B8339
REAL ESTATE MERGERS & ACQUISITIONS DEAL WORKSHOP

A Multidisciplinary Course Jointly Offered by

Columbia Business School & Columbia Law School

Adjunct Professor John Haggerty
Partner, Goodwin Procter LLP

Adjunct Professor Gil Menna
Partner, Goodwin Procter LLP

Course Teaching Assistant:
TBD

Spring 2017 (A Term)
Monday, 4:30-7:45 pm
Room Location: Warren and June Warren Hall 310
(classroom for Jan 20, Jan 27, and April review session TBD)

Course Statement

High-stakes real estate M&A 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, and recent legislative changes improve upon the ability of foreign persons investing in publicly traded REITs. We have seen a number of going private transactions in the REIT industry over the past year and more are expected in the near term given that the trading value of public REITs is generally below NAV and there are significant amounts of private capital, including from foreign investors, interested in investing in U.S. real estate. 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, tax, 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 difficulties with accessing Canvas, please contact ITG: http://www4.gsb.columbia.edu/itg.

There is more reading overall than might be customary in MBA classes. Keep in mind that this is both a business and law course, and reading rather than intense numerical calculations is the norm for class preparation. We will, however, be focusing on the key financial metrics that drive boards of directors and real estate investment managers to do transactions. Many of our guest lecturers are investment bankers who will bring a quantitative approach to the classroom. 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 relevant role playing exercises; and
- Pre-class assignments designed to prepare you for intensive in-class learning; and
- Final assignment: TBD (most likely an analysis of an ongoing or recently completed REIT M&A transaction)

Grading

Grading will be based on the written assignments (4 distinct class assignments = 40%, final paper = 60%). Please note that class participation will count in the final grade in that you may improve your grade if you participate in class discussions and answer questions posed by Messrs. Haggerty or Menna, or by the guest lecturers.
REAL ESTATE MERGERS & ACQUISITIONS DEAL WORKSHOP

Warren and June Warren Hall room 310
Mondays, 4:30pm to 7:45pm

Course Schedule (Class dates and materials are subject to change)

**Pre-Class: Friday, January 20, 1:30 – 4:45pm**
(Location: TBD)
Overview of M&A Concepts and REITs (Messrs. Haggerty and Menna)

**Mandatory attendance for the pre-class by law students; highly encouraged to attend in person by business students; and, in all events, MANDATORY to review tape recording of the class by business students who do not attend prior to Class 1**

**Class 1: Friday, January 27, 4:30 – 7:45pm**
(Location: TBD)
Overview of Real Estate REIT M&A
(Guest Lecturer: Ragavan Bala, Managing Director, Head of Real Estate M&A, Barclays Capital Inc.) (Mr. Haggerty)

**Class 2: Monday, January 30 in Warren 310**
Selling a Public REIT
(Guest Lecturer: Gregory S. Wright, Managing Director, Co-Head of Americas Real Estate Investment Banking, Merrill Lynch) (Mr. Menna)

**Class 3: Monday, February 6 in Warren 310**
Buying a Public REIT
(Guest Lecturer: Douglas W. Sesler, President, True Square Capital, LLC) (Mr. Haggerty)

**Class 4: Monday, February 13 in Warren 310**
Hostile Takeovers of REITs
Macerich/Simon Properties Case Study and Hostile Takeover of REITs
(Guest Lecturers: Avinash Mehrotra, Managing Director, Goldman Sachs and Ettore Santucci, Partner, Goodwin Procter LLP)
(Messrs. Haggerty and Santucci)

**Class 5: Monday, February 20 in Warren 310**
“Merger of Equals Transactions”; Interested-Director Transactions
(Guest Lecturer: Thomas A. Grier, Managing Director, Head of Real Estate Investment Banking, J.P. Morgan Securities LLC and Vineet Seth, Managing Director, Mergers & Acquisitions, J.P. Morgan Securities LLC) (Mr. Menna)

**Class 6: Monday, February 27 in Warren 310**
Lehman Brothers and the Archstone Transaction
(Guest Lecturers: Jonathan Litt, Founder and CEO, Land and Buildings and Steve Hentschel, Founder & CEO, Hentschel & Company, LLC) (Mr. Haggerty)

**Final exam/writing assignment due: Friday, March 17**
**Class 7:** **Review session:** Monday, April 17, 4:30 – 7:45pm  
(Location: TBD)  
Session to Review Final Paper (Either Mr. Haggerty or Mr. Menna)

**Mandatory session for all Law students**
REAL ESTATE MERGERS & ACQUISITIONS DEAL WORKSHOP

Warren 310
Mondays, 4:30pm to 7:45pm

COURSE INDEX

I. Pre-Class (Friday, January 20, 2017), 1:30-4:45pm (Location TBD)

A. Pre-Class Reading – Required:
   Class Agenda – Real Estate Mergers & Acquisitions Deal Workshop.............................. 1
   Pre-Class Overview PowerPoint (will discuss in class; please review in advance).................... 2
   REIT Valuation: The NAV-based Pricing Model, Green Street Advisors ......................... 3
   Heard on the Beach, "The Wrapper Doesn't Matter," July 27, 2011, Green Street Advisors..... 4

B. Pre-Class Reading – Recommended:
   Chpts. 1 (Intro) & 3 -- §§ 3.01, 3.02, 3.03, 3.04 & 3.05 (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 ("REIT M&A Treatise")......................................................... 5

C. Key Topics:
   (A) History of the REIT industry, terminology and overview
   (B) REIT structures, UPREITs and DownREITs
   (C) REIT valuation methodology and terms
   (D) Introduction to basic public REIT M&A concepts
       • What are Revlon duties and when do they apply?
       • How do fiduciary duty outs and deal protections work?
       • How do UPREIT conflicts of interest arise and how are they addressed?
       • Basic terms of a merger agreement
       • Basic defenses to hostile takeovers
   (E) Fiduciary Duties and Charter Ownership Limitations
   (F) Basic Terms of Merger Agreement – Price and Closing Terms; Closing Conditions (MACs) operating covenants; Representations; Interim Covenants, etc.

If we run out of time discussing the Pre-Class topics, we will finish our work on this segment during the beginning of Class 1
II. Class 1 (Friday, January 27, 2017, 4:30-7:45pm, location TBD): Overview of Real Estate REIT M&A
(Guest Lecturer: Ragavan Bala, Managing Director, Head of Real Estate M&A, Barclays Capital Inc.)
(Mr. Haggerty)
A. Pre-Class Reading – Required:
   Board Book – Initial Presentation from Financial Adviser to Board of Directors on an Acquisition Proposal
   Goodwin Procter Board Memorandum: Existing Change of Control Protections Available to ABC Properties Trust, Inc.
   Goodwin Procter Board Memorandum: Responding to Unsolicited Inquiries, Proposals and Related Activities
B. Pre-Class Reading – Recommended:
   REIT M&A Treatise – Chapter 4 (Selling a REIT)
   Goodwin Procter Annotated Form of Confidentiality, Non-disclosure and Standstill Agreement
C. Post-Class Assignment No. 1 (Assignment 1 of 4):
   Memo from Prof. Haggerty and Prof. Menna outlining assignment. Due before Class 2, February 8, 2016

III. Class 2 (Monday, January 30, 4:30-7:45pm, in Warren 310): Selling a Public REIT
(Guest Lecturer: Gregory S. Wright, Managing Director, Co-Head of Americas Real Estate Investment Banking, Merrill Lynch)
(Mr. Menna)
A. Pre-Class Reading – Required:
   Scenario: Selling a Public REIT (Please review this carefully and be prepared to conduct mock negotiations in class)
   Exchange Ratio and M&A Pricing Mechanics
   Relevant excerpts from GMH Communities Proxy Statement and related materials (skim for familiarity)
   GMH Proxy Statement (April 25, 2008)
   Fairness Opinion (June 11, 2008)
   GMH Communities Trust and American Campus Communities, Inc. – Home office Sale, Disposition Assets and Expected Special Distribution – Forms 8-K (May 19, 2008 and June 11, 2008, respectively)
   GMH Communities Trust – Closing of Balfour Beatty on April 30, 2008 – Special Distribution on Military Housing Sale
B. Post-Class Assignment No. 2 (Assignment 2 of 4):
   GMH Transaction Chronology and Statement. Due before Class 3, February 15, 2016
IV. **Class 3 (Monday, February 6, 2017, 4:30-7:45pm in Warren 310):** Buying a Public REIT  
(Guest Lecturer: Douglas W. Sesler, President of True Square Capital, LLC)  
(Mr. Haggerty)

A. **Pre-Class Reading – Required:**
   - Columbia CaseWorks: VNO and the EOP Blackstone Transaction ................................ 19
   - Relevant excerpts from EOP Proxy Statements and related materials  
     (*skim for familiarity*)
     - Proxy Statement of EOP, dated December 29, 2006 ............................................ 20
     - First Supplement to Proxy Statement ......................................................................... 21
     - Second Supplement to Proxy Statement ....................................................................... 22
     - Third Supplement to Proxy Statement ....................................................................... 23
     - Assorted Press Releases .................................................................................................. 24

B. **Pre-Class Reading – Recommended:**
   - REIT M&A Treatise, Chapter 5 -- §§ 5.01, 5.02[1], 5.05, 5.06 and 5.07[2], [3] and [4] (Acquisition Agreements) ............................................................................................... 25

C. **PowerPoint Timeline of EOP Blackstone Transaction (to be discussed and reviewed in class)............................................................................................................................ 26

D. **Post-Class Assignment No. 3 (Assignment 3 of 4):**
   - Friendly Merger Term Sheet. Due before Class 4, February 22, 2016 ......................... 27

V. **Class 4 (Monday, February 13, 2017, 4:30-7:45pm in Warren 310):** Macerich/Simon Properties Case Study and Hostile Takeovers of REITs  
(Guest Lecturers: Avinash Mehrotra, Managing Director, Goldman Sachs and Ettore Santucci, Partner, Goodwin Procter LLP)  
(Messrs. Haggerty and Menna)

A. **Pre-Class Reading – Required:**
   - The Macerich Company Stock Price, 11/1/15 to Present ................................................. 28
   - The Macerich Company / Simon Property Group Unsolicited Takeover Attempt Timeline ................................................................................................................. 29

B. **Pre-Class Reading – Recommended:**
   - REIT M&A Treatise, Chapter 7, §§ 7.02, 7.03, 7.05, and 7.07[4], [5].............................. 30
   - Overview of Maryland Antitakeover Statutes (*For Background Only*) ......................... 31

C. **Post-Class Assignment No. 4 (Assignment 4 of 4):**
   - Advice to Macerich Board, Due before Class 5, February................................................... 32
VI. Class 5 (Monday, February 20, 2017, 4:30-7:45pm in Warren 310): “Merger of Equal Transactions”; Interested-Director Transactions
(Guest Lecturer: Thomas A. Grier, Managing Director, Head of Real Estate Investment Banking, J.P. Morgan Securities LLC or Vineet Seth, Managing Director, Mergers & Acquisitions, J.P. Morgan Securities LLC)
(Mr. Menna)

A. Pre-Class Reading – Required:
Stock Merger Press Releases:
BRE Press Release (December 9, 2013) ................................................................. 33
BRE and ESS Joint Press Release (December 19, 2013) ......................................... 34
MAA and Colonial Joint Press Release (June 3, 2013) .......................................... 35
ProLogis Press Release (January 6, 2011) ............................................................. 36
ProLogis and AMB Joint Press Release (January 31, 2013) ............................... 37
Reuters—“AMB/ProLogis deal would be no merger of equals” (January 28, 2011) ............................................................................................................................................... 38
Ventas and NHP Joint Press Release (February 28, 2011) .................................. 39
Merger of Equals:
Project Washington Term Sheet ........................................................................... 40
M&A Update: Are All MOEs Created Equal (March 15, 2013) .................................. 41
M&A Alert: When public companies combine ..................................................... 42
Dividend Treatment:
HCN and Windrose Joint Press Release (December 11, 2006) ......................... 43
HCN Press Release (January 22, 2007) ............................................................... 44
Spirit Realty Press Release (July 1, 2013) ............................................................. 45
Spirit Realty Press Release (July 17, 2013) .......................................................... 46
Excerpt from AMB/ProLogis Merger Agreement ............................................... 47
Excerpt from email from Yoel Kranz, April 2013 .............................................. 48

B. Pre-Class Reading – Recommended:
Proxy Statement Excerpts:
MAA and Colonial (August 23, 2013) ................................................................. 49
AMB and ProLogis (April 28, 2011) ................................................................... 50
Ventas and NHP (May 13, 2011) ....................................................................... 51
VII. Class 6 (Monday, February 27, 2017, 4:30-7:45pm, Warren 310) (End of Term): 
Lehman Brothers and the Archstone Transaction  
(Guest Lecturer: Jonathan Litt, Founder and CEO, Land and Buildings and Steve Hentschel, 
Founder and CEO, Hentschel & Company, LLC)  
(Mr. Haggerty)  
A. Pre-Class Reading – Required:  
Cover Memorandum from Professor Menna .................................................................  52  
Columbia Business School Case Study: “Archstone from 2007 to 2013, Who 
Said Life was Easy?”, by Lynne Sagalyn and Jared Nutt, January 6, 2014 ...............  53  
Green Street Advisors, “Splitting the Stone” (November 29, 2012) .........................  54  
AVB Press Release announcing closing (February 27, 2013) ..................................  55  
EQR Press Release announcing closing (February 27, 2013) .................................  56  
B. Pre-Class Reading – Optional:  
Bankruptcy Court hearing transcript (January 6, 2012) (Recommended for 
law students) ...........................................................................................................  57  
Bankruptcy Court hearing transcript (January 5, 2012) .........................................  58  
Bankruptcy Court hearing transcript (February 29, 2012) ....................................  59  
C. Writing Assignment  
(Final exam due Friday, March 17; grading due April 14) ....................................  60  
D. Grades to be submitted by April 14, 2017  
VIII. Class 7, Review session (Monday, April 17, 4:30-7:45pm, Location TBD)  
(Mr. Haggerty or Mr. Menna to attend)  
Session to Review Final Paper (MANDATORY FOR ALL LAW STUDENTS)