41, respectively, representing an illustrative Exchange Ratio of 0.4872, with each share of CYS being exchanged for the right to receive 0.4872 shares of Two Harbors (plus the Per Share Cash Consideration).

<sup>2</sup> The actual Exchange Ratio for the Proposed Transaction will be based on each of the parties' adjusted book values per share as of the last day of the month immediately preceding the month in which the conditions to close the Proposed Transaction are reasonably expected to be satisfied (the "Determination Date").

its September 30, 2017 book value per common share of \$8.60, after declaring a \$0.25 dividend per common share, up 3.5% from \$8.31 at June 30, 2017, and GAAP net income (loss) available to common stockholders of \$83.0 million, or \$0.54 per diluted common share.<sup>3</sup> As a result, CYS reported total stockholder return on common equity of 6.50%.

7. On February 7, 2018, Colorado Wealth Management Fund states that “CYS Investments is one of the best mortgage REITs” and, thanks to some of the best management in the sector, stockholders “can get a larger portion of the net interest income.”

8. Subsequently, on February 15, 2018, the Company announced its Fourth Quarter 2017 Financial Results. CYS reported GAAP net income (loss) available to common stockholders of \$160.4 million, as compared to \$(4.4) million in 2016.

9. Second, the \$7.75 implied value of the Per Share Stock Consideration is considerably below CYS’ 52-week trading high of \$8.92 per share, which represents a 13% discount.

10. Third, the members of the Board have further exacerbated their breaches of fiduciary duty by agreeing to lock up the Proposed Transaction with deal protection devices that preclude other bidders from making successful competing offers for the Company. For example, the Board agreed to: (i) a “no-solicitation” provision that prevents the Company from soliciting, initiating, knowingly encouraging or facilitating any inquiries or the making of any proposal or offer with respect to a competing proposal; (ii) an “information rights” provision that grants Two Harbors access to any rival bids, the material terms thereof, and the bidder’s identity; (iii) a “matching rights” provision that provides Two Harbors with three (3) business days to match any

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<sup>3</sup> *CYS Investments, Inc. Announces Third Quarter 2017 Financial Results* (Oct. 25, 2017), available at <https://seekingalpha.com/pr/16980158-cys-investments-inc-announces-third-quarter-2017-financial-results>.

competing proposal in the unlikely event that one emerges; and (iv) a termination fee of \$43.2 million to be paid to Two Harbors if the Company's Board agrees to a competing proposal. These provisions conjunctively and improperly restrain the Board's ability to act with respect to investigating and pursuing superior proposals and alternatives to the Proposed Transaction.

11. On May 25, 2018, in order to convince CYS' public common stockholders to vote in favor of the Proposed Transaction, Defendants authorized the filing of a materially incomplete and misleading Registration Statement on a Form S-4 (the "Proxy") with the SEC.

12. However, the Proxy contains materially incomplete and misleading information concerning: (i) financial projections for CYS, Two Harbors, and the Pro Forma Combined Entity; (ii) the valuation analyses conducted by the Company's financial advisors, Barclays Capital Inc. ("Barclays") and Credit Suisse Securities (USA) LLC ("Credit Suisse," and together with Barclays, the "CYS Advisors"), and Two Harbors' financial advisor, JMP Securities LLC ("JMP"); (iii) the background process leading up to the Proposed Transaction; and (iv) the potential conflicts of interest Barclays faced as a result of its historical dealings with CYS and Two Harbors.

13. In sum, Defendants failed to maximize stockholder value and to protect the interests of CYS stockholders. Instead, Defendants engaged in a process that was designed to benefit Two Harbors and secure material personal benefits for themselves. Each of the Director Defendants has breached his fiduciary duties by favoring Two Harbors' or their own financial interests over those of CYS and its public, non-insider stockholders. As a result, Plaintiffs and the other public stockholders are receiving an unfair price in the Proposed Transaction and lack the necessary and material information to consider it.

14. In facilitating the Proposed Transaction for inadequate consideration and through

a flawed process, each of the Defendants breached and/or aided the other Defendants' breaches of their fiduciary duties. As set forth below, instead of working to maximize stockholder value as required, Defendants agreed to hand over the Company and its future prospects to Two Harbors for a demonstrably unfair price. If Defendants are able to consummate the Proposed Transaction, CYS' public stockholders will not receive the true value of their investment. The Merger Consideration does not reflect CYS' intrinsic value or the value of the Company as the target of a full and fair sale process.

15. For these reasons and as set forth in detail herein, Plaintiffs seek to enjoin the Proposed Transaction, or, in the event the Proposed Transaction is consummated, recover damages resulting from the Individual Defendants' violations of their fiduciary duties.

#### **PARTIES**

16. Plaintiff is, and has been at all times relevant hereto, a common stockholder of CYS.

17. Defendant CYS is a Maryland corporation with its principal executive offices located at 890 Winter Street, Suite 200 Waltham, Massachusetts 02451-1470.

18. Defendant Kevin E. Grant, CFA ("Grant") is, and has been at all relevant times, a director of CYS, and currently served as the Chief Executive Officer ("CEO") and President of the Company and Chairman of the Board.

19. Defendant Tanya S. Beder ("Beder") is, and has been at all relevant times, a director of CYS.

20. Defendant Karen Hammond, CFA ("Hammond") is, and has been at all relevant times, a director of CYS.

21. Defendant Stephanie P. Jonas ("Jonas") is, and has been at all relevant times, a

director of CYS.

22. Defendant Raymond A. Redlingshafer, Jr. ("Redlingshafer") is, and has been at all relevant times, a director of CYS.

23. Defendant Dale A. Reiss ("Reiss") is, and has been at all relevant times, a director of CYS.

24. Defendant James A. Stern ("Stern") is, and has been at all relevant times, a director of CYS.

25. Defendant David A. Tyson, PhD., CFA ("Tyson") is, and has been at all relevant times, a director of CYS.

26. The parties in paragraphs 18 through 25 are collectively referred to herein as the "Board" or the "Individual Defendants," and together with CYS, the "Defendants."

#### **JURISDICTION AND VENUE**

27. The damages suffered and sought to be recovered by Plaintiff and the Class is an amount in excess of \$75,000.

28. This Court has jurisdiction over this matter because each Defendant either conducts business in or maintains operations in Montgomery County, Maryland or is an individual who has sufficient minimum contacts with Montgomery County, Maryland so as to render the exercise of jurisdiction by the Maryland courts permissible under traditional notions of fair play and substantial justice.

29. Venue is proper in this Court pursuant to Maryland Courts and Judicial Procedure § 6-201 (a) and (b) because CYS is organized and existing under the laws of the State of Maryland.

#### **THE FIDUCIARY DUTIES OF THE INDIVIDUAL DEFENDANTS**

30. By reason of the Individual Defendants' positions with the Company as officers

and/or directors, they are in a fiduciary relationship with Plaintiff and the other public stockholders of CYS and, pursuant to Md. Code Ann., Corp. & Ass'ns § 2-405.1(c), owe CYS stockholders a duty of good faith, loyalty, and care.

31. By virtue of their positions as directors and/or officers of CYS, the Director Defendants, at all relevant times, had the power to control and influence CYS, did control and influence CYS, and caused CYS to engage in the practices complained of herein.

32. The duties of good faith, loyalty, and care require directors to act in the best interests of stockholders and maximize stockholder value.

33. To diligently comply with their fiduciary duties, the Individual Defendants may not take any action that: (a) adversely affects the value provided to the Company's stockholders; (b) favors themselves or discourages or inhibits alternative offers to purchase control of the corporation or its assets; (c) adversely affects their duty to search and secure the best value reasonably available under the circumstances for the Company's stockholders; (d) will provide the Individual Defendants with preferential treatment at the expense of, or separate from, the public stockholders; and/or (e) contractually prohibits the Individual Defendants from complying with or carrying out their fiduciary duties.

34. In accordance with their duties of loyalty and good faith, the Individual Defendants are obligated to refrain from: (a) participating in any transaction where the Individual Defendants' loyalties are divided; (b) participating in any transaction where the Individual Defendants receive, or are entitled to receive, a personal financial benefit not equally shared by the public stockholders of the corporation; and/or (c) unjustly enriching themselves at the expense or to the detriment of the public stockholders.

35. Plaintiffs allege herein that the Individual Defendants, separately and together, in

connection with the Proposed Transaction, are knowingly or recklessly violating their fiduciary duties, including their duties of good faith, loyalty, and care owed to the Company.

36. The duties of good faith, loyalty, and care also require directors to disclose all material information to stockholders when soliciting stockholder approval for a transaction.

37. Here, the Individual Defendants failed to disclose all the material facts concerning the Proposed Transaction and, particularly, the fairness of the price offered for the stockholders' equity interest. The Individual Defendants are knowingly or recklessly breaching their fiduciary duty of candor by failing to disclose all material information concerning the Proposed Transaction.

#### **CLASS ACTION ALLEGATIONS**

38. Plaintiff brings this action on his own behalf and as a class action pursuant to Maryland Rule 2-231, on behalf of all holders of CYS common stock who are being and will be harmed by Defendants' actions described below (the "Class"). Excluded from the Class are Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants.

39. This action is properly maintainable as a class action because:

- (a) The Class is so numerous that joinder of all members is impracticable. As of April 27, 2018, there were approximately 155.44 million shares of CYS common stock legally outstanding. The holders of these shares are believed to be geographically dispersed throughout the United States;
- (b) There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. The common questions include, *inter alia*, the following:
  - 1) Have the Individual Defendants breached their fiduciary duties owed to

Plaintiff and the other members of the Class in connection with the Proposed Transaction;

- 2) Have the Individual Defendants engaged in self-dealing in connection with the Proposed Transaction;
  - 3) Have the Individual Defendants unjustly enriched themselves and other insiders or affiliates of the Company in connection with the Proposed Transaction;
  - 4) Have the Individual Defendants impeded or erected barriers to discourage other strategic alternatives including potential third party offers for the Company or its assets;
  - 5) Will Plaintiff and the other members of the Class be irreparably harmed if the transactions complained of herein are consummated; and
  - 6) Is the Class entitled to injunctive relief or damages as a result of Defendants' wrongful conduct.
- (c) Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other Class members and Plaintiff has the same interests as the other members of the Class. Accordingly, Plaintiff is an adequate representative for the Class and will fairly and adequately protect the interests of the Class;
- (d) The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible



standards of conduct for Defendants, or adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; and

- (e) Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

### **SUBSTANTIVE ALLEGATIONS**

#### **I. Summary of the Proposed Transaction**

40. On April 26, 2018, CYS and Two Harbors issued a joint press release announcing the Proposed Transaction. The press release stated, in relevant part:

**Two Harbors Investment Corp. Announces Definitive Agreement to  
Acquire CYS Investments, Inc.**

**New York, April 26, 2018 – Two Harbors Investment Corp. (NYSE: TWO)** (“Two Harbors”), a leading hybrid mortgage real estate investment trust (“REIT”), and CYS Investments, Inc. (NYSE: CYS) (“CYS”), an Agency mortgage REIT, announced today that they have entered into a definitive merger agreement under which Two Harbors will acquire CYS.

In connection with the merger, CYS stockholders will exchange their shares of CYS common stock for newly issued shares of Two Harbors common stock as well as aggregate cash consideration of \$15,000,000. The number of Two Harbors shares issued will be based on an exchange ratio to be determined by dividing 96.75% of CYS’ adjusted book value per share by 94.20% of Two Harbors’ adjusted book value per share. For illustrative purposes, assuming the merger occurs and the exchange ratio was based on March 31, 2018 adjusted book value per share, CYS stockholders would receive \$7.79 of combined cash and stock consideration per share of CYS common stock owned, which represents a premium of approximately 17.7% over the CYS closing price per share on April 25, 2018. The actual exchange ratio for the merger will be publicly announced at least five business days prior to the required stockholder votes on the merger.

Two Harbors and CYS will hold a joint conference call at 9:00 A.M. Eastern Time on April 26, 2018 to discuss the merger. To participate in the teleconference, please call toll-free (877) 868-1835, Conference Code 7197703, (or (914) 495-8581 for international callers) approximately 10 minutes prior to the above start time. You may also listen to the teleconference live via the Internet and review related materials at [www.twoharborsinvestment.com](http://www.twoharborsinvestment.com) in the Investor Relations section under the Events and Presentations link.

#### **Anticipated Benefits to Two Harbors Stockholders from the Merger**

- **Additional capital supports continued growth in target assets:** A larger capital base will support the continued growth across Two Harbors' target assets, and positions Two Harbors to take advantage of market opportunities as they arise.
- **Improved cost structure:** Expect that the combination of Two Harbors and CYS will create cost efficiencies and decrease Two Harbors' other operating expense ratio by 30 to 40 basis points. Additionally PRCM Advisers' agreement to reduce its base management fee on the new CYS equity will further enhance operating cost efficiencies in the year following the close of the transaction.
- **Expect to maintain \$0.47 per share quarterly dividend:** Following the close of the transaction, Two Harbors anticipates that its current quarterly dividend of \$0.47 will be sustainable through 2018, subject to market conditions and the discretion and approval of Two Harbors' Board of Directors.
- **Enhanced scale and liquidity with potential for premium valuation:** With a pro forma equity base of nearly \$5.0 billion, Two Harbors stockholders will benefit from the scale, liquidity and capital alternatives of a larger combined company. Additionally, larger capitalized mortgage REITs have historically carried premium valuations.
- **Anticipate improved Agency spreads in 2018:** If so, Two Harbors believes this deal will be accretive to earnings and endorses the capital raising attendant to this transaction.

#### **Anticipated Benefits to CYS Stockholders from the Merger**

- **Enhanced scale and liquidity:** CYS stockholders will benefit from increased operating scale, liquidity and capital alternatives available to a larger combined company.
- **Meaningful premium to CYS stockholders:** Based on March 31, 2018

adjusted book values per share, CYS stockholders would receive \$7.79 of combined cash and stock consideration per share of CYS common stock, which represents a premium of approximately 17.7% over the CYS closing price per share on April 25, 2018.

- **Benefit from a more diversified business model:** Two Harbors' hybrid business model is positioned to withstand periods of market volatility and is comprised of a mix of asset classes and a platform that is challenging to replicate. Two Harbors' portfolio includes a Rates strategy comprised of Agency RMBS paired with mortgage servicing rights ("MSR"), and a Credit strategy, comprised primarily of deeply discounted, legacy non-Agency RMBS.
- **Strong stewards of capital:** Two Harbors has a history of being strong stewards of its stockholders' capital. Since 2009, Two Harbors has outperformed its peer group and has grown its book value with less volatility. Additionally, Two Harbors has a stock repurchase program in place to support its stock.

#### **About the Merger**

Upon the closing of the merger, CYS stockholders will exchange their shares of CYS common stock for newly issued shares of Two Harbors common stock as well as aggregate cash consideration of \$15,000,000, payable to CYS stockholders on a pro rata basis.

The number of Two Harbors shares to be received by CYS stockholders will be based on an exchange ratio to be determined by dividing 96.75% of the CYS adjusted book value per share by 94.20% of the Two Harbors adjusted book value per share. As defined in the Merger Agreement, adjusted book value per share for each company means (i) such company's total consolidated common stockholders' equity after giving pro forma effect to any dividends or other distributions for which the record date is after the exchange ratio determination date but prior to the closing of the merger and as modified for potential transaction-related adjustments, divided by (ii) each respective company's number of shares of common stock issued and outstanding, including shares issuable upon the vesting of restricted stock.

As of March 31, 2018, the adjusted book value per share for Two Harbors and CYS, on a pro forma basis, would have been \$15.63 and \$7.41, respectively, representing an exchange ratio of 0.4872x, with each share of CYS being exchanged for 0.4872 shares of Two Harbors. For illustrative purposes, under a pro forma exchange ratio, assuming the merger occurs and the exchange ratio was calculated as of March 31, 2018, CYS stockholders would receive approximately 75.7 million Two Harbors shares (representing approximately 30% of the Two Harbors' total outstanding shares immediately following the

merger), which, in combination with the cash consideration of \$15,000,000, would value CYS at approximately \$7.79 per share of common stock. This valuation represents a premium of approximately 17.7% above the closing price per share of CYS common stock on the New York Stock Exchange on April 25, 2018.

The actual exchange ratio for the merger will be publicly announced at least five business days prior to the required stockholder votes on the merger.

In connection with the merger, PRCM Advisers LLC, Two Harbors' external manager, a subsidiary of Pine River Capital Management L.P., has agreed to reduce the base management fee it charges Two Harbors with respect to the additional equity under management resulting from the merger from 1.5% of Stockholders' Equity on an annualized basis to 0.75% through the first anniversary of the closing of the merger. PRCM Advisers LLC will also make a one-time downward adjustment of \$15,000,000 to the management fees payable by Two Harbors for the quarter in which the merger closes. PRCM Advisers has also agreed to a post-closing downward adjustment of up to \$3.3 million to reimburse Two Harbors for certain transaction related expenses.

In addition to the above consideration, Two Harbors would assume the existing notional \$75 million in CYS 7.75% Series A cumulative redeemable preferred stock and \$200 million in CYS 7.50% Series B cumulative redeemable preferred stock.

Following the closing of the transaction, all senior management positions will continue to be led by Two Harbors' personnel and Two Harbors Board of Directors will be expanded to include two additional independent directors from CYS Investments' current board, James Stern and Karen Hammond.

The completion of the merger is subject to the satisfaction of certain customary conditions, and is subject to the approval of the stockholders of both Two Harbors and CYS. The companies expect the transaction to close in the third quarter of 2018.

"We are pleased to announce the acquisition of CYS Investments, which we believe represents a unique opportunity to create value for our stockholders," stated Thomas Siering, Two Harbors' President and Chief Executive Officer. "This transaction offers Two Harbors stockholders the opportunity to benefit from additional capital, supporting continued growth in our target assets, as well as an improved cost structure. The combination of the two companies also supports the potential for the premium valuation of a pro forma Two Harbors."

"We are excited about the opportunity to merge with Two Harbors and believe that our stockholders will benefit from the increased scale, diversification and liquidity of the combined companies," stated Kevin Grant, CYS Investments'

Chairman, Chief Executive Officer, President and Chief Investment Officer. “Two Harbors has a long history of being strong stewards of capital and we believe this transaction should enhance value for our stockholders over the long-term.”

JMP Securities LLC is serving as financial advisor, and Sidley Austin LLP is serving as legal advisor to Two Harbors. Barclays Capital Inc. and Credit Suisse Securities (USA) LLC are serving as financial advisors, and Vinson & Elkins LLP is serving as legal advisor to CYS.<sup>4</sup>

## **II. The Unfair Deal Protection Provisions Deter Superior Offers**

41. Furthermore, and in violation of the duty to maximize stockholder value, the Board agreed to terms in the Merger Agreement that are designed to ensure that the Proposed Transaction is consummated without interference from alternative bidders.

42. For example, the Merger Agreement includes a “no solicitation” provision which prohibits the Company or the Defendants from taking any affirmative action to comply with their fiduciary duties to obtain the best price possible under the circumstances. This provision states that the Company and the Defendants must immediately cease any discussions or negotiations concerning a superior proposal with any potential suitors, and may not solicit, initiate, encourage, or facilitate any alternative acquisition proposal.

43. Furthermore, the Merger Agreement grants Two Harbors recurring and unlimited matching rights, which provides Two Harbors with: (i) unfettered access to confidential, non-public information about competing proposals (*i.e.*, the material terms thereof and the bidder’s identify) from third parties which it can use to prepare a matching bid; and (ii) three (3) business days to negotiate with CYS, amend the terms of the Merger Agreement, and make a counter-offer in the event a superior offer is received.

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<sup>4</sup> CYS Investments, Inc., Current Report (Form 8-K), at Exhibit 99.1 (Joint Press release, dated April 26, 2018) (April 26, 2018).

44. Additionally, the Merger Agreement provides that CYS must pay Two Harbors a termination fee of \$43.2 million in the event the Company elects to terminate the Merger Agreement to pursue a superior proposal.

45. Ultimately, these deal protection provisions restrain the Board's ability to solicit or engage in negotiations with any third party regarding a potentially superior proposal to acquire the Company, and operate conjunctively to ensure that a superior bidder will not emerge.

### **III. The False and Misleading Proxy**

46. On May 25, 2018, Two Harbors filed the Proxy. The Proxy was intended to convince CYS stockholders to vote in favor of the Proposed Transaction. The Proxy denies the Company's stockholders material information concerning the financial and procedural fairness of the Proposed Transaction. Without such information, CYS stockholders cannot make a fully informed decision about whether to vote in favor of the Proposed Transaction

#### ***Material Omissions Concerning CYS' Financial Projections***

47. First, the Proxy provides one non-GAAP (generally accepted accounting principles) financial metric for CYS—Core Earnings Per Common Share—but fails to disclose the line-item projections for the specific metrics, adjustments, and/or inputs that are used to calculate the Non-GAAP financial measure or provide a reconciliation of the Non-GAAP measures to the most directly comparable GAAP financial measure, such as Net Income. *See* Proxy at 113-114.

48. The Proxy defines Core Earnings Per Common Share as “net income (loss) available to common stockholders excluding net realized and unrealized gain (loss) on investments and derivative instruments,” but fails to disclose CYS' projected: (i) net income (loss); and (ii) net realized and unrealized gain (loss) on investments and derivative instruments. *See* Proxy at 113-

114.

49. The failure to disclose the line-item projections that compose CYS' Core Earnings Per Common Share renders the Proxy materially incomplete and misleading because non-GAAP numbers are inherently misleading. Contrary to GAAP metrics, non-GAAP figures are not standardized and, consequently, can be manipulated and easily taken out of context. Because non-GAAP measures, such as Core Earnings Per Common Share, can be measured in different ways, it is inherently misleading when it is not taken in context with GAAP figures, such as Net Income or Operating Income, or reconciled alongside its line-items inputs.

50. In fact, page 114 of the Proxy concedes that non-GAAP metrics are inherently misleading for this exact reason:

Core earnings represents a non-GAAP financial measure...In addition, CYS's presentation of core earnings *may not be comparable to similarly-titled measures used by other companies, which may employ different calculations. As a result, core earnings should not be considered a substitute for CYS's GAAP net income (loss)*, as a measure of its financial performance, or any measure of CYS's liquidity under GAAP.

51. Furthermore, the Proxy entirely fails to disclose CYS' projected dividends and cash flows for the last three quarters of the calendar year ending December 31, 2018 through the calendar year ending December 31, 2020, despite the fact that they existed and were provided to and relied upon by the CYS Advisors when rendering their fairness opinions. See Proxy at 98-99, 107.

***Material Omissions Concerning Two Harbors' Financial Projections***

52. Second, the Proxy also fails to disclose the line-item projections that compose Two Harbors' Core Earnings Per Common Share. See Proxy at 111. However, the Proxy defines Two Harbors' Core Earnings Per Common Share as:

[C]omprehensive (loss) income attributable to common stockholders, excluding

"realized and unrealized gains and losses" (impairment losses, realized and unrealized gains and losses on the aggregate portfolio, reserve expense for representation and warranty obligations on mortgage servicing rights and non-cash compensation expense related to restricted common stock). As defined, Core Earnings includes interest income or expense and premium income or loss on derivative instruments and servicing income, net of estimated amortization on mortgage servicing rights. Dollar roll income is the economic equivalent to holding and financing Agency residential mortgage-backed securities using short-term repurchase agreements.

*Id.* However, the Proxy fails to disclose Two Harbors' projected: (i) comprehensive (loss) income attributable to common stockholders; (ii) realized and unrealized gains and losses; (iii) interest income or expense; and (iv) premium income or loss on derivative instruments and servicing income, net of estimated amortization on mortgage servicing rights.

53. Consequently, the Proxy demonstrates that there are considerable differences between how CYS and Two Harbors calculate the *same* non-GAAP financial metric—Core Earnings Per Common Share—and, as a result, how non-GAAP metrics can be inherently misleading and the failure to provide the line items that compose each company's respective calculation render the Proxy materially incomplete and misleading.

54. In addition, the Proxy entirely fails to disclose Two Harbors' projected dividends and cash flows for the last three quarters of the calendar year ending December 31, 2018 through the calendar year ending December 31, 2020, despite the fact that they existed and were provided to and relied upon by the CYS Advisors when rendering their fairness opinions. *See* Proxy at 98-99, 107.

55. Additionally, the failure to provide CYS stockholders materially complete and accurate financial projections for Two Harbors is particularly important in light of the fact that the Board has asked CYS stockholders to approve the Proposed Transaction, pursuant to which the Merger Consideration will be composed of stock in another company: Two Harbors. Accordingly,



materially complete and accurate Two Harbors' projections must be provided to CYS stockholders for them to be able to evaluate the future prospects of Two Harbors and in order to assess the fairness of the Merger Consideration.

56. By electing to disclose *some* of CYS and Two Harbors' projections, Defendants' obligated themselves to speak the *whole truth* regarding CYS and Two Harbors' projections by providing *complete and accurate* projections because if a proxy discloses financial projections and valuation information, such *projections must be complete and accurate*, rather than cherry-picking favorable financial metrics to disclose. The question here is not the duty to speak, but liability for not having spoken enough. With regard to future events, uncertain figures, and other so-called soft information, a company may choose silence or speech elaborated by the factual basis as then known—but it may not choose half-truths.

***Material Omissions Concerning Pro Forma Financial Projections***

57. Third, the Proxy wholly fails to disclose the Pro Forma Projections, in particular the projected dividends and cash flows for the last three quarters of the calendar year ending December 31, 2018 through the calendar year ending December 31, 2020, despite the fact that that they that they existed and were provided to and relied upon by the CYS Advisors and JMP when rendering their respective fairness opinions. *See* Proxy at 92-101, 107. Such information is material to CYS stockholders in light of the fact that they are being asked to vote on the Proposed Transaction, which, if completed, would result in former CYS common stockholders only owning in the aggregate *approximately 30%* of the post-close, combined business.

***Material Omissions Concerning the CYS Advisors' Financial Analyses***

58. With respect to Barclays' *Dividend Discount Analysis* for CYS, the Proxy fails to disclose the fundamental input underlying the entire analysis: the estimated dividends expected to

be paid by CYS stockholders for the calendar year ending December 31, 2018 through the calendar year ending December 31, 2020. *See Proxy at 98.*

59. Likewise, with respect to Barclays' *Dividend Discount Analysis* for Two Harbors, the Proxy fails to disclose the fundamental input underlying the analysis: the estimated dividends expected to be paid by Pro Forma Two Harbors during the last two quarters of the calendar year ending December 31, 2018 through the calendar year ending December 31, 2020 (based on the Pro Forma Projections). *Id.*

60. Similarly, with respect to Credit Suisse's *Dividend Discount Analysis* for CYS, the Proxy fails to disclose the cash flows that CYS was forecasted to generate during the last three quarters for the fiscal year ending December 31, 2018 through the full fiscal year ending December 31, 2020 based on the CYS Projections. *See Proxy at 107.*

61. In addition, with respect to Credit Suisse's *Dividend Discount Analysis* for Two Harbors, the Proxy fails to disclose the cash flows that Two Harbors was forecasted to generate during the last three quarters for the fiscal year ending December 31, 2018 through the full fiscal year ending December 31, 2020 based on the Two Harbors Projections. *See Proxy at 107.*

62. CYS and Two Harbors' projected dividends and cash flows are material to CYS' common stockholders, and their omission renders the summary of each of the *Dividend Discount Analysis* conducted by the CYS Advisors, for both CYS and Two Harbors, materially incomplete and misleading. As a highly-respected professor explained in one of the most thorough law review articles regarding the fundamental flaws with the valuation analyses bankers perform in support of fairness opinions, "there is [] an element of subjectivity present in the choice and application of these [valuation] methods" and that the banker's key choices can have a substantial "effect the outcome of a valuation." Steven M. Davidoff, *Fairness Opinions*, 55 Am. U.L. Rev. 1557, 1573-

74 (2006). Such choices include “the appropriate discount rate, and the terminal value...” *Id.*

With respect to a discounted cash flow analysis, Professor Davidoff explains:

There is substantial leeway to determine each of these, and any change can markedly affect the discounted cash flow value. For example, a change in the discount rate by one percent on a stream of cash flows in the billions of dollars can change the discounted cash flow value by tens if not hundreds of millions of dollars.... This issue arises not only with a discounted cash flow analysis, but with each of the other valuation techniques. This dazzling variability makes it difficult to rely, compare, or analyze the valuations underlying a fairness opinion unless full disclosure is made of the various inputs in the valuation process, the weight assigned for each, and the rationale underlying these choices. The substantial discretion and lack of guidelines and standards also makes the process vulnerable to manipulation to arrive at the “right” answer for fairness. This raises a further dilemma in light of the conflicted nature of the investment banks who often provide these opinions.

*Id.* at 1577-78.

63. Similar to a discounted cash flow analysis, where the value of a business is based on its projected future free cash flows and then discounted to their present value estimate, the CYS Advisors’ *Dividend Discount Analysis* evaluated the present value of CYS and Two Harbors’ projected dividends and cash flows. However, just as withholding a company’s unlevered free cash flows in a discounted cash flow analysis constitutes a material omission, the Proxy failed to disclose CYS and Two Harbors projected dividends and cash flows.

64. With respect to Barclays’ *Selected Comparable Company Analysis*, the Proxy fails to disclose the individual multiples Barclays utilized for each of the companies considered in the analysis. See Proxy at 95-97. A fair summary of the *Selected Comparable Company Analysis* requires the disclosure of the individual multiples for each company utilized; providing the top quartile, median, and bottom quartile multiples that a banker applied to render CYS and Two Harbors’ implied price per share ranges is insufficient, as the Company’s stockholders are unable to assess whether the banker applied the appropriate multiples, or, instead, applied unreasonably

low multiples in order to drive down the implied valuation of the Company. Accordingly, the omission of the individual multiples renders the summary of these analyses set forth on pages 95 through 97 of the Proxy materially incomplete and misleading.

65. Similarly, the Proxy fails to disclose the individual multiples evaluated in Barclays' *Selected Precedent Transactions Analysis* and Credit Suisse's *Selected Public Companies Analysis* and *Selected Precedent Transaction Analysis*. See Proxy at 97, 103-106. For the same reasons discussed above, the omission of the individual multiples renders the summary of each analysis and its implied per share equity value range misleading.

66. With respect to Barclays' *Historical Trading* analysis, the Proxy fails to disclose the performance of the following companies' stock performance: Armour Residential REIT Inc.; Annaly Capital Management, Inc.; AGNC Investment Corp.; Capstead Mortgage Corporation; and Anworth Mortgage Asset Corporation (collectively, the "Index"). See Proxy at 99. Similar to reasons mentioned above, the failure to disclose the individual percentages for the Index companies renders the summary of Barclays' *Historical Trading* analysis materially incomplete and misleading, as CYS stockholders are unable to assess whether the banker considered the appropriate companies, or, instead, evaluated certain companies in order to make the Merger Consideration appear more favorable than it actually is.

67. With respect to Barclays' *Analyst Target Prices* analysis, the Proxy fails to disclose how many analysts were evaluated, in addition to their identities and individual price targets for CYS and Two Harbors. See Proxy at 99. A fair summary of this analysis requires disclosure of this information. Merely providing the range of the analysts' price targets renders the illustrative range of price targets and the implied premium for such price targets insufficient, as CYS stockholders unable to assess whether Barclays utilized credible research analysts or, instead,

referenced certain analysts in order to intentionally manipulate the range of price targets and the implied premium for such price targets and, as a result, make the Merger Consideration appear more favorable. The omission of the identities of each analyst and their individual price targets renders the summary of Barclays' *Analyst Target Prices* materially incomplete and misleading.

68. Similarly, with respect to Credit Suisse's *Certain Additional Information* section, the Proxy fails to disclose how many analysts were evaluated, in addition to their identities and individual price targets for CYS and Two Harbors. See Proxy at 108. For the same reasons mentioned above, the omission of this information renders Credit Suisse's *Certain Additional Information* materially misleading and incomplete.

***Material Omissions Concerning the JMP's Financial Analyses***

69. With respect to JMP's *Dividend Discount Analysis* for CYS, the Proxy fails to disclose the fundamental input underlying the entire analysis: the projected dividends that CYS was forecasted to generate from March 31, 2018 through calendar year 2020. See Proxy at 90-91. For the same reasons mentioned in paragraphs 58 through 63, the omission of CYS' projected dividends renders the summary of JMP's *Dividend Discount Analysis* materially incomplete and misleading.

70. The Proxy also fails to disclose the individual multiples evaluated in JMP's *Selected Public Companies Comparable Data*, *Premiums Paid Analysis*, *Selected Public Companies Analysis*, and *Selected Precedent M&A Transactions Analysis*. See Proxy at 87-90. For the same reasons discussed in paragraphs 64 through 65, the omission of the individual multiples renders the summary of each analysis and its implied per share equity value range misleading.

71. Additionally, with respect to JMP's *Other Information* section, the Proxy fails to

disclose how many analysts JMP evaluated, in addition to their identities and individual price targets for CYS. See Proxy at 91. For the same reasons mentioned in paragraph 67, the omission of this information renders JMP's *Other Information* section materially misleading and incomplete.

***Material Omissions Concerning Barclay's Potential Conflict of Interest***

72. The Proxy also fails to disclose or misstate material information relating that materially misleads stockholders as to the potential conflicts of interest faced by the Board and Barclays.

73. In particular, the Proxy discloses information concerning the past dealings between Barclays, CYS and Two Harbors, but fails to disclose how much compensation Barclays received or expects to receive from any work it has performed for CYS and Two Harbors in the past. See Proxy at 100. Such information is material to CYS stockholders.

74. Indeed, it is imperative for stockholders to be able to understand what factors might influence the financial advisor's analytical efforts. A financial advisor's own proprietary financial interest in a proposed merger must be carefully considered in assessing how much credence to give its analysis. A reasonable stockholder would want to know what important economic motivations that the advisor, employed by a board to assess the fairness of the merger to the stockholders, might have. Especially when that motivation could rationally lead the advisor to favor a deal at a less than optimal price, because the procession of a deal was more important to him, given his overall economic interest, than only approving a deal at truly fair price to stockholders. The failure to quantify Barclays' previous compensation received in connection with the work is has performed for CYS and Two Harbors renders the Proxy materially incomplete and misleading.

***Material Omissions Concerning the Background of the Proposed Transaction***

75. With respect to the *Background of the Merger*, the Proxy states that CYS entered into non-disclosure agreements with “seven of the eight potential bidders” (the “Interested Parties”) in March 2018 which contained “customary standstill provisions.” See Proxy at 68. However, the Proxy fails to disclose whether such standstill provision contained a “don’t ask don’t waive” (“DADW”) provision, including whether those provisions had fallen away upon the execution of the Merger Agreement or were still in effect. The failure to disclose the existence of DADW provisions creates the false impression that any of the Interested Parties who signed non-disclosure agreements could have made a superior proposal. But that is not true. If those non-disclosure agreements contained DADW provisions, the Interested Parties could only make a superior proposal by breaching their respective agreement, because in order to make the superior proposal, they would have to ask for a waiver, either directly or indirectly. Thus, the omission of this information renders the references to the non-disclosure agreements in the Proxy materially incomplete and therefore misleading as any reasonable stockholder would deem the fact that the most likely potential topping bidders in the marketplace may be precluded from making a superior offer to significantly alter the total mix of information.

76. Finally, on February 13, 2018, the Board formed a special committee (the “Special Committee”) that was comprised of three individuals—Stern, Hammond, and Beder—to avoid the possibility of any conflicts of interests that could arise during the sales process. Moreover, the CYS Board:

delegated to the CYS Special Committee the power and authority to, among other things, (i) review, evaluate and, if advisable, negotiate the terms and provisions of any transaction involving a change of control of CYS, (ii) determine whether any such potential transaction is fair to, and in the best interests of, CYS and its stockholders, and (iii) make a recommendation to the CYS Board to approve or disapprove of any such proposed transaction. No

conflict with Mr. Grant materialized during the process and the Special Committee functioned as a transaction committee throughout the process.

See Proxy at 66.

77. Concerningly, the Proxy later states:

The Merger Agreement provides that, upon and immediately after the effective time of the Merger, the board of directors of the Combined Company will be increased to eleven members and will include all the current nine directors of the Two Harbors Board and *two additional independent directors from the CYS Board: James A. Stern and Karen Hammond.*

See Proxy at 114 (emphasis added).

78. However, the *Background of the Merger* section of the Proxy fails to disclose information concerning when Stern and Hammond were being considered for post-close employment on the combined entity's board of directors. This is particularly troublesome in light of the fact that both Stern and Hammond served on the Special Committee, which was charged with the specific responsibility to evaluate and negotiate any potential change of control transaction affecting CYS *and* to ensure that such potential transaction was in the best interests of CYS and CYS' stockholders.

79. This information is vital to CYS' stockholders so that they may understand the conflicts of interest facing management, the Board, and Special Committee. The timing and nature of post-close employment provides key insight concerning motivations that would prevent fiduciaries from acting solely in the best interests of the Company's stockholders. If the Board negotiated for their own interests ahead of stockholder compensation, stockholders would certainly find such information material.

80. In sum, the Board failed to obtain reasonable consideration for CYS' stockholders, agreed to onerous deal protection provisions that will likely prevent the emergence of a superior offer, and relied upon advice from a Special Committee comprised of two individuals that may



have been incapable of impartially analyzing the fairness of the Proposed Transaction to the Company's stockholders. The Board has thus prevented Plaintiff and the Class from being adequately compensated for their CYS shares. Accordingly, Plaintiff seeks injunctive and other equitable relief to prevent the irreparable injury that Company stockholders will continue to suffer absent judicial intervention.

### **COUNT I**

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

82. The Individual Defendants owe the Class the fiduciary duties of care, loyalty, good faith, candor, and maximization of stockholder value. By virtue of their positions as directors and/or officers of the Company and/or their exercise of control and ownership over the business and corporate affairs of the Company, the Individual Defendants have, and at all relevant times had, the power to control and influence, and did control and influence and cause the Company to engage in the practice complained of herein. Each of the Individual Defendants was required to (i) use their ability to control and manage the Company in a fair, just, and equitable manner and (ii) act in furtherance of the best interest of CYS and its stockholders and not their own.

83. The Individual Defendants are obligated, in accordance with their fiduciary duties as set forth by Md. Code Ann., Corp. & Ass'ns § 2-405.1(c), to ensure that any sale of the Company is accomplished by a process that will maximize the consideration CYS' stockholders receive.

84. By reason of the foregoing acts, practices, and courses of conduct, the Individual Defendants have failed to exercise and fulfill their fiduciary obligations toward Plaintiff and the other members of the Class. The Individual Defendants failed to take reasonable steps to obtain and/or ensure that CYS stockholders receive adequate consideration for their shares, agreed to

restrictive deal protection devices that deter other suitors from making a superior bid for the Company, relied upon a conflicted Special Committee to evaluate the fairness of the Proposed Transaction to CYS' stockholders, and likely placed their personal financial interests ahead of those of the Company's stockholders.

85. As a result of the actions by the Individual Defendants, Plaintiff and the Class have been, and will be, irreparably harmed in that they have not, and will not, receive their fair portion of the value of CYS' assets and businesses, and will be prevented from obtaining a fair price for their common stock.

86. Unless enjoined by this Court, the Individual Defendants will continue to breach their fiduciary duties owed to Plaintiff and the members of the Class and may consummate the Proposed Transaction to the disadvantage of CYS' public stockholders.

87. Plaintiff and the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

## **COUNT II**

### **On Behalf of Plaintiff and the Class Against All Defendants For Declaratory Relief Pursuant to Courts and Judicial Proceedings Article of the Annotated Code of Maryland § 3-401, *et seq.***

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

89. Defendants breached their fiduciary duties owed directly to Plaintiff and the Class in connection with the Proposed Transaction, and are liable therefore.

90. As a result of Defendants' conduct as herein alleged, Plaintiff and the other members of the Class have suffered and/or will, in the future, suffer damages and harm, including harm for which they have no adequate remedy at law.

91. Pursuant to Courts and Judicial Proceedings Article of the Annotated Code of Maryland § 3-412, Plaintiff demands a declaration that: (a) the stockholders should not be asked to vote on the Proposed Transaction, and that such vote should be enjoined; (b) the Defendants and each of them have breached their fiduciary duties owed directly to Plaintiff and the Class; (c) the Proposed Transaction was entered into in breach of Individual Defendants' common law fiduciary duties owed directly to Plaintiff and the Class and was therefore unlawful and unenforceable, and that the Merger Agreement and any other agreements in connection with, or in furtherance of, the Proposed Transaction should be rescinded and invalidated; (d) the Proposed Transaction, the Merger Agreement and/or related transactions contemplated thereby, should be rescinded and the parties restored to their original position; and (e) Plaintiff and the stockholders should be granted such other and further relief as the nature of their cause may require.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff demands judgment against Defendants jointly and severally, as follows:

- A. Declaring this action to be a Class Action and certifying Plaintiff as Class representative and his counsel as Class counsel;
- B. Enjoining Defendants, their agents, counsel, employees, and all persons acting in concert with them from consummating the Proposed Transaction;
- C. Enjoining the Merger Agreement as invalid and unenforceable, or in the alternative, amending, or enjoining the deal protection provisions as necessary to ensure a full and fair sales process for the benefit of the Class;
- D. Rescinding, to the extent already implemented, the Proposed Transaction or any of the terms thereof, or granting Plaintiff and the Class rescissory damages;

E. Directing Defendants to account to Plaintiff and the Class for all damages suffered as a result of the Individual Defendants' wrongdoing;

F. Imposition of a constructive trust, in favor of Plaintiff and members of the Class, upon any benefits improperly received by Defendants as a result of their wrongful conduct;

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


H. Granting such other and further equitable relief as this Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Maryland Rule 2-325(a), Plaintiff hereby demands a trial by jury on all issues so triable.

DATED: June 14, 2018

**GOLDMAN & MINTON, P.C.**

  
Thomas J. Minton  
3600 Clipper Mill Road  
Suite 201  
Baltimore, MD 21211  
Tel.: (410) 783-7575  
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*Liaison Counsel for Plaintiff*

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[mschreiner@monteverdelaw.com](mailto:mschreiner@monteverdelaw.com)

*Counsel for Plaintiff*

**CIVIL - NON-DOMESTIC CASE INFORMATION REPORT**

**DIRECTIONS**

**Plaintiff:** This Information Report must be completed and attached to the complaint filed with the Clerk of Court unless your case is exempted from the requirement by the Chief Judge of the Court of Appeals pursuant to Rule 2-111(a).

**Defendant:** You must file an Information Report as required by Rule 2-323(h).

**THIS INFORMATION REPORT CANNOT BE ACCEPTED AS A PLEADING**

FORM FILED BY:  PLAINTIFF  DEFENDANT CASE NUMBER \_\_\_\_\_ (Clerk to insert)

CASE NAME: Walter Penchuk Plaintiff vs. CYS Investments, Inc., et al. Defendant

PARTY'S NAME: Walter Penchuk PHONE: \_\_\_\_\_

PARTY'S ADDRESS: 2912 Sweet Brair Street, Grapevine, Texas 76051

PARTY'S E-MAIL: \_\_\_\_\_

If represented by an attorney:  
 PARTY'S ATTORNEY'S NAME: Thomas J. Minton PHONE: 410-783-7575  
 PARTY'S ATTORNEY'S ADDRESS: 3600 Clipper Mill Road, Suite 201, Baltimore, Maryland 21211  
 PARTY'S ATTORNEY'S E-MAIL: tminton@charmcitylegal.com

JURY DEMAND?  Yes  No

RELATED CASE PENDING?  Yes  No If yes, Case #(s), if known: \_\_\_\_\_

ANTICIPATED LENGTH OF TRIAL?: \_\_\_\_\_ hours 15 days

**PLEADING TYPE**

New Case:  Original  Administrative Appeal  Appeal  
 Existing Case:  Post-Judgment  Amendment

If filing in an existing case, skip Case Category/ Subcategory section - go to Relief section.

**IF NEW CASE: CASE CATEGORY/SUBCATEGORY (Check one box.)**

- |   |   |   |   |
|---|---|---|---|
| <p><b>TORTS</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Asbestos</li> <li><input type="checkbox"/> Assault and Battery</li> <li><input checked="" type="checkbox"/> Business and Commercial</li> <li><input type="checkbox"/> Conspiracy</li> <li><input type="checkbox"/> Conversion</li> <li><input type="checkbox"/> Defamation</li> <li><input type="checkbox"/> False Arrest/Imprisonment</li> <li><input type="checkbox"/> Fraud</li> <li><input type="checkbox"/> Lead Paint - DOB of Youngest Plt: _____</li> <li><input type="checkbox"/> Loss of Consortium</li> <li><input type="checkbox"/> Malicious Prosecution</li> <li><input type="checkbox"/> Malpractice-Medical</li> <li><input type="checkbox"/> Malpractice-Professional</li> <li><input type="checkbox"/> Misrepresentation</li> <li><input type="checkbox"/> Motor Tort</li> <li><input type="checkbox"/> Negligence</li> <li><input type="checkbox"/> Nuisance</li> <li><input type="checkbox"/> Premises Liability</li> <li><input type="checkbox"/> Product Liability</li> <li><input type="checkbox"/> Specific Performance</li> <li><input type="checkbox"/> Toxic Tort</li> <li><input type="checkbox"/> Trespass</li> <li><input type="checkbox"/> Wrongful Death</li> </ul> <p><b>CONTRACT</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Asbestos</li> <li><input type="checkbox"/> Breach</li> <li><input checked="" type="checkbox"/> Business and Commercial</li> <li><input type="checkbox"/> Confessed Judgment</li> <li>(Cont'd)</li> <li><input type="checkbox"/> Construction</li> <li><input type="checkbox"/> Debt</li> <li><input type="checkbox"/> Fraud</li> </ul> | <ul style="list-style-type: none"> <li><input type="checkbox"/> Government</li> <li><input type="checkbox"/> Insurance</li> <li><input type="checkbox"/> Product Liability</li> </ul> <p><b>PROPERTY</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Adverse Possession</li> <li><input type="checkbox"/> Breach of Lease</li> <li><input type="checkbox"/> Detinue</li> <li><input type="checkbox"/> Distress/Distrain</li> <li><input type="checkbox"/> Ejectment</li> <li><input type="checkbox"/> Forcible Entry/Detainer</li> <li><input type="checkbox"/> Foreclosure</li> <li><input type="checkbox"/> Commercial</li> <li><input type="checkbox"/> Residential</li> <li><input type="checkbox"/> Currency or Vehicle</li> <li><input type="checkbox"/> Deed of Trust</li> <li><input type="checkbox"/> Land Installments</li> <li><input type="checkbox"/> Lien</li> <li><input type="checkbox"/> Mortgage</li> <li><input type="checkbox"/> Right of Redemption</li> <li><input type="checkbox"/> Statement Condo</li> <li><input type="checkbox"/> Forfeiture of Property / Personal Item</li> <li><input type="checkbox"/> Fraudulent Conveyance</li> <li><input type="checkbox"/> Landlord-Tenant</li> <li><input type="checkbox"/> Lis Pendens</li> <li><input type="checkbox"/> Mechanic's Lien</li> <li><input type="checkbox"/> Ownership</li> <li><input type="checkbox"/> Partition/Sale in Lieu</li> <li><input type="checkbox"/> Quiet Title</li> <li><input type="checkbox"/> Rent Escrow</li> <li><input type="checkbox"/> Return of Seized Property</li> <li><input type="checkbox"/> Right of Redemption</li> <li><input type="checkbox"/> Tenant Holding Over</li> </ul> | <p><b>PUBLIC LAW</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Attorney Grievance</li> <li><input type="checkbox"/> Bond Forfeiture Remission</li> <li><input type="checkbox"/> Civil Rights</li> <li><input type="checkbox"/> County/Mncpl Code/Ord</li> <li><input type="checkbox"/> Election Law</li> <li><input type="checkbox"/> Eminent Domain/Condemn.</li> <li><input type="checkbox"/> Environment</li> <li><input type="checkbox"/> Error Coram Nobis</li> <li><input type="checkbox"/> Habeas Corpus</li> <li><input type="checkbox"/> Mandamus</li> <li><input type="checkbox"/> Prisoner Rights</li> <li><input type="checkbox"/> Public Info. Act Records</li> <li><input type="checkbox"/> Quarantine/Isolation</li> <li><input type="checkbox"/> Writ of Certiorari</li> </ul> <p><b>EMPLOYMENT</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> ADA</li> <li><input type="checkbox"/> Conspiracy</li> <li><input type="checkbox"/> EEO/HR</li> <li><input type="checkbox"/> FLSA</li> <li><input type="checkbox"/> FMLA</li> <li><input type="checkbox"/> Workers' Compensation</li> <li><input type="checkbox"/> Wrongful Termination</li> </ul> <p><b>INDEPENDENT PROCEEDINGS</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Assumption of Jurisdiction</li> <li><input type="checkbox"/> Authorized Sale</li> <li><input type="checkbox"/> Attorney Appointment</li> <li><input type="checkbox"/> Body Attachment Issuance</li> <li><input type="checkbox"/> Commission Issuance</li> </ul> | <ul style="list-style-type: none"> <li><input type="checkbox"/> Constructive Trust</li> <li><input type="checkbox"/> Contempt</li> <li><input type="checkbox"/> Deposition Notice</li> <li><input type="checkbox"/> Dist Ct Mtn Appeal</li> <li><input type="checkbox"/> Financial</li> <li><input type="checkbox"/> Grand Jury/Petit Jury</li> <li><input type="checkbox"/> Miscellaneous</li> <li><input type="checkbox"/> Perpetuate Testimony/Evidence</li> <li><input type="checkbox"/> Prod. of Documents Req.</li> <li><input type="checkbox"/> Receivership</li> <li><input type="checkbox"/> Sentence Transfer</li> <li><input type="checkbox"/> Set Aside Deed</li> <li><input type="checkbox"/> Special Adm. - Atty</li> <li><input type="checkbox"/> Subpoena Issue/Quash</li> <li><input type="checkbox"/> Trust Established</li> <li><input type="checkbox"/> Trustee Substitution/Removal</li> <li><input type="checkbox"/> Witness Appearance-Compel</li> </ul> <p><b>PEACE ORDER</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Peace Order</li> </ul> <p><b>EQUITY</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Declaratory Judgment</li> <li><input type="checkbox"/> Equitable Relief</li> <li><input type="checkbox"/> Injunctive Relief</li> <li><input type="checkbox"/> Mandamus</li> </ul> <p><b>OTHER</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Accounting</li> <li><input type="checkbox"/> Friendly Suit</li> <li><input type="checkbox"/> Grantor in Possession</li> <li><input type="checkbox"/> Maryland Insurance Administration</li> <li><input type="checkbox"/> Miscellaneous</li> <li><input type="checkbox"/> Specific Transaction</li> <li><input type="checkbox"/> Structured Settlements</li> </ul> |
|---|---|---|---|



**COMPLEX SCIENCE AND/OR TECHNOLOGICAL CASE  
MANAGEMENT PROGRAM (ASTAR)**

*FOR PURPOSES OF POSSIBLE SPECIAL ASSIGNMENT TO ASTAR RESOURCES JUDGES under Md. Rule 16-302, attach a duplicate copy of complaint and check whether assignment to an ASTAR is requested.*

- Expedited** - Trial within 7 months of Defendant's response       **Standard** - Trial within 18 months of Defendant's response

**IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE CITY, OR BALTIMORE COUNTY, PLEASE FILL OUT THE APPROPRIATE BOX BELOW.**

**CIRCUIT COURT FOR BALTIMORE CITY (CHECK ONLY ONE)**

- Expedited                      Trial 60 to 120 days from notice. Non-jury matters.
- Civil-Short                      Trial 210 days from first answer.
- Civil-Standard                      Trial 360 days from first answer.
- Custom                      Scheduling order entered by individual judge.
- Asbestos                      Special scheduling order.
- Lead Paint                      Fill in: Birth Date of youngest plaintiff \_\_\_\_\_.
- Tax Sale Foreclosures                      Special scheduling order.
- Mortgage Foreclosures                      No scheduling order.

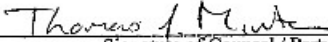
**CIRCUIT COURT FOR BALTIMORE COUNTY**

- Expedited (Trial Date-90 days)                      Attachment Before Judgment, Declaratory Judgment (Simple), Administrative Appeals, District Court Appeals and Jury Trial Prayers, Guardianship, Injunction, Mandamus.
- Standard (Trial Date-240 days)                      Condemnation, Confessed Judgments (Vacated), Contract, Employment Related Cases, Fraud and Misrepresentation, International Tort, Motor Tort, Other Personal Injury, Workers' Compensation Cases.
- Extended Standard (Trial Date-345 days)                      Asbestos, Lender Liability, Professional Malpractice, Serious Motor Tort or Personal Injury Cases (medical expenses and wage loss of \$100,000, expert and out-of-state witnesses (parties), and trial of five or more days), State Insolvency.
- Complex (Trial Date-450 days)                      Class Actions, Designated Toxic Tort, Major Construction Contracts, Major Product Liabilities, Other Complex Cases.

6/14/18  
Date

3600 Clipper Mill Road, Suite 201  
Address

Baltimore                      MD                      21211  
City                      State                      Zip Code

  
Signature of Counsel / Party

Thomas J. Minton  
Printed Name







2405 York Road, Suite 201 )  
Lutherville Timonium, MD 21093 )  
 )  
 )  
Defendants. )  
 )

Plaintiff Shiva Stein ("Plaintiff"), by her attorneys, brings this action against CYS Investments, Inc. ("CYS" or the "Company"), the members of the Company's board of directors (collectively referred to as the "Board" or the "Individual Defendants," and, together with CYS, the "Defendants") for violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78n(a), 78t(a), and SEC Rule 14a-9, 17 C.F.R. 240.14a-9, in connection with the proposed merger (the "Proposed Transaction") by and among CYS, Two Harbors Investment Corp. ("Parent"), and Eiger Merger Subsidiary LLC ("Merger Sub," and collectively with Parent, "Two Harbors"). Plaintiff alleges the following based upon personal knowledge as to herself, and upon information and belief, including the investigation of Counsel and review of publicly available information, as to all other matters.

NATURE OF THE ACTION

1. On April 26, 2018, CYS and Two Harbors issued a joint press release announcing their entry into an Agreement and Plan of Merger (the "Merger Agreement") to sell CYS to Two Harbors. Under the terms of the Merger Agreement, CYS stockholders will receive:

- a. a number of shares of Two Harbors common stock determined by dividing (i) CYS' adjusted book value per share, multiplied by

96.75%, by (ii) Two Harbors' adjusted book value per share, multiplied by 94.20%; and

- b. \$15,000,000 divided by the sum of (i) the number of shares of CYS common stock issued and outstanding as of the effective time, and (ii) the number of shares of CYS common stock issuable upon the vesting of outstanding Company restricted stock (the "Merger Consideration").

2. Based on the March 31, 2018 adjusted book value per share of each company, CYS stockholders would receive \$7.79 of combined cash and stock per CYS share of common stock.

3. On May 25, 2018, Two Harbors filed a Form S-4 Registration Statement (the "Registration Statement") with the SEC containing a joint proxy statement/prospectus. The Registration Statement, which recommends that CYS stockholders vote in favor of the Proposed Transaction, omits or misrepresents material information concerning, among other things: (i) CYS' and Two Harbors' financial projections, relied upon by CYS' financial advisors Barclays and Credit Suisse Securities (USA) LLC ("Credit Suisse"); (ii) the data and inputs underlying the financial valuation analyses that support the fairness opinions provided by Barclays and Credit Suisse; (iii) the background process leading to the Proposed Transaction; and (iv) potential conflicts of interest of Barclays. The failure to adequately disclose such material information constitutes a violation of Sections 14(a) and 20(a) of the Exchange Act as CYS stockholders need such information in order to make a fully informed decision whether to vote in favor of the Proposed Transaction

4. In short, unless remedied, CYS' public stockholders will be forced to make a voting decision on the Proposed Transaction without full disclosure of all material

information concerning the Proposed Transaction being provided to them. Plaintiff seeks to enjoin the stockholder vote on the Proposed Transaction unless and until such Exchange Act violations are cured

PARTIES

5. Plaintiff is, and at all relevant times has been, a stockholder of CYS.

6. Defendant CYS is a Maryland corporation and maintains its principal executive offices at 500 Totten Pond Road, 6th Floor, Waltham, Massachusetts, 02451. CYS's common stock is listed on the New York Stock Exchange under the ticker symbol "CYS".

7. Defendant Kevin E. Grant has served as President, CEO, Chairman, and as a director of the Company since 2006, when he founded the Company.

8. Defendant Tanya S. Beder has been a director of the Company since 2012.

9. Defendant Karen Hammond has served as a director of the Company since 2014.

10. Defendant Raymond A. Redlingshafer, Jr. has served as a director of the Company since 2006.

11. Defendant Dale A. Reiss has served as a director of the Company since 2015.

12. Defendant James A. Stern has served as a director of the Company since 2006.

13. The parties in paragraphs 7 through 12 are referred to herein as the "Individual Defendants" and/or the "Board," collectively with CYS the "Defendants."

14. Non-party Two Harbors is a Maryland corporation and a party to the Merger Agreement. Two Harbors is headquartered at 575 Lexington Avenue, Suite 2930,

New York, New York, 10022. Two Harbors common stock is listed on the New York Stock Exchange under the ticker symbol "TWO."

#### JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges violations of Section 14(a) and 20(a) of the Exchange Act.

16. Personal jurisdiction exists over each Defendant either because the Defendant is incorporated in or maintains operations in this District, or is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over Defendant by this Court permissible under traditional notions of fair play and substantial justice.

17. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because: (i) the conduct at issue took effect under the laws in this District; (ii) CYS is incorporated in this District and each of the Individual Defendants, and Company officers or directors, either resides in this District or has extensive contacts within this District; (iii) a substantial portion of the transactions and wrongs complained of herein, occurred under the laws of this District; (iv) relevant documents pertaining to Plaintiff's claims are stored (electronically and otherwise), and evidence exists, in this District; and (v) Defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

#### SUBSTANTIVE ALLEGATIONS

Company Background and the Proposed Transaction

18. CYS, incorporated in Maryland in 2006, is a specialty finance company taxed as a REIT. The Company primarily invests in agency residential mortgage-backed securities ("Agency RMBS") guaranteed by fixed rate mortgage loans, adjustable-rate mortgages ("ARMs"), or hybrid ARMs. CYS also invests in debt securities issued by the U.S. Department of Treasury. The Company's income is generated primarily from the difference between the interest income it earns on its investment portfolio and the cost of its borrowings and hedging activities ("net spread").

19. CYS' financial performance and growth prospects remained strong throughout 2017. During the Company's October 26, 2017 third quarter of 2017 earnings call, CYS' Chief Financial Officer ("CFO") Jack DeCicco ("DeCicco") highlighted the Company's solid financial results, stating, "we feel very good about the third quarter and expect the asset and hedge portfolio repositioning that took place during the quarter to benefit future quarters and to enhance book value protection to the extent we experience a backup in rates." DeCicco also noted that the third quarter of 2017 marked the sixth consecutive quarter that the Company paid a \$0.25 dividend per share. Net income for the quarter was \$83 million, or \$0.54 per share, compared to \$45 million, or \$0.30 per share, in the second quarter of 2017.

20. On February 14, 2018, CYS announced its fourth quarter and year ended 2017 financial results. The Company maintained its consistent \$0.25 per common share quarterly dividend. CYS' debt securities portfolio increased to approximately \$13.1 billion at December 31, 2017, from \$12.9 billion at September 31, 2017. Despite a challenging environment, in CYS' February 15, 2018 earnings call, defendant Grant highlighted CYS' total stockholder return of 12.6% and market return of 17%, explaining "[t]his is a good result for an environment where the Fed raised short rates three times,

clearly messaged that they'd be continuing to raise rates and also announced their plans to reduce their asset purchases going forward." DeCicco also noted, "we are pleased with our annual results and have taken a more defensive position in anticipation of the current environment. . . ."

The Sale Process

21. On February 8, 2018, defendant Grant received an unsolicited proposal to acquire CYS in a stock-for-stock merger from a mortgage REIT referred to in the Registration Statement as Company C. Thereafter, the independent members of the Board formed a special committee (the "Special Committee") comprised of defendants Stern (chairman), Hammond and Beder. The Board subsequently engaged Barclays and Credit Suisse to act as its advisors.

22. On February 21, 2018, defendant Grant received an unsolicited proposal to acquire CYS from another mortgage REIT referred to in the Registration Statement as Company B. Company B had previously expressed an interest in exploring a potential acquisition of CYS in July 2016, executed a non-disclosure agreement and engaged in due diligence before withdrawing its indication of interest in September 2016.

23. On February 27, 2018, the Special Committee met and authorized Barclays and Credit Suisse to contact six additional potential bidders to determine whether they would be interested in submitting an offer to enter into a business combination or strategic transaction with CYS.

24. Following the outreach, CYS entered into non-disclosure agreements containing standstill provisions with seven of the eight potential bidders (including Two Harbors, Company B, Company C, a mortgage REIT that previously expressed interest in exploring a potential acquisition of CYS in April 2016, referred to in the Registration

Statement as Company A, a publicly traded mortgage REIT referred to in the Registration Statement as Company D and a publicly traded mortgage REIT referred to in the Registration Statement as Company E). The Registration Statement fails to disclose whether the standstill provisions contained in the non-disclosure agreements are still in effect and operate to preclude the six potential bidders (not including Two Harbors) from making a topping bid for the Company.

25. Barclays and Credit Suisse invited bidders other than Company C (who had already submitted an initial indication of interest) to submit preliminary indications of interest by March 12, 2018. The parties were subsequently invited to submit indications of interest incorporating CYS' transaction expense assumptions by March 16, 2018.

26. On March 19, 2018, the Special Committee met to review the revised bids, which reflected the following proposed purchase prices per share of CYS common stock: (i) Company B - \$7.27 per share; (ii) Company C - a range of \$7.33 to \$7.47 per share; (iii) Two Harbors - \$7.33 per share; (iv) Company D - \$7.42 per share and (v) Company E - \$7.15 per share.

27. Following the March 21, 2018 Board and Special Committee meetings, the Special Committee determined to invite Company C, Company D and Two Harbors to participate in the second round of the process. As Company B was unwilling to participate on CYS' proposed timeline, the Special Committee also determined to invite Company E to participate in the second round. The parties received access to a virtual data room and were asked to submit a markup of a draft merger agreement.

28. On April 3, 2018, the four parties submitted third round indications of interest, with Company C revising its proposed purchase price to \$7.46 per share. Also on April 3, following a meeting with the Special Committee's legal counsel, Two Harbors



agreed to make certain changes to its proposed markup of the draft merger agreement, including PRCM Advisers LLC, Two Harbors' external manager and a subsidiary of Pine River Capital Management L.P., agreeing to contribute \$10 million in cash as part of the merger consideration. This amount was later increased to \$15 million.

29. On April 5, 2018, the Board met and, following discussion, instructed the Special Committee to continue negotiations with Two Harbors and Company C.

30. On April 11, 2018, Company C delivered a revised draft of the merger agreement that included adjustments to the offer price and purchase price mechanics which purportedly resulted in at least a \$0.11 per share reduction in Company C's per share offer price. Following Company C's refusal to increase its bid, the Special Committee proceeded to negotiate the final terms of the Proposed Transaction with Two Harbors.

31. On April 18, 2018, CYS and Two Harbors executed an exclusivity agreement, providing for exclusivity regarding a strategic transaction until April 25, 2018.

32. On April 25, 2018, Barclays and Credit Suisse rendered their fairness opinions and the Board approved the Merger Agreement. The next day, the parties executed the Merger Agreement, which was dated effective as of April 25, 2018.

#### The Proposed Transaction

39. On April 26, 2018, CYS and Two Harbor issued a joint press release announcing the Proposed Transaction, which states, in relevant part:

NEW YORK--(BUSINESS WIRE)-- Two Harbors Investment Corp. (NYSE: TWO) ("Two Harbors"), a leading hybrid mortgage real estate investment trust ("REIT"), and CYS Investments, Inc. (NYSE: CYS) ("CYS"), an Agency mortgage REIT, announced today that they have entered into a definitive merger agreement under which Two Harbors will acquire CYS.

In connection with the merger, CYS stockholders will exchange their shares of CYS common stock for newly issued shares of Two Harbors common stock as well as

aggregate cash consideration of \$15,000,000. The number of Two Harbors shares issued will be based on an exchange ratio to be determined by dividing 96.75% of CYS' adjusted book value per share by 94.20% of Two Harbors' adjusted book value per share. For illustrative purposes, assuming the merger occurs and the exchange ratio was based on March 31, 2018 adjusted book value per share, CYS stockholders would receive \$7.79 of combined cash and stock consideration per share of CYS common stock owned, which represents a premium of approximately 17.7% over the CYS closing price per share on April 25, 2018. The actual exchange ratio for the merger will be publicly announced at least five business days prior to the required stockholder votes on the merger.

Two Harbors and CYS will hold a joint conference call at 9:00 A.M. Eastern Time on April 26, 2018 to discuss the merger. To participate in the teleconference, please call toll-free (877) 868-1835, Conference Code 7197703, (or (914) 495-8581 for international callers) approximately 10 minutes prior to the above start time. You may also listen to the teleconference live via the Internet and review related materials at [www.twoharborsinvestment.com](http://www.twoharborsinvestment.com) in the Investor Relations section under the Events and Presentations link.

#### Anticipated Benefits to Two Harbors Stockholders from the Merger

- Additional capital supports continued growth in target assets: A larger capital base will support the continued growth across Two Harbors' target assets, and positions Two Harbors to take advantage of market opportunities as they arise.
- Improved cost structure: Expect that the combination of Two Harbors and CYS will create cost efficiencies and decrease Two Harbors' other operating expense ratio by 30 to 40 basis points. Additionally PRCM Advisers' agreement to reduce its base management fee on the new CYS equity will further enhance operating cost efficiencies in the year following the close of the transaction.
- Expect to maintain \$0.47 per share quarterly dividend: Following the close of the transaction, Two Harbors anticipates that its current quarterly dividend of \$0.47 will be sustainable through 2018, subject to market

conditions and the discretion and approval of Two Harbors' Board of Directors.

- Enhanced scale and liquidity with potential for premium valuation: With a pro forma equity base of nearly \$5.0 billion, Two Harbors stockholders will benefit from the scale, liquidity and capital alternatives of a larger combined company. Additionally, larger capitalized mortgage REITs have historically carried premium valuations.
- Anticipate improved Agency spreads in 2018: If so, Two Harbors believes this deal will be accretive to earnings and endorses the capital raising attendant to this transaction.

#### Anticipated Benefits to CYS Stockholders from the Merger

- Enhanced scale and liquidity: CYS stockholders will benefit from increased operating scale, liquidity and capital alternatives available to a larger combined company.
- Meaningful premium to CYS stockholders: Based on March 31, 2018 adjusted book values per share, CYS stockholders would receive \$7.79 of combined cash and stock consideration per share of CYS common stock, which represents a premium of approximately 17.7% over the CYS closing price per share on April 25, 2018.
- Benefit from a more diversified business model: Two Harbors' hybrid business model is positioned to withstand periods of market volatility and is comprised of a mix of asset classes and a platform that is challenging to replicate. Two Harbors' portfolio includes a Rates strategy comprised of Agency RMBS paired with mortgage servicing rights ("MSR"), and a Credit strategy, comprised primarily of deeply discounted, legacy non-Agency RMBS.
- Strong stewards of capital: Two Harbors has a history of being strong stewards of its stockholders' capital. Since 2009, Two Harbors has outperformed its peer group and has grown its book value with less volatility. Additionally, Two Harbors has a stock repurchase program in place to support its stock.

#### About the Merger

Upon the closing of the merger, CYS stockholders will exchange their shares of CYS common stock for newly issued shares of Two Harbors common stock as well as aggregate cash consideration of \$15,000,000, payable to CYS stockholders on a pro rata basis.

The number of Two Harbors shares to be received by CYS stockholders will be

based on an exchange ratio to be determined by dividing 96.75% of the CYS adjusted book value per share by 94.20% of the Two Harbors adjusted book value per share. As defined in the Merger Agreement, adjusted book value per share for each company means (i) such company's total consolidated common stockholders' equity after giving pro forma effect to any dividends or other distributions for which the record date is after the exchange ratio determination date but prior to the closing of the merger and as modified for potential transaction-related adjustments, divided by (ii) each respective company's number of shares of common stock issued and outstanding, including shares issuable upon the vesting of restricted stock.

As of March 31, 2018, the adjusted book value per share for Two Harbors and CYS, on a pro forma basis, would have been \$15.63 and \$7.41, respectively, representing an exchange ratio of 0.4872x, with each share of CYS being exchanged for 0.4872 shares of Two Harbors. For illustrative purposes, under a pro forma exchange ratio, assuming the merger occurs and the exchange ratio was calculated as of March 31, 2018, CYS stockholders would receive approximately 75.7 million Two Harbors shares (representing approximately 30% of the Two Harbors' total outstanding shares immediately following the merger), which, in combination with the cash consideration of \$15,000,000, would value CYS at approximately \$7.79 per share of common stock. This valuation represents a premium of approximately 17.7% above the closing price per share of CYS common stock on the New York Stock Exchange on April 25, 2018.

The actual exchange ratio for the merger will be publicly announced at least five business days prior to the required stockholder votes on the merger.

In connection with the merger, PRCM Advisers LLC, Two Harbors' external manager, a subsidiary of Pine River Capital Management L.P., has agreed to reduce the base management fee it charges Two Harbors with respect to the additional equity under management resulting from the merger from 1.5% of Stockholders' Equity on an annualized basis to 0.75% through the first anniversary of the closing of the merger. PRCM Advisers LLC will also make a one-time downward adjustment of \$15,000,000 to the management fees payable by Two Harbors for the quarter in which the merger closes. PRCM Advisers has also agreed to a post-closing downward adjustment of up to \$3.3 million to reimburse Two Harbors for certain transaction related expenses.

In addition to the above consideration, Two Harbors would assume the existing notional \$75 million in CYS 7.75% Series A cumulative redeemable preferred stock and \$200 million in CYS 7.50% Series B cumulative redeemable preferred stock.

Following the closing of the transaction, all senior management positions will continue to be led by Two Harbors' personnel and Two Harbors Board of Directors will be expanded to include two additional independent directors from CYS Investments' current board, James Stern and Karen Hammond.

The completion of the merger is subject to the satisfaction of certain customary conditions, and is subject to the approval of the stockholders of both Two Harbors and CYS. The companies expect the transaction to close in the third quarter of 2018.

"We are pleased to announce the acquisition of CYS Investments, which we believe represents a unique opportunity to create value for our stockholders," stated Thomas Siering, Two Harbors' President and Chief Executive Officer. "This transaction offers Two Harbors stockholders the opportunity to benefit from additional capital, supporting continued growth in our target assets, as well as an improved cost structure. The combination of the two companies also supports the potential for the premium valuation of a pro forma Two Harbors."

"We are excited about the opportunity to merge with Two Harbors and believe that our stockholders will benefit from the increased scale, diversification and liquidity of the combined companies," stated Kevin Grant, CYS Investments' Chairman, Chief Executive Officer, President and Chief Investment Officer. "Two Harbors has a long history of being strong stewards of capital and we believe this transaction should enhance value for our stockholders over the long-term."

JMP Securities LLC is serving as financial advisor, and Sidley Austin LLP is serving as legal advisor to Two Harbors. Barclays Capital Inc. and Credit Suisse Securities (USA) LLC are serving as financial advisors, and Vinson & Elkins LLP is serving as legal advisor to CYS.

#### Insiders' Interests in the Proposed Transaction

42. CYS and Two Harbors insiders are the primary beneficiaries of the Proposed Transaction, not the Company's public stockholders. The Board and the Company's executive officers are conflicted because they will have secured unique benefits for themselves from the Proposed Transaction not available to Plaintiff and the public stockholders of CYS.

43. CYS' directors and executive officers stand to reap substantial financial benefits for securing the deal with Two Harbors. Pursuant to the Merger Agreement, all outstanding shares of Company restricted stock will vest and be converted into the right to receive the Merger Consideration. The following table sets forth the value of restricted stock that the Company's directors and executive officers will receive upon consummation of the Proposed Transaction:

| Executive Name                | Number of Shares of CYS Restricted Stock to be Accelerated (#) | Value of Accelerated Shares of CYS Restricted Stock (\$) |
|-------------------------------|--|--|
| Kevin E Grant                 | 501,840  | 3,793,425  |
| Jack DeCicco                  | 93,936   | 710,065  |
| Richard E. Cleary             | 86,818   | 656,260  |
| Thomas A. Rosenbloom          | 96,918   | 732,606  |
| Director Name                 |  | —  |
| Tanya S. Beder                | 3,206  | 24,234   |
| Karen Hammond                 | 3,206  | 24,234   |
| Raymond A. Redlingshafer, Jr. | 3,206  | 24,234   |
| Dale A. Reiss                 | 3,206  | 24,234   |
| James A. Stern                | 3,206  | 24,234   |

33. Moreover, if they are terminated in connection with the Proposed Transaction, the Company's named executive officers stand to receive substantial cash severance payments in the form of golden parachute compensation, as set forth in the following table:

| Name                 | Golden Parachute Compensation |             |               | Total (\$) |
|----------------------|-------------------------------|-------------|---------------|------------|
|                      | Cash (\$)                     | Equity (\$) | Benefits (\$) |            |
| Kevin E. Grant       | 9,136,458                     | 3,793,425   | 48,314        | 12,978,197 |
| Jack DeCicco         | 1,325,833                     | 710,065     | 64,157        | 2,100,055  |
| Richard E. Cleary    | 1,129,083                     | 656,260     | 64,157        | 1,849,500  |
| Thomas A. Rosenbloom | 1,200,000                     | 732,606     | 64,157        | 1,996,764  |

The Registration Statement is Materially Incomplete and Misleading

45. The defendants filed a materially incomplete and misleading Registration Statement with the SEC and disseminated it to CYS' stockholders. The Registration Statement misrepresents or omits material information that is necessary for the Company's stockholders to make an informed voting decision in connection with the Proposed Transaction.

46. Specifically, as set forth below, the Registration Statement fails to provide Company stockholders with material information or provides them with materially misleading information concerning: (i) CYS' and Two Harbors' financial projections, relied upon by CYS' financial advisors Barclays and Credit Suisse; (ii) the data and inputs underlying the financial valuation analyses that support the fairness opinions provided by Barclays and Credit Suisse; (iii) the background process leading to the Proposed Transaction; and (iv) potential conflicts of interest of Barclays. Accordingly, CYS stockholders are being asked to make a voting decision in connection with the Proposed Transaction without all material information at their disposal.

#### Material Omissions Concerning CYS' and Two Harbors' Financial Projections

34. The Registration Statement is materially deficient because it fails to disclose material information relating to the Company's intrinsic value and prospects going forward.

35. First, the Registration Statement omits material information regarding CYS management's financial projections and the financial projections of Two Harbors.

36. For example, the Registration Statement fails to disclose for CYS over the projection period of December 31, 2018 through December 31, 2020: (i) tangible book value per share ("TBVPS"); (ii) dividend yield; (iii) dividends; and (iv) distributed cash flows.

37. Additionally, the Registration Statement fails to disclose for Two Harbors over the projection period of December 31, 2018 through December 31, 2020: (i) TBVPS; (ii) dividend yield; (iii) dividends; and (iv) distributed cash flows.



38. Moreover, the Registration Statement sets forth that in connection with rendering their fairness opinions, both Barclays and Credit Suisse reviewed and analyzed financial and operating information with respect to the business, operations and prospects of the pro forma combined company, including financial projections of Pro Forma Two Harbors prepared and furnished to Barclays and Credit Suisse by Two Harbors, and relied upon by Barclays and Credit Suisse upon the advice and at the direction of CYS ("Pro Forma Projections"). Yet, the Registration Statement wholly omits the Pro Forma Projections relied upon by both Barclays and Credit Suisse in their financial analyses.

39. The omission of this information renders the statements in the "Certain Two Harbors Unaudited Prospective Financial Information," "Certain CYS Unaudited Prospective Financial Information," "Opinion of CYS's Financial Advisor, Barclays Capital Inc." and "Opinion of CYS's Financial Advisor, Credit Suisse Securities (USA) LLC" sections of the Registration Statement false and/or materially misleading in contravention of the Exchange Act  
Barclays' Valuation Analyses and Fairness Opinion

40. The Registration Statement describes Barclays' fairness opinion and the various valuation analyses it performed in support of its opinion. However, the description of Barclays' fairness opinion and analyses fails to include key inputs and assumptions underlying these analyses. Without this information, as described below, CYS's stockholders are unable to fully understand these analyses and, thus, are unable to determine what weight, if any, to place on Barclays' fairness opinion in determining how to cast their vote on the Proposed Transaction. This omitted information, if disclosed, would significantly alter the total mix of information available to CYS's stockholders.



41. With respect to Barclays' Dividend Discount Analysis, the Registration Statement omits the projected dividends for both CYS and Two harbors provided by the Company's management.

42. With respect to Barclays' Selected Comparable Company Analysis and Selected Precedent Transaction Analysis, the Registration Statement fails to disclose the individual multiples Barclays calculated for each company and transaction utilized in the analyses. The omission of these multiples renders the summary of the analysis and the implied values materially misleading. A fair summary of the analyses requires the disclosure of the individual multiples; merely providing the range that a banker applied is insufficient, as CYS stockholders are unable to assess whether Barclays applied appropriate multiples, or, instead, applied unreasonably low multiples in order to drive down the Company's valuation.

#### Credit Suisse's Valuation Analyses and Fairness Opinion

43. The Registration Statement also describes Credit Suisse's fairness opinion and the various valuation analyses it performed in support of its opinion. However, the description of Credit Suisse's fairness opinion and analyses fails to include key inputs and assumptions underlying these analyses. Without this information, as described below, CYS's stockholders are unable to fully understand these analyses and, thus, are unable to determine what weight, if any, to place on Credit Suisse's fairness opinion in determining how to cast their vote on the Proposed Transaction. This omitted information, if disclosed, would significantly alter the total mix of information available to CYS's stockholders.

44. With respect to Credit Suisse's Dividend Discount Analysis, the Registration Statement omits the projected dividends for both CYS and Two harbors provided by the

Company's management, as well as the inputs and assumptions underlying the discount rates applied by Credit Suisse.

45. With respect to Credit Suisse's Selected Comparable Company Analysis and Selected Precedent Transaction Analysis, the Registration Statement fails to disclose the individual multiples Credit Suisse calculated for each company and transaction utilized in the analyses. The omission of these multiples renders the summary of the analysis and the implied values materially misleading. A fair summary of the analyses requires the disclosure of the individual multiples; merely providing the range that a banker applied is insufficient, as CYS stockholders are unable to assess whether Credit Suisse applied appropriate multiples, or, instead, applied unreasonably low multiples in order to drive down the Company's valuation.

#### Material Omissions Concerning the Sales Process

46. The Registration Statement also fails to disclose or misstate material information relating to the sale process leading up to the Proposed Transaction.

47. The Registration Statement discloses that CYS entered into nondisclosure agreements that contained "customary standstill provisions" with six potential bidders other than Two Harbors. However, the Registration Statement omits whether these standstill provisions expired upon announcement of the Proposed Transaction or contain so-called "don't-ask-don't-waive" ("DADW") provisions that preclude these parties from making a topping bid for the Company. A DADW provision prevents a party from approaching the Company's Board privately to request a waiver of the standstill provision in order to submit a superior proposal. This omission is particularly notable because the Registration Statement discloses that the Merger Agreement prohibits CYS or its subsidiaries from terminating, waiving, amending, or modifying any provision of the standstill provisions. Thus the Board has potentially willfully blind itself to

any superior offers from these six parties. Such information is material to CYS stockholders as a reasonable CYS stockholder would find it material and important to their voting decision whether or not parties that had previously been interested in a potential acquisition of the Company are now foreclosed from submitting superior proposals.

30. Defendants' failure to provide CYS stockholders with the foregoing material information renders the statements in the Background of the Merger section of the Registration Statement false and/or materially misleading.

#### Material Omissions Concerning the Potential Conflicts of Interest Faced by Barclays

48. Further, the Registration Statement fails to disclose material information concerning potential conflicts of interest faced by the Company's financial advisors, Barclays and Credit Suisse.

49. The Registration Statement sets forth that "Barclays has performed various investment banking services for CYS and Two Harbors in the past, and expects to perform such services in the future, and has received, and expects to receive, customary fees for such services." Registration Statement at 100. The Registration Statement fails, however, to disclose the past services and past fees for these services received by Barclays.

50. Moreover, the Registration Statement fails to disclose whether Credit Suisse has performed past work for CYS and, if so, the amount of any compensation Credit Suisse has received in connection with such services.

51. Full disclosure of investment banker compensation and all potential conflicts is required due to the central role played by investment banks in the evaluation, exploration, selection, and implementation of strategic alternatives. CYS stockholders need to be provided with a description of the services and the fees received for these services performed by Barclays on

behalf of CYS and Two Harbors to compare these services and fees and assess whether Barclays had a strong historical relationship with Two Harbors that could have impacted its advice provided to CYS.

52. The omission of this information renders the statements in the "Opinion of CYS's Financial Advisor, Barclays Capital Inc." and "Opinion of CYS's Financial Advisor, Credit Suisse Securities (USA) LLC" sections of the Registration Statement false and/or materially misleading in contravention of the Exchange Act.

53. In sum, the omission of the above-referenced information renders statements in the Registration Statement materially incomplete and misleading in contravention of the Exchange Act. Absent disclosure of the foregoing material information prior to the special shareholder meeting to vote on the Proposed Transaction, Plaintiff will be unable to make a fully-informed decision regarding whether to vote in favor of the Proposed Transaction, and is thus threatened with irreparable harm, warranting the injunctive relief sought herein.

COUNT I

(Against All Defendants for Violations of Section 14(a) of the Exchange Act  
and Rule 14a-9 Promulgated Thereunder)

54. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

55. Section 14(a)(1) of the Exchange Act makes it "unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or

authorization in respect of any security (other than an exempted security) registered pursuant to section 78l of this title." 15 U.S.C. § 78n(a)(1).

56. Rule 14a-9, promulgated by the SEC pursuant to Section 14(a) of the Exchange Act, provides that registration statement communications with shareholders shall not contain "any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading." 17 C.F.R. § 240.14a-9.

57. The omission of information from a registration statement will violate Section 14(a) and Rule 14a-9 if other SEC regulations specifically require disclosure of the omitted information.

58. Defendants have issued the Registration Statement with the intention of soliciting stockholder support for the Proposed Transaction. Each of the Defendants reviewed and authorized the dissemination of the Registration Statement, which fails to provide critical information regarding, amongst other things: (i) the valuation analyses performed by the Company's financial advisors, Barclays and Credit Suisse; (ii) the background process leading up to the Proposed Transaction; and (iii) the potential conflicts of interest faced by Barclays in advising the Board.

59. In so doing, Defendants made untrue statements of fact and/or omitted material facts necessary to make the statements made not misleading. Each of the Individual Defendants, by virtue of their roles as officers and/or directors, were aware of the omitted information but failed to disclose such information, in violation of Section 14(a). The Individual Defendants were therefore negligent, as they had reasonable grounds to believe material facts existed that were misstated or omitted from the Registration Statement, but nonetheless failed to obtain and disclose

such information to CYS common stockholders although they could have done so without extraordinary effort.

60. The Individual Defendants knew or were negligent in not knowing that the Registration Statement is materially misleading and omits material facts that are necessary to render it not misleading. The Individual Defendants undoubtedly reviewed and relied upon most if not all of the omitted information identified above in connection with their decision to approve and recommend the Proposed Transaction; indeed, the Registration Statement states that Barclays and Credit Suisse reviewed and discussed their financial analyses with the Board, and further states that the Board considered the financial analyses provided by Barclays and Credit Suisse, as well as its fairness opinion and the assumptions made and matters considered in connection therewith. Further, the Individual Defendants were privy to and had knowledge of the projections for the Company and the details surrounding the process leading up to the signing of the Merger Agreement. The Individual Defendants knew or were negligent in not knowing that the material information identified above has been omitted from the Registration Statement, rendering the sections of the Registration Statement identified above to be materially incomplete and misleading. Indeed, the Individual Defendants were required to, separately, review Barclays' and Credit Suisse's analyses in connection with their receipt of the fairness opinion, question the advisors as to the derivation of fairness, and be particularly attentive to the procedures followed in preparing the Registration Statement, and review it carefully before it was disseminated, to corroborate that there are no material misstatements or omissions.

61. The Individual Defendants were, at the very least, negligent in preparing and reviewing the Registration Statement. The preparation of a registration statement by corporate insiders containing materially false or misleading statements or omitting a material fact constitutes

negligence. The Individual Defendants were negligent in choosing to omit material information from the Registration Statement or failing to notice the material omissions in the Registration Statement upon reviewing it, which they were required to do carefully as the Company's directors. Indeed, the Individual Defendants were intricately involved in the process leading up to the signing of the Merger Agreement and the preparation of the Company's financial projections.

62. CYS is also deemed negligent as a result of the Individual Defendants' negligence in preparing and reviewing the Registration Statement.

63. The misrepresentations and omissions in the Registration Statement are material to Plaintiff and the CYS stockholders, who will be deprived of their right to cast an informed vote if such misrepresentations and omissions are not corrected prior to the vote on the Proposed Transaction. Plaintiff and the CYS stockholders have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the CYS stockholders be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

#### COUNT II

(Against the Individual Defendants for Violations of Section 20(a) of the Exchange Act)

64. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

65. The Individual Defendants acted as controlling persons of CYS within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as directors of CYS, and participation in and/or awareness of the Company's operations and/or intimate knowledge of the incomplete and misleading statements contained in the Registration Statement filed with the SEC, they had the power to influence and control and did influence and control,

directly or indirectly, the decision making of CYS, including the content and dissemination of the various statements that Plaintiff contends are materially incomplete and misleading.

66. Each of the Individual Defendants was provided with or had unlimited access to copies of the Registration Statement and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

67. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of CYS, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the Exchange Act violations alleged herein, and exercised the same. The omitted information identified above was reviewed by the Board prior to voting on the Proposed Transaction. The Registration Statement at issue contains the unanimous recommendation of the Board to approve the Proposed Transaction. The Individual Defendants were thus directly involved in the making of the Registration Statement.

68. In addition, as the Registration Statement sets forth at length, and as described herein, the Individual Defendants were involved in negotiating, reviewing, and approving the Merger Agreement. The Registration Statement purports to describe the various issues and information that the Individual Defendants reviewed and considered. The Individual Defendants participated in drafting and/or gave their input on the content of those descriptions.

69. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

70. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these



Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Individual Defendants' conduct, Plaintiff and the CYS stockholders will be irreparably harmed.

71. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

A. Enjoining Defendants, their agents, counsel, employees, and all persons acting in concert with them from consummating the Proposed Transaction, unless and until the Company discloses the material information discussed above which has been omitted from the Registration Statement;

B. Directing the Individual Defendants to account to Plaintiff for all damages suffered as a result of the Individual Defendants wrongdoing;

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

D. Granting such other and further equitable relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: June 19, 2018

LEVI & KORSINSKY LLP

By: /s/ Donald J. Enright  
Donald J. Enright (Bar No. 13551)

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