**B8339 REAL ESTATE M&A WORKSHOP**

**Spring 2019, A-term
Mondays 4:30-7:45pm, Uris 332**

**FOR BIDDING PURPOSES ONLY**

|  |  |
| --- | --- |
| **Adjunct Professors Gil Menna and John Haggerty** **Emails: (**ggm2116@columbia.edu) **and** **(**jth2156@columbia.edu)Office Hours: by appointment | TEACHING ASSISTANTS |

Communications from professor and teaching assistants about the course will take place through Canvas.

Students should make sure they regularly check for announcements and messaging notifications.

**COURSE DESCRIPTION**

High-stakes real estate M&A transactions require consummate deal-making skills and a thorough understanding of the underlying business, legal, tax, financial and strategic frameworks. This Workshop will explore, in particular, the relevant financial advisory and legal skills needed to consummate these transactions, and will also highlight these skills in a combination of relevant class discussions, hands-on exercises and guest lectures.

Volatility and inconsistency between publicly traded REIT and REOC prices and the underlying net asset value of these assets have and will continue to create M&A opportunities in the publicly traded real estate sector, whether through strategic combinations, privatizations, or sophisticated and complex joint ventures. Capital flows into the U.S. real estate sector continue to be robust, which makes for a more interesting M&A dynamic. The last decade saw significant legislative improvement in the tax scheme that governs REITS. This has provided REITs with greater operating and transaction flexibility, and recent legislative changes have improved the ability of foreign persons to invest in publicly traded REITs. It is also anyone’s guess what is in store for the real estate industry and REIT market generally under the Trump administration. The 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.

This Workshop will take a multi-disciplinary approach, based on the premise that effective transaction advisors must understand the business and financial goals and implications of the deal and, similarly, that an effective business or finance executive must also have a solid grasp of the financial, structural, legal, and tax 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, and capital flows into the real estate asset class.

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 to do transactions. Many of our guest lecturers are investment bankers who will bring a deep 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***.

**COURSE ROADMAP/SCHEDULE**

**\*\*Pre-Class: date TBA** 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, February 1, 4:30 – 7:45pm (location TBD)**

Overview of Real Estate REIT M&A - (Guest Lecturer: Gregory S. Wright, Managing Director, Co-Head of Americas Real Estate Investment Banking, Bank of America Merrill Lynch) (Mr. Haggerty)

**Class 2: Monday, February 4 in Uris 332**

Selling a Public REIT – (Guest Lecturer: Jens Thomas Jung, Managing Director, Citigroup Global Banking) (Mr. Menna)

**Class 3: Monday, February 11 in Uris 332**

Buying a Public REIT - (Messrs. Mr. Haggerty and Menna)

**Class 4: Monday, February 18 in Uris 332**

Hostile Takeovers of REITs - Hostile Takeover of REITs/Shareholder Activism: (Guest Lecturers: Avinash Mehrotra, Managing Director, Goldman Sachs and Jonathan Litt, Founder and CEO, Land and Buildings) (Mr. Haggerty)

**Class 5: Monday, February 25 in Uris 332**

**“**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) (Mr. Menna)

**Class 6: Monday, March 4 in Uris 332**

Lehman Brothers and the Archston Transaction - (Guest Lecturers: David J. Neithercut, President & CEO, Equity Residential and Steve Hentschel, Founder & CEO, Hentschel & Company, LLC) (Mr. Menna)

**Final exam/writing assignment due: Friday, March 22**

**Class 7: \*\*Review session: Date and classroom TBA**

Session to Review Final Paper (Mr. Haggerty)

**\*\*Mandatory session for all Law students**

**Warren 310**



**Mondays, 4:30pm to 7:45pm**

**COURSE INDEX**

**I. Pre-Class: date TBA (location TBA)**

A. Pre-Class Reading – Required:

Course Syllabus – 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

Goodwin Procter REIT Alert (June 8, 2016) on REIT Ownership Limitations 4A

NAREIT Alert (December 18, 2015) on the PATH Act 4B

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

• Delaware vs. Maryland Corporation

• Why Maryland?

• What are Revlon duties under Delaware law, and when do they apply? Do they apply in Maryland?

* 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 “REIT qualification” 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.

**NOTE**: ***All information necessary for Assignment No. 1 is covered in the Pre‐ Class and you should review Assignment No. 1 so any clarifying questions can be asked at Class No. 1.***

**II. Class 1 (Friday, February 1, 2019, 4:30-7:45pm, location TBD): Overview of**

**Real Estate REIT M&A**

(Guest Lecturer: Gregory S. Wright, Managing Director, Co‐Head of Americas Real

Estate Investment Banking, Bank of America Merrill Lynch)

(Mr. Haggerty)

A. Pre‐Class Reading – Required:

Board Book – Initial Presentation from Financial Adviser to Board of

Directors on an Acquisition Proposal 6

Goodwin Procter Board Memorandum: Existing Change of Control

Protections Available to ABC Properties Trust, Inc. 7

Goodwin Procter Board Memorandum: Responding to Unsolicited Inquiries,

Proposals and Related Activities 8

B. Pre‐Class Reading – Recommended:

REIT M&A Treatise – Chapter 4 (Selling a REIT) 9

Goodwin Procter Annotated Form of Confidentiality, Non‐disclosure and

Standstill Agreement 10

C. Post‐Class Assignment No. 1 (Assignment 1 of 4):

Memo from Prof. Haggerty and Prof. Menna outlining assignment. Due

before Class 2, January 30, 2017 11

**III. Class 2 (Monday, February 4, 4:30-7:45pm, in Warren 310): Selling a Public REIT**

(Guest Lecturer: Jens Thomas Jung, Managing Director, Citigroup Global Banking)

(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) 12

Exchange Ratio and M&A Pricing Mechanics 13

Relevant excerpts from MAA/Post Properties Proxy Statement and MAA Registration Statement and related materials (*skim for familiarity*)

Excerpts from MAA/Post Joint Proxy Statement/Prospectus dated

September 30, 2016, sent on October 3, 2016 14

Excerpts from MAA/Post Joint Proxy Statement/Prospectus –

Fairness Opinions dated August 14, 2016 15

Two‐Tier Termination Fees 16

Market Reaction to Transaction (Green Street Analysis) 17

B. Post-Class Assignment No. 2 (Assignment 2 of 4):

MAA/Post Transaction Questions and Answers. Due before Class 3,

February 6, 2017 18

**IV. Class 3 (Monday, February 11, 2019, 4:30-7:45pm in Warren 310): Buying a Public**

**REIT**

(Messrs. Haggerty and Menna)

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 13, 2017 27

**V. Class 4 (Monday, February 18, 2019, 4:30-7:45pm in Warren 310): Hostile Takeovers**

**of REITs/Shareholder Activism**

(Guest Lecturers: Avinash Mehrotra, Managing Director, Goldman Sachs and Jonathan Litt,

Founder and CEO, Land and Buildings)

(Mr. Haggerty)

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 20, 2017 32

**VI. Class 5 (Monday, February 25, 2019, 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)

(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, March 4, 2019, 4:30-7:45pm, Warren 310) (End of Term):**

**Lehman Brothers and the Archstone Transaction**

(Guest Lecturers: David J. Neithercut, President & CEO, Equity Residential and Steve

Hentschel, Founder and CEO, Hentschel & Company, LLC)

(Mr. Menna)

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 16; grading due April 13)** 60

D. Grades to be submitted by April 13, 2018

**VIII. Class 7, Review session: date TBA (classroom TBD )**(Mr. Haggerty)

Session to Review Final Paper (MANDATORY FOR ALL LAW STUDENTS)

**ATTENDANCE POLICY**Students are required to attend each class. Students should reach out to the [Office of Student Affairs (OSA)](https://www8.gsb.columbia.edu/mba-students/the-office-of-student-affairs) by using Core Absence Form on this course’s Canvas page regarding excused absences (for religious observances; personal, medical, and family emergencies; military service; court appearances such as jury duty). Unexcused absences will affect your course grade.

**INCLUSION, ACCOMMODATIONS, AND SUPPORT FOR STUDENTS**At Columbia Business School, we believe that diversity strengthens any community or business model and brings it greater success. Columbia Business School is committed to providing all students with the equal opportunity to thrive in the classroom by providing a learning, living, and working environment free from discrimination, harassment, and bias on the basis of gender, sexual orientation, race, ethnicity, socioeconomic status, or ability. Columbia Business School will make reasonable accommodations for persons with documented disabilities.  Students are encouraged to contact the Columbia University’s Office of Disability Services for information about registration. Students seeking accommodation in the classroom may obtain information on the services offered by Columbia University’s Office of Disability Services online at [www.health.columbia.edu/docs/services/ods/index.html](http://www.health.columbia.edu/docs/services/ods/index.html) or by contacting (212) 854-2388.Columbia Business School is committed to maintaining a safe environment for students, staff and faculty.  Because of this commitment and because of federal and state regulations, we must advise you that if you tell any of your instructors about sexual harassment or gender-based misconduct involving a member of the campus community, your instructor is required to report this information to a Title IX Coordinator.  They will treat this information as private, but will need to follow up with you and possibly look into the matter.  Counseling and Psychological Services, the Office of the University Chaplain, and the Ombuds Office for Gender-Based Misconduct are confidential resources available for students, staff and faculty. “Gender-based misconduct” includes sexual assault, stalking, sexual harassment, dating violence, domestic violence, sexual exploitation, and gender-based harassment.  For more information, see <http://sexualrespect.columbia.edu/gender-based-misconduct-policy-students>.