REAL ESTATE CAPITAL MARKETS

REPORT

FALL
2024

HUNTON
ANDREWS KURTH

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We are excited to share with you some highlights of our Real Estate Capital Markets team from the third quarter of 2024. During the quarter, the markets welcomed the first of what many hope will be a series of interest rates cuts. However, in light of continued mixed economic data, the pace and size of cuts continue to be uncertain. That said, conditions for REITs (particularly for public REITs raising debt capital) were very constructive, and significant amounts of capital were raised. In terms of REITs raising equity, performance was mixed depending on asset class, and several REITs continue to trade below book value. We also observed many REITs seek to raise capital through strategic joint ventures and other fund structures, as well as consider accretive M&A transactions.

Our practice continues to be very active on a number of fronts. As noted above, there was a significant uptick in debt offerings by REITs. We represented a number of market participants on note offerings during the second quarter. One transaction of note was our representation of Pebblebrook Hotel Trust (NYSE: PEB) in connection with the private placement of $400 million aggregate principal amount of 6.375% Senior Notes due 2029. In part reflecting the market's appetite for REIT debt offerings, the deal launched at $350 million but was upsized at pricing to $400 million. Read more about this transactions in our "Deal Spotlight" beginning on page 4.

We continued to be active on the M&A front as well. In particular, we recently represented Chimera Investment Corporation (NYSE:CIM) in connection with its acquisition of Palisades Group, a US-based alternative asset manager specializing in residential real estate credit. Chimera will acquire Palisades for cash consideration of $30 million at closing, plus an additional potential earnout of up to $20 million over five years contingent upon achieving certain financial targets. Our representation of Chimera in this deal is the latest in a long line of our participation in mortgage REIT M&A deals, and we continue to have one of the country's most active practices on that front. One of our partners who is key to our representations of mortgage REITs, specialty finance companies and other real estate participants is Amy Williams, who leads our practice in advising companies on qualifying for exemptions from the Investment Company Act of 1940. Learn more about Amy and the 1940 Act practice on page 5.

In terms of thought leadership, please refer to pages 6 and 10 for two articles we think are relevant to all public REITs. The first relates to an uptick in the SEC's enforcement of beneficial ownership rules under the federal securities laws. The enforcement actions are part of an SEC enforcement initiative aimed at ensuring compliance with ownership disclosure and other reporting rules, all relevant to public REITs. In addition, we encourage all REITs to review our REIT tax team's very relevant publication on year-end tax planning. As noted on page 10, as the end of 2024 nears, REITs have opportunities for tax planning with respect to year-end distributions.

Finally, on page 13 we present you with an update on our pro bono work with Project Destined, a nonprofit that connects students with real estate firms for training, networking, mentorship and job opportunities. Representatives from Hunton and Project Destined are excited to see all our friends, colleagues and clients at Nareit's REITworld in Las Vegas from November 18 to 21. Hunton is once again a proud sponsor of this event.

DEAL SPOTLIGHT

PEBBLEBROOK HOTEL TRUST'S HIGH-YIELD NOTES PRIVATE PLACEMENT

We recently represented Pebblebrook Hotel Trust (NYSE: PEB) in connection with the private placement of $400 million aggregate principal amount of 6.375% Senior Notes due 2029 issued by Pebblebrook Hotel Trust's operating partnership, Pebblebrook Hotel, L.P., and one of its wholly owned subsidiaries. The deal launched at $350 million but was upsized at pricing to $400 million.This was Pebblebrook's debut offering of high-yield notes.

We have served as Pebblebrook's corporate, tax and capital markets counsel since its formation and initial public offering in 2009 to date. Over that time, we have advised Pebblebrook in its $5.2 billion acquisition of another public REIT and over $4.0 billion in capital markets transactions, including numerous public underwritten offerings, private placements, at-the-market offerings, redemptions and repurchases of multiple forms of equity and debt, including common shares, preferred shares, convertible notes and senior notes.

Pebblebrook is the largest owner of urban and resort lifestyle hotels in the United States. It owns 46 hotels, totaling approximately 12,000 guest rooms across 13 urban and resort markets.

REIT partner **Mark Wickersham** led the Hunton team in the transaction. Other team members included capital markets partner **Henry Havre** and associates **Erin Jennings** and **Elizabeth White**; tax partners **Kendal Sibley** and **Robert McNamara** and counsel **Allison Stelter**; and lending services counsel **Byron Mulligan**.

TEAM MEMBER SPOTLIGHT

AMY WILLIAMS

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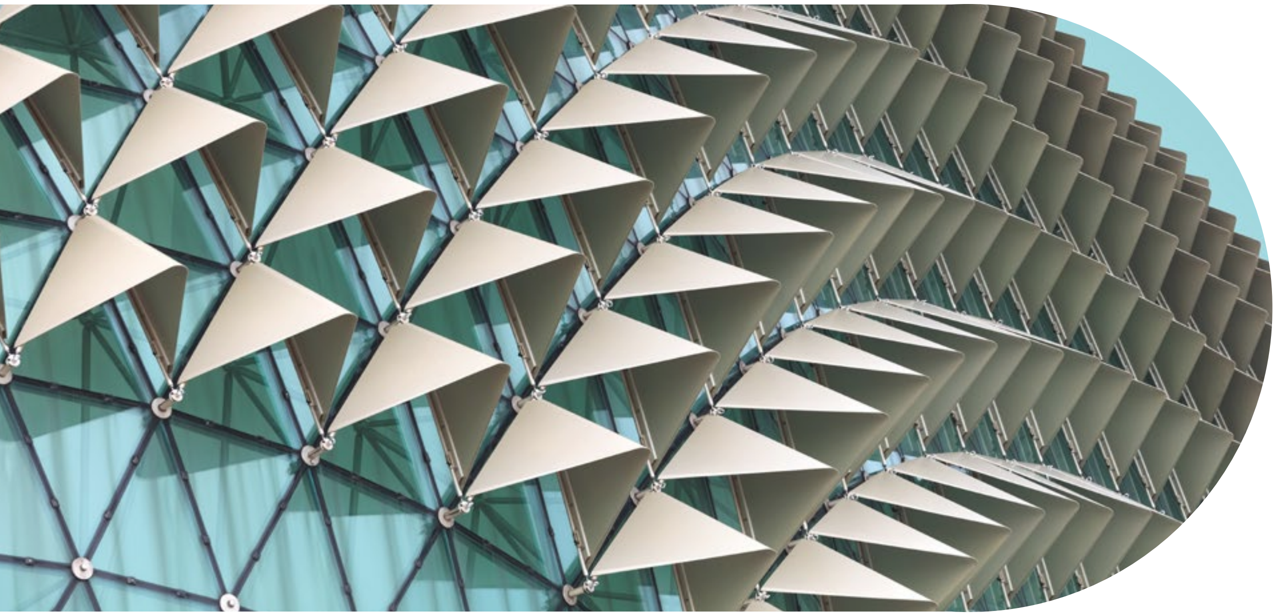
Throughout her career at Hunton, Amy has advised clients, including specialty finance companies and REITs, about status under the Investment Company Act of 1940 (1940 Act). REIT clients are sometimes surprised that the rules of the road for the 1940 Act are distinct from the rules of the road for REIT tax purposes, and sometimes specialty finance companies think they need not concern themselves about the 1940 Act if they are not REITs. Even ordinary operating companies, including companies that own real properties, need to ensure that they qualify for exemptions from the 1940 Act.

Exemptions from the 1940 Act fall generally into three categories: exemptions for already regulated entities, such as banks and insurance companies; private exemptions; and exemptions based upon asset mix. Private companies that do not intend to go public are exempt if all their securities are held by qualified purchasers or if their securities are held by no more than 100 holders. Entities that must rely on private exemptions are "covered funds" under the Volcker Rule, however, which can limit financing opportunities. Exemptions based upon asset mix provide more financing flexibility but can be complicated to analyze and monitor. Amy has made a name for herself in helping clients to structure their activities in such a way as to qualify for one or more asset-based exemptions.

Amy is a partner on the Structured Finance and Securitization team. She has represented Ginnie Mae since she helped develop its multiclass program in the early 1990s. She assists a variety of clients in warehouse financings and other structured finance transactions. Amy serves on the board of the Structured Finance Association. She is the chair of Hunton's Opinion Committee and serves as an editor of the ABA Opinion Committee's newsletter. She is a frequent speaker and moderator and hosts "Wisdom Wednesdays," a series of CLE programs for Hunton's lawyers.

Problems often arise when these operating companies enter into joint ventures without consulting a 1940 Act practitioner such as Amy.



OUR THOUGHT LEADERSHIP (IN CASE YOU MISSED IT[1])

SEC BRINGS MULTIPLE ENFORCEMENT ACTIONS RELATING TO BENEFICIAL OWNERSHIP AND OTHER REPORTING OBLIGATIONS

by James Davidson, Mayme Donohue, Kate Saltz, Eric Markus and Scott Kimpel

WHAT HAPPENED

On September 25, 2024, the Securities and Exchange Commission (the SEC) announced that it had instituted and settled enforcement actions under Section 13(d), Section 13(g) and Section 16(a) of the Securities Exchange Act of 1934 (as amended, the Exchange Act). The actions involved 21 individuals and entities that allegedly had failed to timely file Schedule 13D or 13G to report beneficial ownership of greater than 5% of the registered equity securities outstanding and/or amendments to such reports, and/or to timely file Form 3, 4 or 5 to report ownership of, and transactions in, registered equity securities by executive officers, directors and greater-than-10% beneficial owners (collectively, insiders). As part of the settlements, individual respondents agreed to pay civil monetary penalties ranging from $10,000 to $200,000, and entities agreed to pay civil penalties ranging from $40,000 to $750,000. As part of the same set of settlements, the SEC also instituted and settled two enforcement actions against public companies for allegedly causing certain of their insiders' Form 3, 4 or 5 filing failures or for failing to report such filing delinquencies. Just a week earlier, the SEC had announced the institution and settlement of enforcement actions under Section 13(f) and Section 13(h) of the Exchange Act against 11 institutional investment managers that allegedly had failed on a timely basis to file one or more quarterly Form 13F reports and/or periodic Form 13H reports.

[1] We first published these Thought Leadership articles on October 9, 2024 and October 21, 2024, respectively.

THE BOTTOM LINE

The foregoing actions are part of an SEC enforcement initiative aimed at ensuring compliance with ownership disclosure and other reporting rules. Insofar as the beneficial ownership and insider actions are concerned, the most recent set of settlements suggest a possible willingness on the SEC's part to bring enforcement actions even for minor and technical violations. Insofar as the institutional investor enforcement actions are concerned, the recent "sweep" appears to mark the first such broad action by the SEC. Notably, for two of the sanctioned institutional investment managers that were based outside the United States and where the managers self-reported their errors to the SEC, no monetary penalties were assessed. A third institutional investment manager did not pay a monetary penalty for its Form 13H filing delinquency, which had been self-reported to the agency. Further, the SEC's public announcement of the settlements indicated that the SEC staff used data analytics to identify the delinquent filings. The SEC has occasionally used various technological solutions to search for late filings and other violations of law in the vast EDGAR database, and as artificial intelligence and similar applications become more widespread and economical, we expect the SEC to make greater use of automated techniques in the future as part of its ongoing filing review process.

THE FULL STORY

5% Beneficial Owners, Insiders and Public Company Issuers

Under Section 13(d)(1) of the Exchange Act and Rule 13d-2(a) promulgated thereunder, any person who acquired beneficial ownership of more than 5 percent of a public company's stock must, within 10 calendar days of the relevant acquisition,[2] file an initial set of disclosures on Schedule 13D with the SEC. The beneficial owner must then file updates with the SEC to report any material changes to its position or other facts disclosed in prior filings. Certain investors (mostly passive ones) are eligible to file a simplified set of disclosures on Schedule 13G. The deadline to file a Schedule 13G was also within 10 calendar days of acquiring more than 5 percent beneficial ownership, but certain institutional investors were permitted to defer disclosing their passive holdings on Schedule 13G until 45 days after the end of the calendar year.

Under Section 16(a) of the Exchange Act and Rule 16a-3 promulgated thereunder, officers and directors of public companies, and any beneficial owners of greater than 10% of stock in a public company, were (and currently are) required to file initial statements of holdings on Form 3 either within 10 calendar days of becoming an insider or on or before the effective date of the initial registration of the stock. Such insiders are then obligated to keep this information current by reporting subsequent transactions on Forms 4 and 5 (in most instances, within two business days of any change). In

[2] The deadlines described here were in effect during the relevant periods in the settled actions. Effective on and after February 5, 2024, the initial Schedule 13D must be filed within five business days of the relevant acquisition. For more information on the current deadlines for filing Schedule 13D, see our client alert.

addition, Section 13(a) of the Exchange Act and Item 405 of Regulation S-K promulgated thereunder require issuers to disclose information regarding delinquent Section 16(a) filings by insiders in their annual reports.

Here, the SEC alleged that 14 persons, who were obligated to file Forms 3/4/5, failed to timely file or update such reports required under Section 16(a), that two public companies caused some of those late filings and/or did not disclose the late filings when required, and that 18 persons who were obligated to file and/or amend Schedules 13D/13G failed to do so timely as required under Sections 13(d) and (g). In most of the non-issuer settlements, there appear to have been repeated failures over multiple issuers, sometimes over several years. However, not all persons settling with the SEC had failures that were repeated or otherwise egregious. Each of two of the matters that settled for $25,000 or less alleged only a few violations (and one of those included two alleged Schedule 13D violations that arguably are supported by a compliance and disclosure interpretation but not by the actual wording of Section 13 and its implementing rules). By contrast, among the 11 beneficial ownership settlements that the SEC announced nearly a year ago, none were below $66,000. This suggests that the SEC may once again be bringing less serious enforcement actions and pursuing even minor infractions.

INSTITUTIONAL INVESTMENT MANAGERS

Under Section 13(f) of the Exchange Act and Rule 13f-1 promulgated thereunder, entities with investment discretion over at least $100 million worth of specified US publicly traded securities (and certain securities exercisable for or convertible into such securities) (institutional investment managers) are required to file quarterly Form 13F reports detailing their ownership of such securities regardless of the percentages owned. Reports can omit certain de minimis positions, though the de minimis level is set quite low so relatively few positions are typically excluded from Form 13F on this

basis. The $100 million threshold was originally set in 1975, is not indexed for inflation and has not been adjusted since. Each report for a calendar quarter must be filed no later than 45 calendar days after the end of the preceding quarter.

Under Section 13(h) of the Exchange Act and Rule 13h-1 promulgated thereunder, persons who trade US publicly traded securities equal to or exceeding two million shares or $20 million during any calendar day, or 20 million shares or $200 million during any calendar month (collectively, large traders) are required to file required Form 13H reports with the SEC. Unlike the beneficial ownership reports and Form 13F, Form 13H reports are confidential and viewable only by the SEC. While the specific reporting thresholds for Form 13F and Form 13H are different, most (but not all) large traders will also be institutional investment managers. But most institutional investment managers will not necessarily be large traders.

The SEC alleged that nine institutional investment managers failed to timely file required Form 13F reports—often over a long period of years. Those nine firms (not including one which was part of the beneficial owner settlements discussed above but had also not filed Form 13F for a number of years) agreed to pay in aggregate more than $3.4 million to settle those cases. Notably, two additional settling parties (both institutional investment managers located outside the United States) were not assessed penalties relating to their delinquent Form 13F because they self-reported their failure to report directly to the SEC.

Two of the parties settling Form 13F failures also were charged with failing to timely file required Form 13H reports. Because both of these parties self-reported their Form 13H filing failures, neither was assessed a penalty relating to Section 13(h).

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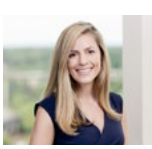

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REIT DIVIDEND PLANNING FOR YEAR END

by Kendal Sibley, George Howell, Allison Stelter, Joshua Milgrom, Anna Page, Patrick Tricker and Emily Benedict

As the end of 2024 comes into sight, REITs have opportunities for tax planning with respect to year-end distributions.

Dividends declared in October, November or December, payable to shareholders of record in such month, and actually paid during January of the following year, are treated as paid on December 31 for both the REIT and the shareholders (Code section 857(b)(9)). Declaring in December (to shareholders of record in December) and paying in January provides REITs with a tool to avoid undesired return of capital distributions. Code section 857(b)(9) is particularly beneficial because it only applies to a distribution to the extent it is a dividend. As a result, if a REIT has $50 of earnings and profits and declares a $60 distribution in December 2024, paid in January 2025, then only $50 (the amount of earnings and profits) is recharacterized as a dividend paid in 2024. The remaining $10 paid in January is treated as a 2025 distribution and available to satisfy the 2025 distribution requirement. On the other hand, if the same REIT declared a $60 distribution in December 2024 and paid the $60 in December 2024, then the shareholders would have a $50 dividend and a $10 return of capital for 2024. With December payment, the REIT would not be able to use the $10 for purposes of satisfying its 2025 distribution requirement.

If a REIT has net operating losses, the REIT generally will not be able to use such net operating losses to reduce its taxable income to the extent that it pays a dividend. A REIT with net operating losses may choose to intentionally fail one of the requirements of Code section 857(b)(9) described above. For example, the REIT could declare a distribution in December to shareholders of record on January 1. Or, the REIT could declare a distribution in December payable on February 1. In both of these cases, the entire distribution would be treated for tax purposes as made in 2025, which could leave room for net operating losses to be used for 2024.

If a REIT still has undistributed taxable income after all 2024 distributions (including the December declaration mentioned above), then it can use distributions declared and paid in 2025 to satisfy its 2024 distribution requirement (Code section 858(a)). Such dividends must be declared prior to the time that the REIT files its 2024 tax return and paid during 2025 prior to the next regular distribution after the declaration. The REIT then elects to take a 2024 dividends paid deduction for such payments on its 2024 tax return. REIT shareholders, on the other hand, would include this distribution in income for 2025. A REIT using this strategy would owe a 4 percent nondeductible excise tax to the extent that the amount that it actually distributed during 2024 (including the December declaration described above) was less than 85% of its ordinary income and 95 percent of its capital gain net income (other than any retained capital gain on which tax is paid). Depending on borrowing costs, liquidity, and dividend and taxable income projections, a REIT may conclude that it makes sense to pay the nondeductible excise tax as a toll charge for delaying payments.

Finally, for REITs with few shareholders, the REIT can use the consent dividend procedure. A consent dividend requires the REIT to attach consents from its common shareholder(s) to the REIT's tax return consenting to the amount of the dividend deemed paid and recontributed. Because of the need to obtain actual shareholder consents, this procedure is only practical for non-public REITs with concentrated shareholder bases.

If you have questions about the REIT distribution requirement and year-end distributions, please contact one of the members of our REIT tax team.

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REIT MARKET DATA
TOP 5 SECTORS
IN CAPITAL MARKETS DEAL VOLUME (Q3 2024)

RETAIL REITS: 18

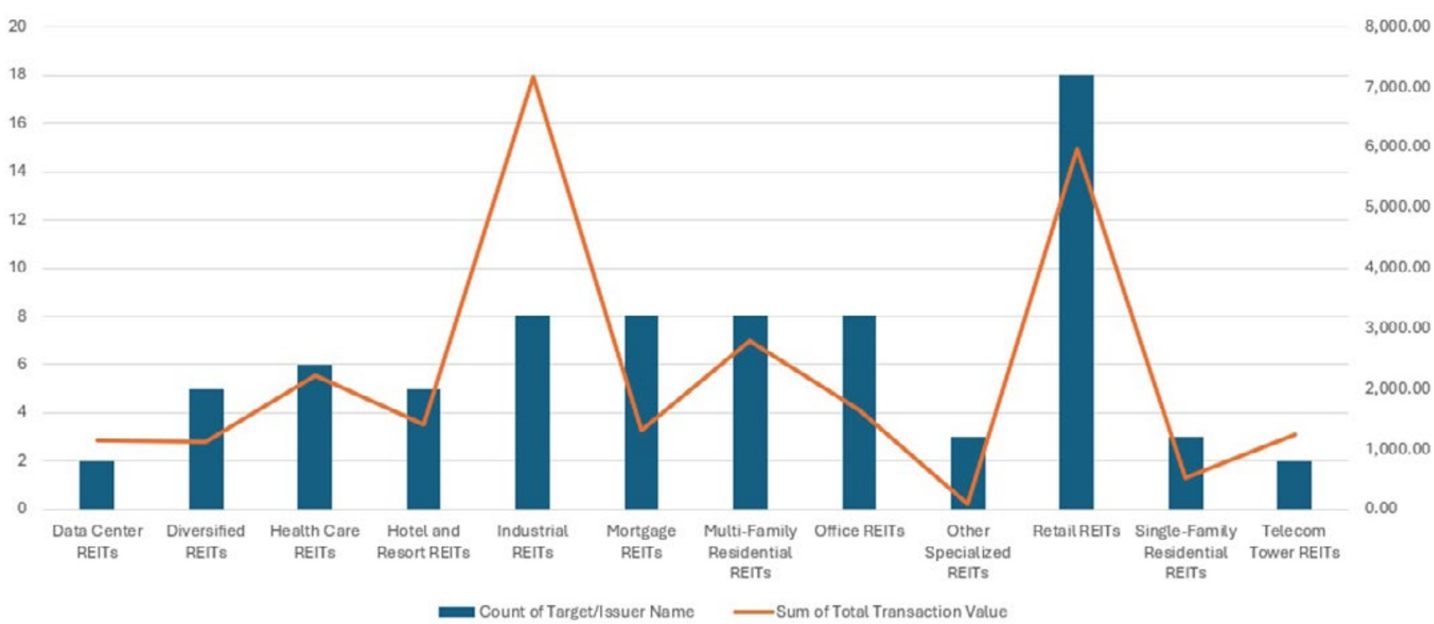
INDUSTRIAL REITS: 8

MORTGAGE REITS: 8

MULTI-FAMILY REITS: 8

OFFICE REITS: 8

REIT CAPITAL MARKET TRANSACTIONS
Q3 2024 DEAL COUNTS AND DEAL VALUE BY SECTOR



Source: S&P Capital IQ Pro

PRO BONO UPDATE

PARTNERSHIP WITH PROJECT DESTINED

Since 2017, Hunton Andrews Kurth LLP has acted as outside counsel on a pro bono basis to **Project Destined**, a leading social impact platform that provides training in real estate, entrepreneurship and financial literacy. Since 2016, Project Destined has trained over 10,000 students, many of whom went on to work at some of the country's leading REITs and real estate companies.

Please click here to learn more about Hunton's partnership with Project Destined.

Representatives from Hunton and Project Destined are excited to see all our friends, colleagues and clients at Nareit's REITworld in Las Vegas from November 18 to 21. Hunton is once again a proud sponsor of this event.

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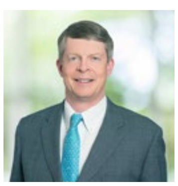

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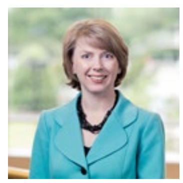

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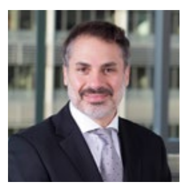

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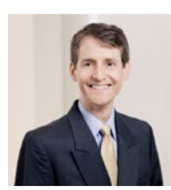

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ABOUT US

Hunton Andrews Kurth LLP consistently ranks as one of the most experienced law firms with respect to real estate capital markets transactions, representing issuers, underwriters, sponsors and lenders in connection with structuring and financing publicly and privately owned real estate companies, including in particular real estate investment trusts (REITs). The firm regularly receives top tier national rankings for its work as both issuer's and underwriter's counsel in *Chambers USA*, *Legal 500*, *Bloomberg* and *Refinitiv*.

Hunton Andrews Kurth has extensive experience in taking real estate companies public, both as REITs and as C corporations, and in subsequent financing transactions. We have handled approximately 155 IPOs and Rule 144A equity offerings and more than 1,100 capital markets transactions involving more than 210 REITs and other real estate companies. In the course of those and other engagements, we have worked closely with the leading investment banking firms, accounting firms and other professionals active in the real estate finance industry. As a result, our Real Estate Capital Markets practice group is particularly well qualified to assist companies accessing the public capital markets as well as private capital sources.

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