B8339
REAL ESTATE MERGERS & ACQUISITIONS AND RESTRUCTURING
DEAL WORKSHOP

A Multidisciplinary Course Jointly Offered by
Columbia Business School & Columbia Law School

Adjunct Professor Gil Menna
Partner, Goodwin Procter LLP

and

Adjunct Professor Yoel Kranz
Partner, Goodwin Procter LLP

and

Professor Lynne Sagalyn
Earle W. Kazis and Benjamin Schore Professor of Real Estate
Director, Paul Milstein Center for Real Estate

Spring 2014
Monday, 4:30-7:45 pm
WJW207

Dear Students,

The Spring 2014 syllabus will be posted at a later date. Please note that it will be similar
to the Spring 2013 syllabus which is posted for your reference.

Best,

Prof.’s Sagalyn, Kranz, and Menna

Spring 2014 Course Teaching Assistant: TBD
B8316-001-20131
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Spring 2013
Tuesday, 4:30-7:45 pm
Uris 331

Course Statement

High-stakes real estate M&A and restructuring transactions require consummate deal-making skills and a thorough understanding of the underlying business, legal, financial and strategic frameworks. This Workshop will explore the relevant skill-sets and underlying frameworks through a combination of class discussions and hands-on exercises.

The REIT and commercial real estate sectors have emerged from the financial crisis, poised for a new phase of consolidation and M&A. In addition, on a technical note, the last decade saw significant legislative improvement in the tax scheme that governs REITs, which has provided REITs with greater operating and transaction flexibility. Many REITs have now shored up their balance sheets, regained the confidence of investors, and built up cash stockpiles and access to capital required to grow through acquisitions. At the same time, large pools of over-levered assets continue to wind their way through restructuring and recapitalization (i.e., deleveraging) transactions, as the industry continues to work through the hangover from the last cycle’s boom period of liquidity and leveraged M&A. These waves of transactional activity provide an ideal case study approach for learning the strategy and tactics involved in sophisticated real estate deal making, as well as the underlying legal and business building blocks.
The class will take a multi-disciplinary approach, based on the premise that an effective transactional lawyer must understand the business and financial goals and implications of the deal and, similarly, that an effective business or finance executive must have a solid grasp of the legal and structural underpinnings for the transaction.

Course Themes:

1) Real estate M&A transactions occur in both the public and private equity and debt markets; this duality creates arbitrage opportunities that, in turn, shape M&A activity; it also creates clashes of cultures and deal structures.

2) Real estate M&A transactions are influenced by the cyclical nature of real estate, equity and debt capital markets.

3) The legal and structural differences among investment vehicles for owning real estate affect the strategy and structure of M&A transactions.

Readings and Materials

Readings for the course are laid out in two ways: required and recommended. We expect you to have read the required readings prior to class. The materials are available on the Canvas site for the course, which Business and Law students can access: http://canvas.gsb.columbia.edu. If you experience any problem with accessing Canvas, please contact ITG: http://www4.gsb.columbia.edu/itg

*There is a lot of reading, more than might be customary in MBA classes. Keep in mind that this is both a business law course, and heavy reading rather than intense numerical calculations is the norm. We will, however, be focusing on the key financial metrics that drive boards of directors and real estate investment managers to do transactions. Class discussion and effective participation in the assigned exercises is based on the assumption that you have thoroughly read these materials and are prepared to answer questions and pose questions in class.*

Course Expectations and Assignments

- Readings in advance of each class;
- Active class participation including in connection with the role playing exercises; and
- Pre-class assignments designed to prepare you for intensive in-class learning; and
- Final assignment: TBA (most likely an analysis of an ongoing or recently completed M&A transaction)

Grading

Grading will be based on the written assignments (class assignments = 40%, final paper = 60%) and class participation will count in the final grade.

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B8316-001-20131
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URIS 331
Mondays, 4:30pm to 7:45pm

Course Schedule

Pre-Class: January 28  Overview of M&A Concepts and REITs
Class 1: February 4   Overview of Real Estate REIT M&A
Class 2: February 11  Selling a REIT
Class 3: February 18  Buying a REIT
Class 4: February 25  Hostile Takeovers of REITs
                       Unlocking Real Estate Value in Corporate America
Class 5: March 4      Bankruptcy Auctions and Distressed Investments
Class 6: March 11     Lehman Brothers and the Archstone Transaction
Class 7: TBD          Session to Review Final Paper
I. Pre-Class (January 28, 2013)  
(No Guest Lecturer)  

A. Pre-Class Reading  
   Class Agenda – Real Estate M&A and Restructurings Deal Workshop .......................... 1  
   Pre-Class Overview Powerpoint .................................................................................. 2  
   Glossary of Terms from NAREIT Website .................................................................. 3  
   Background Reading: Heard on the Beach, "The Wrapper Doesn't Matter," July 27, 2011, Green Street Advisors ................................................................. 4  
   Chpts. 1 (Intro) & 3 -- §§ 3.01, 3.02 & 3.03 (Directors’ Duties and Duties of OP Unitholders and other REIT Complications) of REITs: Mergers and Acquisitions, Law Journal Press, by David M. Einhorn, Adam O. Emmerich & Robin Panovka ("Panovka Treatise") .................................................................................................................. 5  

II. Class 1 (February 4, 2013): Overview of Real Estate REIT M&A  
(Guest Lecturer: Naftali Holtz, Vice President, Goldman Sachs & Co.)  

A. Pre-Class Reading – Required  
   Board Book – Initial Presentation from Financial Adviser to Board of Directors on an Acquisition Proposal ........................................................................................................ 7  
   Goodwin Procter Board Memorandum: Existing Change of Control Protections Available to ABC Properties Trust, Inc. .................................................................................. 8  
   Goodwin Procter Board Memorandum: Responding to Unsolicited Inquiries, Proposals and Related Activities ........................................................................................................ 9
B. Pre-Class Reading – Recommended
Panovka Treatise – Chapter 4 (Selling a REIT) ................................................................. 10

Redline of Goodwin Procter Pro-Buyer and Pro-Seller Form Confidentiality and
Standstill Agreement ........................................................................................................... 11

C. Post-Class Assignment
Memo from Prof. Menna and Prof. Kranz outlining brief assignment due before
Class 2, February 11, 2013 .................................................................................................. 12

III. Class 2 (February 11, 2013): Selling a Public REIT
(Guest Lecturer: Gregory S. Wright, Managing Director, Bank of America Merrill Lynch)

A. Pre-Class Reading – Required
Scenario: Selling a Public REIT ......................................................................................... 13

Exchange Ratio and M&A Pricing Mechanics .................................................................... 14

Relevant excerpts from GMH Communities Proxy Statement and related materials (skim
for familiarity)

GMH Proxy Statement ........................................................................................................ 15

Closing of Merger Transaction – June 11, 2008 ................................................................. 16

GMH Communities Trust – Home office Sale, Disposition Assets and
Expected Special Distribution – Form 8-K, May 19, 2008.pdf ........................................ 17

GMH Communities Trust – Closing of Balfour Beatty on April 30, 2008 –
Special Distribution on Military Housing Sale .................................................................. 18

B. Pre-Class Reading – Recommended
The M&A Lawyer: REIT Takeovers – Novel Issues Raised by
Excess Share Provisions and UPREIT Structures, by Adam O. Emmerich
and Robin Panovka, Vol. 1, No. 6, October 1997 ............................................................... 19

Real Estate Finance: Conflicts of Interest in the Structure of REITs, by Lynne B.
Sagalyn, Vol. 13, No. 2, Summer 1996 ............................................................................. 20

C. Post-Class Assignment
GMH Transaction Chronology and Statement. Due before Class 3, February 18,
2013 .................................................................................................................................. 21
IV. Class 3 (February 18, 2013): Buying a Public REIT
(Guest Lecturer: Ragavan Bala, Managing Director, Bank of America Merrill Lynch)

A. Pre-Class Reading – Required
Getting to a Term Sheet: Negotiation Points ................................................................. 22
Columbia CaseWorks: VNO and the EOP Blackstone Transaction.............................. 23
Relevant excerpts from EOP Proxy Statements and related materials
\[skim for familiarity\]

Proxy Statement of EOP, dated December 29, 2006 ............................................ 24
First Supplement to Proxy Statement ........................................................................ 25
Second Supplement to Proxy Statement .................................................................... 26
Third Supplement to Proxy Statement ....................................................................... 27
Assorted Press Releases ............................................................................................. 28

B. Pre-Class Reading – Recommended
Panovka Treatise, Chapter 5 -- §§ 5.01, 5.02[1], 5.05, 5.06 and 5.07[2], [3] and [4] (Acquisition Agreements) ................................................................................................................... 29

C. Post-Class Assignment
Friendly Merger Term Sheet. Due before Class 5, March 4, 2013 ......................... 30

V. Class 4 (February 25, 2013): Hostile Takeovers of REITs
(Guest Lecturer: Robin Panovka, Partner, Wachtell, Lipton, Rosen & Katz)

A. Pre-Class Assignment
Unsolicited Offers and Takeover Defenses. Due before Class 4, February 25, 2013 ......................................................................................................................... 31

B. Pre-Class Reading
Organizational Documents of Crown American Realty Trust and related materials – read sections as directed in cover sheet to these materials; rest may be skimmed for familiarity only

SharkRepellent Report ................................................................................................. 33
Declaration of Trust ..................................................................................................... 34

Tax Protection Agreement .......................................................................................... 36

Unlocking Real Estate Value in U.S. Businesses: Tax Efficient Strategies for Maximizing value, by David M. Einhorn, Robin Panovka, Joshua M. Holmes, Michael Sabbah, dated January 2011 ................................................................. 37

VI. Class 5 (March 4, 2013): Bankruptcy Auctions and Distressed Investments
(Guest Lecturer: Emanuel C. Grillo, Partner, Goodwin Procter LLP
Stephen Hannan, Senior Managing Director, Evercore Partners LP)

A. Pre-Class Reading – Required

Bankruptcy 101: An Introductory Primer ................................................................. 53

Checklist for Restructuring and Distress Investing ................................................. 52

Innkeepers USA: Capital Stack Diagram Showing Pre-Petition Capital Structure and Post-Proposed Plan Capital Structure .......................................................... 39


Extended Stay: Capital Structure Chart ................................................................. 50

Centerbridge Snares Extended Stay ..................................................................... 50

Extended Stay accepts Starwood reorganization bid ........................................ 51
VII. Class 6 (March 11, 2013): Lehman Brothers/Archstone

(Guest Lecturers: Stephen G. Hentschel, Managing Director, Head of Real Estate, Gleacher & Company
R. Webster Neighbor, Chief Financial Officer, Archstone
Douglas W. Sesler, Consultant, Lehman Brothers Holdings Inc.)

A. Pre-Class Reading - Required

Cover Memorandum from Professor Menna ............................................................... 49
Lehman Bros. / Archstone Timeline (powerpoint) .................................................. 50
Lehman – Archstone Timeline ............................................................................ 51
ASN Press Release announcing merger agreement (May 29, 2007) ....................... 52
Green Street Advisors, “Heard on the Beach” (June 1, 2007) .............................. 53
EQR Press Releases related to agreement to acquire interest in Archstone:

Press Release announcing agreement (December 2, 2011) ..................... 54
Press Release announcing bankruptcy court proceedings (December 29, 2011) ................................................................. 55
Press Release announcing settlement and breakup fees (May 25, 2012) ....... 56

Excerpt from Bankruptcy Court hearing (January 6, 2012):

Bench Ruling denying Lehman’s motion for preliminary injunction ............. 57

Excerpts from Amendment No. 4 to Form S-11 (November 19, 2012):

Discussing proposed corporate governance structure of Archstone Inc. ...... 58

AVB Press Release announcing acquisition agreement (November 26, 2012) .... 59
EQR Press Release announcing acquisition agreement (November 26, 2012) ....... 60
Green Street Advisors, “Splitting the Stone” (November 29, 2012)....................... 61
AVB Press Release announcing closing (February 27, 2013) .............................. 62
EQR Press Release announcing closing (February 27, 2013) .............................. 63
B. Pre-Class Reading – Optional

Bankruptcy Court hearing transcript (January 6, 2012) (Recommended for law students) .......................................................... 64

Bankruptcy Court hearing transcript (January 5, 2012) ...................................................... 65

Bankruptcy Court hearing transcript (February 29, 2012) .................................................. 66

C. Writing Assignment