

SCULPTOR CAPITAL MANAGEMENT, INC.

FORM 8-K (Current report filing)

Filed 01/23/20 for the Period Ending 01/23/20

Address	9 WEST 57TH STREET SUITE 1300 NEW YORK, NY, 10019
Telephone	(212)790-0000
CIK	0001403256
Symbol	SCU
SIC Code	6282 - Investment Advice
Industry	Investment Management & Fund Operators
Sector	Financials
Fiscal Year	12/31

**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 (Date of earliest event reported): January 23, 2020

SCULPTOR CAPITAL MANAGEMENT, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
**(State or Other Jurisdiction
of Incorporation)**

001-33805
**(Commission
File Number)**

26-0354783
**(IRS Employer
Identification No.)**

9 West 57th Street, New York, New York
(Address of Principal Executive Offices)

10019
(Zip Code)

212-790-0000
(Registrant's Telephone Number, Including Area Code)

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))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Class A Shares	SCU	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

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 1.01. Entry into a Material Definitive Agreement.

On January 23, 2020, Sculptor Capital Management, Inc. (the “Company”) entered into an amendment (the “Amendment”) to its Deferred Prosecution Agreement (the “DPA”) with the U.S. Department of Justice (the “DOJ”) and the U.S. Attorney’s Office for the Eastern District of New York (the “USAO”) that extends the term of the DPA until 61 days after the entry of a final judgment by the U.S. District Court for the Eastern District of New York (the “Court”) in the matter of *U.S. v. Oz Africa Management GP, LLC*, Cr. No. 16-515 (NGG) (EDNY). The Amendment makes no other material changes to the DPA.

The extension is based solely on the voluntary agreement of the parties and is not premised on any non-compliance by the Company with the DPA. Because of an outstanding restitution claim against OZ Africa, sentencing in the OZ Africa matter has not occurred and, based on the current schedule, will not be completed before the scheduled conclusion of the DPA. Because the DPA contemplates that the sentencing in the OZ Africa matter would have occurred before the expiration of the DPA, the parties have executed an agreement with the purpose of extending the expiration date of the DPA.

The Amendment does not contemplate any additional term for the independent compliance monitor appointed to evaluate the Company’s compliance with its obligations under the DPA.

The foregoing description of the Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the Amendment, which is attached hereto as Exhibit 10.1 and which is incorporated herein by reference.

Item 8.01. Other Events.

On January 23, 2020, the USAO filed a letter with the Court on behalf of itself, the DOJ and the Company related to the Amendment. A copy of the letter is attached hereto as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
10.1	<u>Amendment to Deferred Prosecution Agreement, dated as of January 23, 2020, by and among Sculptor Capital Management, Inc., the U.S. Department of Justice and the U.S. Attorney’s Office for the Eastern District of New York.</u>
99.1	<u>Letter to the U.S. District Court for the Eastern District of New York, dated as of January 23, 2020, by and among Sculptor Capital Management, Inc., the U.S. Department of Justice and the U.S. Attorney’s Office for the Eastern District of New York.</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

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 thereunto duly authorized.

SCULPTOR CAPITAL MANAGEMENT, INC.
(Registrant)

By: /s/ Thomas M. Sipp
Thomas M. Sipp
Chief Financial Officer and
Executive Managing Director

Date: January 23, 2020

AES:DCP/JPM/JPL/GMM
F. #2012R01893

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X

UNITED STATES OF AMERICA

- against -

OCH-ZIFF CAPITAL MANAGEMENT
GROUP LLC,
also known as "Sculptor Capital
Management,"

AMENDMENT TO THE DEFERRED
PROSECUTION AGREEMENT

Cr. No. 16-516 (NGG)

The Defendant Och-Ziff Capital Management Group LLC, also known as Sculptor Capital Management (hereinafter, "Och-Ziff" or the "Company"), by its undersigned attorneys and representative, pursuant to authority granted to it by the Company's Board of Directors, and the United States Attorney's Office for the Eastern District of New York and the United States Department of Justice, Criminal Division, Fraud Section (collectively, the "Offices") enter into this Amendment to the Deferred Prosecution Agreement dated and filed September 29, 2016 (the "DPA"). The terms and conditions of this Amendment to the DPA are as follows:

1. Paragraph 3 of the DPA is amended to provide as follows:

This Agreement is effective for a period beginning on the date on which the Information is filed and ending 61 days after the entry of a final judgment by the Court in the matter of United States v. OZ Africa Management GP LLC (Docket No. 16-CR-515 (NGG) (E.D.N.Y.)) (the "Term"). The Company agrees, however, that, in the event the Offices determine, in their sole discretion, that the Company has knowingly violated any provision of this Agreement, an extension or extensions of the term of the Agreement may be imposed by the Offices, in their sole discretion, for up to a total additional time period of one year, without prejudice to the Offices' right to proceed as provided in Paragraphs 16 through 19 below. Any extension of the Agreement extends all terms of this Agreement for an equivalent period. If the Court rejects the Agreement, all the provisions of the

Agreement shall be deemed null and void, and the Term shall be deemed to have not begun.

2. The term of the Monitor shall remain as provided in paragraphs 11 through 13 of the DPA.

3. Paragraph 7 of the DPA, commencing with “The Company, directly or through an affiliate agrees to transfer...” is amended as follows:

The Company, directly or through an affiliate, previously has transferred the monetary penalty of \$213,055,689 into a suspense account at the United States Treasury. The monetary penalty in the amount of \$213,055,689 shall be released from the suspense account to the United States Treasury within ten (10) days of the entry of the judgment in the matter of United States v. OZ Africa Management GP LLC (Docket No. 16-CR-515 (NGG) (E.D.N.Y.)). The parties agree that any criminal fine that might be imposed by the Court against OZ Africa Management GP, LLC, in connection with its guilty plea and plea agreement, will be paid from the \$213,055,689 monetary penalty held in the suspense account and that any remaining balance will be transferred from the suspense account within ten (10) days of entry of the judgment to the United States Treasury. The Company and the Offices agree that the monetary penalty is appropriate given the facts and circumstances of this case, including the factors described in Paragraph 4 above. The \$213,055,689 monetary penalty is final and shall not be refunded. Furthermore, nothing in this Agreement shall be deemed an agreement by the Offices that the \$213,055,689 monetary penalty is the maximum penalty that may be imposed in any future prosecution, and the Offices are not precluded from arguing in any future prosecution that the Court should impose a higher fine, although the Offices agree that under those circumstances, they will recommend to the Court that any amount paid under this Agreement should be offset against any fine the Court imposes as part of a future judgment. The Company acknowledges that no tax deduction may be sought in connection with the payment of any part of this \$213,055,689 million monetary penalty. The Company shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source with regard to the penalty or disgorgement amounts that the Company pays pursuant to this Agreement or any other agreement concerning the conduct set forth in the Statement of Facts acts entered into with an enforcement authority or regulator.

4. Paragraph 26 of the DPA is amended as follows:

Any notice to the Offices under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to Chief, FCPA Unit, Fraud Section, Criminal Division, United States Department of Justice, 1400 New York Avenue, Washington, D.C. 20530; Chief, Business and Securities Fraud Section, United States Attorney’s

Office, Eastern District of New York, 271-A Cadman Plaza East, Brooklyn, New York 11201. Any notice to the Company under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to David Levine, Chief Legal Officer, Sculptor Capital Management, 9 West 57th Street, New York, New York 10019, with a copy to Anirudh Bansal, Esq., Cahill Gordon & Reindel, LLP, 80 Pine Street, New York, New York 10005. Notice shall be effective upon actual receipt by the Offices or the Company.

5. In all other aspects, the DPA shall remain in full force and effect.

AGREED:

FOR Och-Ziff Capital Management Group LLC:

/s/ David Levine
David Levine, Esq.
Chief Legal Officer
Och-Ziff/Sculptor Capital Management

/s/ Anirudh Bansal
Charles Gilman, Esq.
Anirudh Bansal, Esq.
Cahill Gordon & Reindel LLP
Counsel to the Defendant

Date: 1/23/20

FOR THE U.S. DEPARTMENT OF JUSTICE:

RICHARD P. DONOGHUE
United States Attorney
Eastern District of New York

ROBERT ZINK
Chief
Criminal Division, Fraud Section
U.S. Department of Justice

/s/ David C. Pitluck
David C. Pitluck
James P. McDonald
Jonathan P. Lax
Assistant U.S. Attorneys

/s/ Gerald M. Moody
Gerald M. Moody, Jr.
Trial Attorney

Date: 1/23/20

U.S. Department of Justice



DCP:JPM/JPL/GMM
F. #2012R01716

*United States Attorney
Eastern District of New York*
271 Cadman Plaza East
Brooklyn, New York 11201

January 23, 2020

By ECF and Hand Delivery

The Honorable Nicholas G. Garaufis
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Och-Ziff Capital Management Group LLC
Criminal Docket No. 16-516 (NGG)

Dear Judge Garaufis:

The government and the defendant Och-Capital Management Group LLC, which now operates under the name Sculptor Capital Management, respectfully submit this letter to advise the Court that the parties have agreed to voluntarily extend the term of the Deferred Prosecution Agreement (“DPA”) in the above-referenced matter. The parties have agreed to extend the DPA and have attached an Amendment to the Deferred Prosecution Agreement (the “Amendment”) which memorializes the parties’ agreement to certain revised provisions of the DPA.

As the Court is aware, on September 29, 2016, the parties entered into the DPA, which is currently scheduled to expire on January 24, 2020. See ECF Dkt. No. 11, Court Exhibit 2: Deferred Prosecution Agreement dated Sept. 29, 2016. Concurrent with the filing of the DPA, the government filed a Criminal Information against the defendant. See ECF Dkt. No. 8. The government also commenced a related criminal case, United States v. OZ Africa Management GP, LLC, 16-CR-515 (NGG) (the “OZ Africa Matter”), against one of the defendant’s subsidiary companies. Because of an outstanding restitution claim against that subsidiary, sentencing in the OZ Africa Matter has not occurred and, based on the current schedule, will not be completed before the scheduled conclusion of the DPA.

Under the DPA, the defendant agreed to pay a criminal monetary penalty in the amount of \$213,055,689. The parties also agreed that if the Court imposed a fine as part of sentencing in the OZ Africa Matter, the amount of such a fine would be paid from the \$213,055,689 monetary penalty currently being held by the government in a U.S. Treasury suspense account. Because the DPA contemplates that the sentencing in the OZ Africa Matter would have occurred before the expiration of the DPA, the parties have executed an agreement with the purpose of extending the expiration date of the DPA.

As part of the agreement to extend and the Amendment, the parties have agreed that the DPA will terminate 61 days after the entry of a final judgment by the Court in the OZ Africa Matter. This additional time period will ensure, among other things, that any monetary penalty can be appropriately disbursed by the government. The extension is based solely on the voluntary agreement of the parties and is not premised on any non-compliance by Och-Ziff or Sculptor with the DPA; indeed, the Amendment does not contemplate any additional term for the independent compliance monitor.

The parties are available to supply any additional information the Court may require.

OCH-ZIFF CAPITAL MGMT.
Defendant

/s/ Anirudh Bansal

Charles Gilman
Anirudh Bansal
Cahill Gordon & Reindel LLP
(212) 701-3207

Respectfully submitted,

RICHARD P. DONOGHUE
United States Attorney

/s/ James P. McDonald

James P. McDonald
Jonathan P. Lax
Assistant U.S. Attorneys
(718) 254-7000

ROBERT ZINK
Chief, Fraud Section
U.S. Dept. of Justice, Criminal Division

/s/ Gerald M. Moody

Gerald M. Moody
Trial Attorney
(202) 616-4988

cc: Clerk of the Court (NGG) (by ECF)
All Counsel of Record (by ECF)