Columbia Business School

Columbia Law School

B8339 REAL ESTATE M&A WORKSHOP
Spring 2020, A-term
Mondays 4:30-7:45pm, [Location TBD]

Adjunct Professors John Haggerty and Gil Menna
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Office Hours: by appointment

TEACHING ASSISTANT
[_____:_____]

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 case study oriented 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, exercises/assignments 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, hybrid public and private transactions or sophisticated and complex public/private joint ventures. Capital flows into the U.S. real estate sector continue to be robust, which makes for a more interesting M&A dynamic. Thanks in part to the efforts of NAREIT (the National Association of Real Estate Investment Trusts) there continues to be 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. On the other hand, as the corporate tax rate has declined from 35% to 21% federally, the tax advantage of the REIT dividends paid deduction has lessened.

This Workshop will take a multi-disciplinary approach, based on the premise that effective transaction advisors must understand the business, financial and tax 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 capital markets; this duality creates public/private 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 assets also 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 financially oriented 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 pose and answer questions in class.

Course Expectations and Assignments

- Readings in advance of each class;
- Active class participation;
- Pre-class assignments designed to consolidate and assess in-class learning and discussion; and
- Final assignment: 8-10 page paper analyzing a complex REIT M&A transaction.

Grading

Grading will be based on the written assignments (4 distinct class assignments = 40% (i.e., 10% each), 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 Professors Haggerty or Menna, or by the guest lecturers***.

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

****Pre-Class: Friday, January 24, 3:45 – 7:00pm** Overview of REITs and Key Concepts (Prof. Haggerty) - **TBD**

****Mandatory attendance for the pre-class by Law students; request attendance in person by business students (if possible); 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: Monday, January 27, 4:30 – 7:45pm in TBD

Overview of Real Estate REIT M&A - (Guest Lecturer: [Gregory S. Wright, Chief Investment Officer, Digital Realty Trust, Inc.]) (Prof. Menna)

Class 2: Monday, February 3, 4:30 – 7:45pm in TBD

Selling a Public REIT - (Guest Lecturer: [Jens Thomas Jung, Managing Director, Citigroup Global Banking]) (Prof. Menna)

Class 3: Monday, February 10, 4:30 – 7:45pm in TBD

Buying a Public REIT; Go Privates - (Guest Lecturer: [Michael Connor, Vice President, Morgan Stanley]) (Prof. Haggerty)

Class 4: Monday, February 17, 4:30 – 7:45pm in TBD

Hybrid Transactions (Private/Public M&A) - (Guest Lecturer: [Ted Bigman, Managing Director and Global Head of Real Estate, Morgan Stanley Investment Management]) (Prof. Haggerty)

Class 5: Monday, February 24, 4:30 – 7:45pm in TBD

Shareholder Activism/Hostile Takeovers of REITs - (Guest Lecturers: [Zach Eckler, Managing Director, Goldman Sachs, and Jonathan Litt, Founder and CEO, Land and Buildings]) (Prof. Menna)

Class 6: Monday, March 2, 4:30 – 7:45pm in TBD

Lehman Brothers and the Archstone Transaction - (Guest Lecturers: [Rob Gifford, Director of Lehman Brothers Holdings, Inc. and Steve Hentschel, Senior Managing Director, HFF, LP]) (Prof. Haggerty)

Final exam/writing assignment due: Monday, March 16, 2020

Class 7: **Review session: Monday, April 13, 4:30 – 7:45pm in TBD

Session to Review Final Paper (Either Prof. Haggerty or Prof. Menna)

****This review session is Mandatory session for all Law students**

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COURSE INDEX

VII. **Pre-Class (Friday, January 24, 2020, 3:45-7:00pm TBD: Overview of REITs and Key Concepts** (Prof. Haggerty)

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: Version 3.0 of our Pricing Model, Green Street Advisors..... 3

Heard on the Beach, "Alternative Facts," February 17, 2017, Green Street Advisors (to be reviewed in connection with Assignment No. 1)..... 4

Sections I through IV of Goodwin Procter REIT Alert (June 8, 2016) on REIT Ownership Limitations..... 5

B. Pre-Class Reading – Recommended:

Chapter 1 (Intro) of REITs: Mergers and Acquisitions, Law Journal Press, by David M. Einhorn, Adam O. Emmerich & Robin Panovka ("REIT M&A Treatise")..... 6

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) Charter "REIT qualification" Ownership Limitations

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.***

VIII. **Class 1 (Monday, January 27, 2020, 4:30-7:45pm in TBD): Overview of Real Estate REIT M&A**
(Guest Lecturer: Greg Wright, Chief Investment Officer, Digital Realty Trust) (Prof. Menna)

A. Pre-Class Reading – Required:

Board Book – Presentation from Financial Advisor to Board of Directors on an Acquisition Proposal..... 7

Comparison of Material Real Estate M&A Terms 8

B. Pre-Class Reading – Recommended:

REIT M&A Treatise –§§ 3.01, 3.02, 3.03, 3.04 & 3.05 (Directors' Duties and Duties of OP Unitholders and other REIT Complications) 9

Goodwin Procter Annotated Form of Confidentiality, Non-disclosure and Standstill Agreement (Focus particularly on §§ 3 and 7) 10

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

Memo from Prof. Haggerty and Prof. Menna outlining assignment Due Wednesday, February __, 2020 11

D. Key Topics:

(A) Introduction to basic REIT public M&A concepts

(B) Differences between public M&A and private asset transactions

(C) Fiduciary Duties

(D) How do UPREIT conflicts of interest arise and how are they addressed?

(E) Basic terms of a merger agreement; how do fiduciary termination rights and deal protection provisions work?

(F) Role of Investment Bankers and Fairness Opinions

IX. **Class 2 (Monday, February 3, 2020, 4:30-7:45pm, in TBD: Selling a Public REIT**
(Guest Lecturer: Jens Thomas Jung, Managing Director, Citigroup Global Banking) (Prof. Menna)

A. Pre-Class Reading – Required:

Scenario: Selling a Public REIT (Please review carefully and be prepared to negotiate in class) 12

Exchange Ratio and M&A Pricing Mechanics 13

LaSalle Case Study Timeline 14

Relevant excerpts from LaSalle/Blackstone and LaSalle/Pebblebrook Proxy Statements (*skim for familiarity*) 15

Pebblebrook public proposal dated March 28, 2018 16

HG Vora 13D dated April 2, 2018 17

Pebblebrook 13D dated June 22, 2018 18

Pebblebrook Investor Presentation dated August 10, 2018 19

HG Vora 13D/A dated August 22, 2018 20

Various Bloomberg Articles 21

B. Pre-Class Reading – Recommended:

REIT M&A Treatise –Chapter 4 (Selling a Public REIT) 22

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

LaSalle/Post Transaction Questions and Answers. Due before Class 3, February 10, 2020 23

X. **Class 3 (Monday, February 10, 2020, 4:30-7:45pm in TBD): Buying a Public REIT; Go Privates**
(Guest Lecturer: Michael Connor, Vice President, Morgan Stanley) (Prof. Haggerty)

A. Pre-Class Reading – Required:

PowerPoint Timeline of Monogram/Greystar Transaction (to be discussed and reviewed in class) 24

Relevant Excerpts from Monogram Proxy Statement dated August 10, 2017 25

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) 26

Columbia CaseWorks: VNO and the EOP/Blackstone Transactions 27

PowerPoint Timeline of EOP/Blackstone Transactions 28

C. Post-Class Assignment No. 3 (Assignment 3 of 4):

Buyer Proposal and Term Sheet. Due before Class 4, February 17, 2020 29

XI. **Class 4 (Monday, February 17, 2020, 4:30-7:45pm in TBD): Hybrid Transactions (Private/Public M&A)**
(Guest Lecturer: Ted Bigman, Managing Director and Global Head of Real Estate, Morgan Stanley Investment Management) (Prof. Haggerty)

A. Pre-Class Reading – Required:

Scenario – Hybrid Transaction 30

B. Pre-Class Reading – Recommended:

Goodwin Insights – Trends in Public REIT M&A 2012-2017 31

Goodwin Update: Further Trends in REIT M&A (2018) 32

XII. **Class 5 (Monday, February 24, 2020, 4:30-7:45pm in TBD): Hostile Takeovers of REITs/Shareholder Activism**
(Guest Lecturers: Zach Eckler, Managing Director, Goldman Sachs and Jonathan Litt, Founder and CEO, Land and Buildings)
(Prof. Menna)

A. Pre-Class Reading – Required:

The Macerich Company Stock Price, 11/1/15 to Present 33

The Macerich Company / Simon Property Group Unsolicited Takeover Attempt Timeline 34

Goodwin Procter Board Memorandum: Existing Change of Control Protections Available to ABC Properties Trust, Inc. 35

Goodwin Procter Board Memorandum: Responding to Unsolicited Inquiries, Proposals and Related Activities 36

B. Pre-Class Reading – Recommended:

REIT M&A Treatise, Chapter 7, §§ 7.02, 7.03, 7.05, and 7.07[4], [5] 37

Overview of Maryland Antitakeover Statutes (For Background Only) 38

C. Post-Class Assignment No. 4 (Assignment 4 of 4):

Advice to Macerich Board of Directors. Due before Class 6, March 2, 2020..... 39

XIII. **Class 6 (Monday, March 2, 2020, 4:30-7:45pm in TBD) (End of Term): Lehman Brothers and the Archstone Transaction**
(Guest Lecturers: Rob Gifford, Director of Lehman Brothers Holdings, Inc. and Steve Hentschel, Senior Managing Director, HFF, LP)
(Prof. Haggerty)

A. Pre-Class Reading – Required:

Cover Memorandum from Professor Menna..... 40

Columbia Business School Case Study: "Archstone from 2007 to 2013, Who Said Life was Easy?" by Lynne Sagalyn and Jared Nutt, January 6, 2014..... 41

Green Street Advisors, "Splitting the Stone" (November 29, 2012) 42

AVB Press Release announcing closing (February 27, 2013)..... 43

EQR Press Release announcing closing (February 27, 2013)..... 44

B. Pre-Class Reading – Optional:

Bankruptcy Court hearing transcript (January 6, 2012) (Recommended but not required for law students) 45

Bankruptcy Court hearing transcript (January 5, 2012) 46

Bankruptcy Court hearing transcript (February 29, 2012) 47

C. Final Exam/Writing Assignment
(Final exam due Friday, March __, 2020) 48

XIV. **Class 7, Review session: April 13, 2020 in TBD)**
(Prof. Haggerty or Prof. Menna)

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) 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 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.