GOODWIN INSIGHTS

TRENDS IN PUBLIC REIT M&A 2012-2017

TABLE OF CONTENTS

1.	FORM OF CONSIDERATION	2
2.	PREMIUMS	3
3.	STRUCTURE AND OTHER TAX CONSIDERATIONS	5
4.	TREATMENT OF DIVIDENDS	7
5.	DEAL PROTECTION PROVISIONS	8
6.	GO-SHOPS AND WINDOW SHOPS	10
7.	CONDITIONS TO CLOSING	11
8.	TERMINATION FEES; EXPENSES	12
9.	REMEDIES	13
10.	POST-SIGNING LITIGATION	13
INDEX OF REIT M&A TRANSACTIONS 2012-2017		15

GOODWIN

GOODWIN INSIGHTS

For the REIT Market

TRENDS IN PUBLIC REIT M&A: 2012-2017

The last six years have witnessed over $165 billion in M&A transactions involving public REITs. 15 public REITs were taken private in buyout transactions, while 39 REITs were acquired by other public REITs in strategic transactions. Over this period, the largest number of transactions occurred in the residential sector, including multifamily and single-family homes, while the retail, healthcare and suburban office sectors saw robust M&A activity as well. Numerous transactions during this period also involved public non-traded REITs, largely in the triple-net-lease space. There were large deals and small deals, ranging from a high of $11.2 billion to a low of $120 million, high-premium deals and low-premium deals, all-cash buyouts, stock-for-stock mergers and combination cash-and-stock transactions. The common denominator in all of them was that shareholders of a public REIT voted to approve the acquisition of their company by a third party.

Public REIT M&A Transactions: 2012-2017

Sector	Go-Private	Public Strategic	Aggregate Transaction Value (in billions)
Residential	6	6	$42.2
Retail	4	4	$18.5
NNN	0	6	$23.7
Healthcare	1	6	$16.7
Office*	2	5	$16.0
Other**	2	12	$48.1
Total:	15	39	$165.2

* Includes 3 office-industrial transactions.
** Includes 3 lodging, 1 diversified, 1 storage, 1 industrial, 1 data center, 1 lifestyle, 1 timber, 1 farmland and 4 mortgage sector transactions.

A full listing of these transactions is included at the end of this piece. We reviewed the terms of these 50+ M&A transactions and are pleased to present our findings below with respect to a variety of data points that characterized M&A activity involving public REITs during this period.

Every business combination transaction is unique and each deal develops against its own background of facts and circumstances; however, we believe that the ability to view and compare select metrics across a broad section of recent transactions in the industry provides market participants with useful information about frequently negotiated terms and whether trends may be developing with respect to those terms.

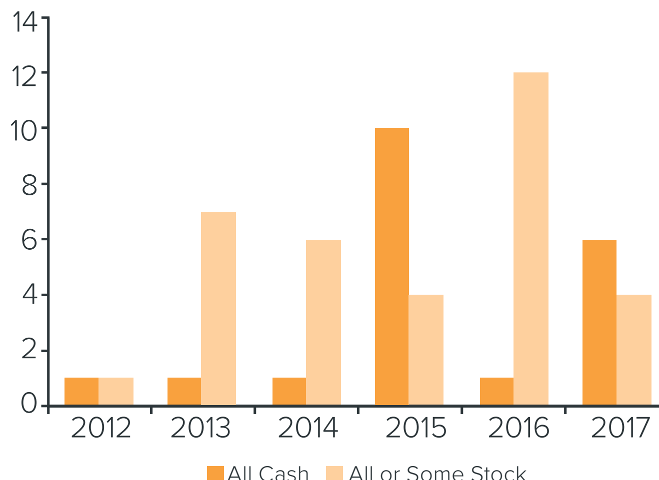
Our review included findings and commentary on the following:

1. Form of Consideration
2. Premiums
3. Structure and Other Tax Considerations
4. Treatment of Dividends
5. Deal Protection Provisions
6. Go-Shops and Window Shops
7. Conditions to Closing
8. Termination Fees; Expenses
9. Remedies
10. Post-Signing Litigation

1. FORM OF CONSIDERATION One of the first questions in every M&A transaction is the amount and form of the consideration to be paid to the common shareholders of the target. Of the REIT transactions announced in the 2012-2017 period, 20 (37.0%) were all-cash, 21 (38.9%) were all-stock and 13 (24.0%) were mixed cash-and-stock[1]. This means that approximately 65% of the time, buyers used public stock as acquisition currency, in whole or part. To be sure, the form of agreed consideration is typically heavily influenced by market conditions. For example, in the 2005–2007 time frame, low interest rates and availability of cheap debt drove a take-private boom characterized by highly-leveraged buyers making all-cash offers. Many publicly-traded REITs during that period believed that they were effectively priced out of the M&A market due to their unwillingness to incur higher leverage ratios to finance all-cash acquisitions at prevailing prices. Conversely, the past seven years have witnessed a shift to more strategic deals involving public REITs as more active participants on the buy-side. This trend has been compounded by the perceived discount to NAV at which many public REITs have traded during much of the 2012-2017 period. An uptick in cash deals is likely to be accompanied by a reversion of public REIT prices to their historic means at or near NAV.

The chart below illustrates the number of cash deals vs. those with all or some stock announced during the surveyed period.

Number of Deals by Form of Consideration



Although the winds have generally shifted in favor of strategic deals – for example, 2016 saw 14 announced public REIT transactions and all but one of them had a stock component – the significant overall percentage of recent deals involving a mix of stock and cash (as above, 13 of 34 or approximately 38.2% of all deals with a stock component) signal that sellers remain interested in taking at least some money off the table to monetize their investments in the event of a sale. Including a cash component can benefit buyers as well in the form of reduced dilution.

The vast majority of transactions over the survey period provided for a "fixed basket" of consideration to target shareholders, whether stock, cash or a combination of both. The amount and form of consideration was determined when the merger agreement was signed and neither could be altered after that point. The "fixed basket" approach provides certainty to all parties on what consideration will be paid, but does not provide flexibility to address post-signing developments or account for differences in what individual shareholders want. A minority of transactions, however, did vary from the "fixed basket" format:

- Four of the mixed stock and cash transactions were cash/stock election deals that permitted each target shareholder to elect whether to receive cash, stock or a combination thereof, subject in each case to an aggregate limit on cash consideration (e.g., up to 20% of outstanding company shares could elect cash), payable pro rata to holders who elected cash when the elections exceeded the threshold;
- Four of the transactions involving a stock component included provisions for adjusting the exchange ratio at

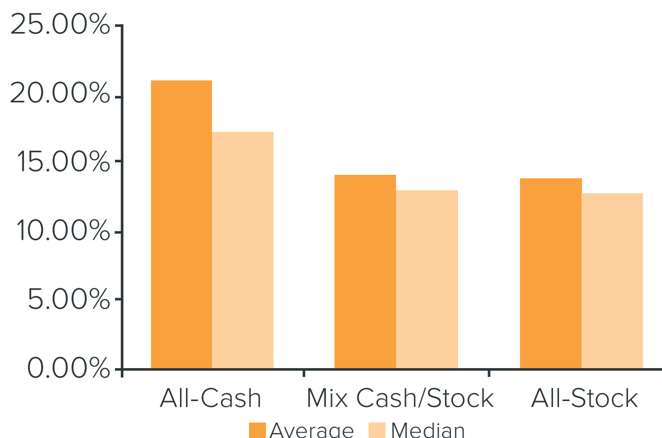
[1] Mixed cash stock deals include those in which each shareholder receives a fixed bundle of cash and stock as well as cash/stock election deals in which individual shareholders can elect, subject to certain overall limits, whether to receive cash or stock or a mix thereof.

closing to account for changes in the value of the buyer's stock, subject to a collar. Collars such as these are uncommon in typical REIT public-to-public transactions since buyer and target stock prices will generally begin trading in unison after announcement of a deal so the collar provides little to no practical protection. We note that in each of the four surveyed transactions with a collar, the target was a non-traded REIT and, thus, did not have publicly traded stock that could trade in a tracking pattern to the buyer's stock.

- One transaction, an all-cash deal, provided for additional cash to be added to the merger consideration if buyer delayed the closing more than six months from announcement in order to effect a sale of the target's management business. This was a unique situation and is not indicative of a trend towards this sort of provision.
- Another unique transaction provided for a level of price protection by providing target a termination right if either the cash portion of the consideration exceeded 40%, or if the 20-day average price of the buyer's stock declined by 15% or more of the RMZ.
- Two deals (one mix cash/stock, one cash) were structured as asset deals followed by a liquidation of the target, and a third deal (all-cash) involved the establishment of a liquidating trust that sold a portfolio of undesired assets over time and distributed the proceeds to the target stockholders. In these cases, the proceeds to target shareholders were estimated and the ultimate amount paid depended upon the level of winding-up expenses incurred by the target.
- Two of the mortgage REIT transactions provided for adjustments to the consideration depending on changes in book value between signing and closing.
- A cash NTR deal mimicked a private acquisition construct through providing for closing adjustments and a contingent value right under certain circumstances.

2. PREMIUMS. Of the deals surveyed in which the target was a listed company (i.e., excluding non-traded REITs)[2], the average premium to the unaffected share price was 16.4% and the median premium to unaffected share price was 13.3%[3], as follows:

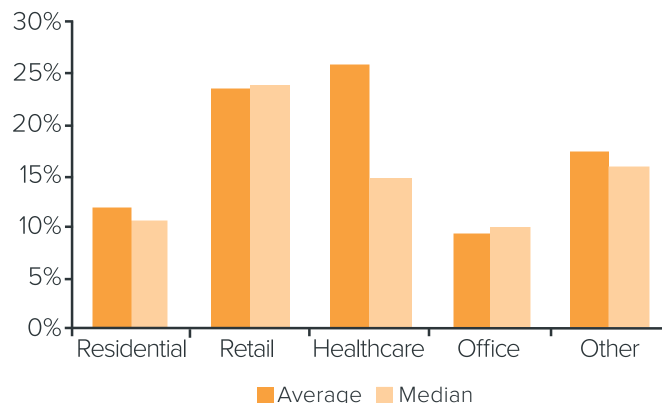
Premiums by Form of Consideration



As evident in the table above, premiums logically tend to decrease when stock is included as a component of the merger consideration, with the highest premiums coming in all-cash go-private transactions and the lowest premiums coming in all stock so-called "merger of equal" transactions. When shareholders are exchanging their shares for all cash in a "no tomorrow" transaction, buyers will pay as robust a premium as the market will bear in exchange for capturing all future upside in the target business. Conversely, when shareholders are receiving shares in the combined company, which will almost always be a larger and more diverse company, buyers have less of a compelling reason to provide target shareholders with a robust up-front premium because they will receive the future economic benefits of the combined enterprise.

The table below sets forth the average and median premiums by sector during the surveyed period:

Average Premium By Sector



[2] Non-traded REITs do not, by definition, have a daily trading price that can be used to calculate whether a premium has been paid, although they are periodically required to disclose per share valuations.

[3] For purposes of these calculations, the value of the consideration at public announcement was compared to the closing price of the target stock on the day immediately preceding announcement, unless the parties disclosed a specific, earlier, unaffected price date, for example, in the event of public rumors of a deal that caused the stock prices to change.

Selected Data

Of the 54 public REIT M&A transactions announced in 2012-2017 period:

28%	were go-private transactions
72%	were public-to-public strategic transactions
37%	provided for all-cash consideration
39%	provided for all-stock consideration
24%	provided for mixed cash-and-stock consideration
16.4%	= the average premium to the unaffected share price
13.3%	= median premium to unaffected share price
79%	involved a forward merger or forward triangular merger of the target REIT
17%	involved a reverse merger or reverse triangular merger of the target REIT
20%	of all-cash deals provided tax-deferred rollover option for target OP unitholders
20%	of all-cash transactions restricted payment of cash dividends post signing
70%	of public-to-public transactions provided for dividends to target shareholders through closing, including a pro-rated dividend at closing
13%	included a "go-shop"
100%	included some form of buyer matching rights
90%	provided the buyer with multiple matching rights
52%	limited subsequent notice/matching periods to 2 business days or less
80%	allowed target boards to change or withdraw their recommendation in situations not involving a competing offer such as an intervening event
58%	included one or more non-standard conditions to closing
100%	granted buyer right to seek specific performance
85%	granted target right to seek specific performance
15%	limited target remedies to terminating the agreement and collecting a reverse termination fee
75%	resulted in post-announcement litigation

3. TRANSACTION STRUCTURE AND OTHER TAX CONSIDERATIONS. Among the over 50 REIT M&A transactions announced in the 2012-2017 period, the most common transaction structure involved the forward merger of the REIT with and into either the buyer or its merger sub. The table below indicates the various transaction structures used over this period:

Structure of Transaction	Number of Deals
REIT Forward Mergers:[4]	
REIT forward triangular merger	12
REIT forward merger	5
REIT forward triangular merger immediately preceded by OP reverse triangular merger	10
REIT forward merger immediately preceded by OP reverse triangular merger	2
REIT forward triangular merger followed immediately by OP reverse triangular merger	7
REIT forward triangular merger followed immediately by OP forward triangular merger	4
REIT forward triangular merger followed immediately by OP forward merger	2
Tender offer followed by REIT forward merger	1
REIT Reverse Mergers:[4]	
REIT reverse triangular merger	5
REIT reverse triangular merger followed immediately by OP reverse triangular merger	1
OP forward merger followed immediately by REIT forward merger	1
Tender offer followed by REIT reverse triangular merger	2
Asset Sales (followed by liquidation)	2

The predominance of the forward merger reflects the fact that:

- in a tax-free stock-for-stock deal (or a partially tax-free deal with some taxable "boot") the forward merger is easier to qualify as a tax-free reorganization as compared to other structures; and
- in a taxable deal (such as an all-cash go-private transaction) the forward merger provides an easy mechanism to give the buyer a fair market value tax basis "step up" in the target assets.

In the public-to-public tax-free or partially tax-free context, the choice between a direct merger of the target into the public acquirer or a triangular merger of the target REIT into a merger sub is generally driven by non-income tax considerations, including transfer tax and lender or JV partner consent considerations.

Although the tax structuring considerations for each deal are, of course, unique, there are common themes that run through the universe of REIT M&A transactions announced in the 2012-2017 period. These include:

- ***REIT Qualification***. A critical underlying premise of every public REIT transaction is that the target REIT in fact qualifies as a REIT for tax purposes. If the target's REIT qualification is in question, issues that arise include: (i) exposing buyer to inheriting contingent tax liabilities with respect to the target's pre-closing years, (ii) in the case of a tax-free deal exposing a buyer REIT to corporate level "sting tax" on a subsequent taxable disposition of target assets, (iii) in a taxable deal with a basis step up the risk of corporate-level tax on the appreciation in target's assets and/or (iv) additional requirements to qualify for tax-free reorganization treatment when one of the parties is a non-REIT "investment company." While tax insurance can sometimes provide a satisfactory resolution to these issues, not every deal can absorb the incremental cost of tax insurance. Accordingly, extensive REIT diligence and the delivery of unqualified REIT opinions from target's counsel are the norm for virtually all REIT M&A deals.

  Sting tax. Even if the target has a clean REIT qualification history, it may have tax attributes that limit the range of attractive tax structures and any such attributes must be identified early in the process. For example, if the target has acquired assets with "built-in gain" from a taxable C corporation in a tax-deferred transaction in the prior 5 years[5], a taxable disposition of such assets as part of the transaction would trigger a

[4] In the majority of instances where the relevant merger involved only the REIT, the applicable target was not structured as an UPREIT and thus did not have an operating partnership.
[5] This was reduced from 10 years by the Protecting Americans from Tax Hikes Act of 2015, known as the PATH Act.

corporate level "sting tax." Material sting taxes may force a buyer in a taxable deal to forgo a basis step up, which may in turn reduce what the buyer is willing to pay.

Practice Note. We strongly advise potential targets with REIT qualification issues in their past (as well as REITs on the buy side that want to issue stock to target shareholders) to address any REIT qualification issues early on in any business combination process. Care must also be taken that some aspect of the transaction itself does not jeopardize REIT status. For example, any gain recognized in the transaction must be analyzed under the REIT rules. Likewise, in a tax-free deal, care must be taken to ensure that the target's pre-merger dividends will be sufficient to "clean out" its REIT taxable income.

- ***UPREITs.*** The presence of an umbrella partnership real estate investment trust, or UPREIT, on either side of the transaction can add significant tax structuring complications to a public REIT M&A deal. In a typical UPREIT structure, the REIT holds all of its assets through its interests in an operating partnership, of which the REIT is the general partner. While the acquisition of the target REIT is governed by the corporate tax rules, the acquisition of the operating partnership is governed by very different partnership tax rules, often with the overlay of "tax protection agreements" for the benefit of certain holders of operating partnership units ("OP units"). Tax protection agreements generally require the operating partnership to indemnify a protected partner for tax gain resulting from (i) taxable sales of assets contributed by the protected partner, (ii) a forced taxable exchange of the protected partner's OP units without a tax-deferred alternative and/or (iii) the operating partnership's failure to maintain arrangements (such as minimum levels of nonrecourse debt on contributed assets and debt guarantee opportunities) designed to provide the tax protected partner with a sufficient share of operating partnership liabilities to "cover" the protected partner's "negative tax capital account" during a specific tax protection period.

Stock-for-stock mergers of two public UPREITs. The tax treatment of OP unitholders in a merger of two public UPREITs can be relatively straightforward. Holders of OP units in target's operating partnership can receive OP units in the surviving operating partnership, essentially receiving a currency that functions much like their original OP units, while the assets to be acquired end up "in the right place" with relatively little effort. The change of control provisions in the operating partnership agreement typically permit such transactions without OP unitholder consent. Unitholders in either operating partnership typically can receive OP units of the surviving operating partnership on a tax deferred basis, at least if the unitholders are allocated sufficient debt of the surviving operating partnership to cover any negative capital accounts. For federal income tax purposes, the larger of the operating partnerships generally continues for tax purposes regardless of the state law structure of the operating partnership merger, so the state law structure of the operating partnership merger can accommodate non-income tax considerations such as transfer taxes and lender and JV partner consents. However, even in a merger of two public UPREITs, there are many potential triggers for gain to unitholders, including sales of unwanted assets, changes in financing strategies (e.g., public debt or other unsecured debt versus property specific mortgages), and loss of favorable grandfather status for existing "bottom dollar" debt guarantees, and thus potential indemnities under tax protection agreements.

DownREITs. Stock-for-stock mergers involving only one UPREIT can be more challenging. In addition to presenting many of the same issues as the UPREIT-to-UPREIT combination, when only one of the parties is an UPREIT, and absent further structuring, the merger transaction results in a "downREIT" structure in which some of the combined company's assets are held in the operating partnership and some are held at the surviving parent REIT. The parties must consider whether to continue with this structure and/or how to get all the assets into the one operating partnership without excessive costs (such as transfer taxes). In some instances, OP unit holders may have to consent to the downREIT structure remaining in place.

Going Private. Go-private transactions with UPREITs do not present any special problems if the OP unitholders can be cashed out along with the public shareholders (assuming no significant tax protection obligations will be triggered or the resulting indemnity payments are acceptable). Complexity increases if tax protection agreements or the terms of the operating partnership agreement require, or the board otherwise determines, that the OP unit holders must be offered some form of tax deferred currency—such as units in a private partnership going forward—as an alternative to cash, and if buyer agrees to abide by the tax protection agreements. The change of control provisions in the

operating partnership agreement may limit the parties' options or give consent rights in such circumstances. Approximately 20% of the all-cash deals announced in the 2012-2017 period included an option for target OP unitholders to receive a form of tax deferred private partnership unit rather than the cash received by REIT shareholders.

Practice Note. Offering the OP unitholders an alternative form of consideration may address issues surrounding tax protection agreements, but also requires the board to manage conflicts between the interests of public stockholders and those of the OP unitholders. For example, there may be a need for a special committee (or the approval of disinterested directors) if certain board members of the target are tax protected parties and the board will want to satisfy itself (through financial advisor advice, opinions or otherwise) that the alternative equity option for OP unitholders has not diverted value away from the public stockholders.

4. DIVIDENDS. REITs are generally required to pay out to shareholders at least 90% of their annual taxable income and public REITs typically pay out more than the minimum requirement. For investors in public REITs, the dividend yield is an important component of total return. In M&A transactions, provisions of the definitive agreement will govern whether and when target shareholders will receive the regular quarterly dividend for all periods through closing.

In all-cash deals, it is not a given that buyer will be amenable to having more cash go out to target shareholders in the form of interim dividends above and beyond the agreed-upon price per share to be paid at closing, which may already represent a meaningful premium. Even when the agreement permits target to continue to pay its regular quarterly dividend in the post-signing period, this provision still does not necessarily mean that target shareholders will receive a dividend for the period in which the closing occurs, since closing is likely to occur other than on a regularly scheduled quarterly record date. Instead, the ability to pay a partial, or pro-rated, dividend, must be specially negotiated and agreed to among the parties. Other than in competitive processes for highly desirable assets, the willingness of an all-cash buyer to subsidize ongoing regular quarterly dividends and/or a pro-rated dividend is likely to decrease in proportion to the value of the premium to market it is otherwise paying in the transaction. Indeed, we have seen a slight drop-off in the number of all-cash transactions where targets can pay dividends to target shareholders before closing. Over the 2012-2017 period, approximately 20% of the all-cash transactions restricted the payment of cash dividends entirely once the merger agreement had been signed (other than as required to maintain REIT qualification), with half of these coming in 2016 and 2017.

Practice Note. The definitive agreement governing virtually every REIT cash buyout transaction will permit the REIT to pay any dividends necessary to maintain its qualification as a REIT under the federal tax rules. In the rare instance that such a dividend is paid, buyers should consider whether the amount of the dividend should reduce the per-share purchase price in like amount.

In stock-for-stock combinations, conversely, the receipt by both sets of common shareholders of their respective dividends through closing is the norm. This approach is often referred to as "coordination of dividends", whereby the parties agree to coordinate dividend declaration, record and payment dates during the interim period to ensure that shareholders of both companies receive the dividend to which they are entitled for all periods. A full 77% of public-to-public transactions over the 2012-2017 survey period provided for target shareholders to receive both regular quarterly dividends and a pro-rated dividend through closing, and approximately 90% provided for payment of at least regular quarterly dividends. Unlike the cash buyout scenario described above, it is still unusual in a stock-for-stock transaction for the acquiring company to impose a dividend freeze on the target company while shareholders of the acquiring company continue to receive regular dividends.

Practice Note. The objective in coordinating the dividends of the buyer and the seller is to ensure that each set of common shareholders receives the dividend to which it is entitled – but not the dividend to which the other set of common shareholders is entitled. For example, if a merger is scheduled to close on March 1 and both companies have historically paid a regular quarterly dividend in arrears on April 15 to shareholders of record on March 31, except that Company A, the to-be acquired company, pays $0.10 per quarter and Company B, the acquiring company, pays $0.15 per quarter – then all shareholders would receive equal treatment if immediately prior to closing Company A pays a pro-rated dividend to its shareholders of $0.066 and Company B pays a pro-rata dividend of $0.098 to its shareholders, in each ***(continued on next page)***

(continued from previous page) case representing the accrual for 59 days of the 90-day quarter. If the historical quarterly record and payment dates for the two companies do not line up, as is often the case, then the calculation for each company's pro-rated dividend would need to be tailored to its historical payment and accrual practices. In all cases, the record date for the pro-rated divided payment would typically be one or two business days prior to closing. For all periods following closing, the newly combined group of shareholders would begin receiving whatever the going dividend rate is determined to be for the combined entity. If a pro-rata dividend were not paid as above and shareholders of the to-be acquired company simply receive the new dividend alongside the acquiring company's shareholders on its regular schedule, then the former are likely to be either underpaid or overpaid with respect to the partial period preceding the closing. In our example above, if Company A shareholders receive the equivalent of $0.15 dividend for their holding period prior to the merger, they will have been overpaid at the expense of Company B and its shareholders. Similarly, practitioners should consider the effect of paying a dividend in arrears if one of the companies has historically paid its dividends in advance.

5. DEAL PROTECTION PROVISIONS. REIT merger agreements typically include a suite of deal protection provisions, which are generally in line with M&A agreements in the broader market. Deal protections are provisions designed to protect the buyer's status as the first mover and to safeguard the deal from interloping competitors. However, the duties of the target board of directors to its shareholders require that the board retain the ability to consider and accept better offers that may be made after signing. Although deal protection provisions contain many nuances, the overall framework is a familiar one: target[6] is prohibited from actively soliciting competing offers once the definitive agreement is executed but can still consider unsolicited offers from third parties if the target board determines that the competing offer constitutes, or is likely to lead to, a "superior proposal," meaning one that is more favorable to target shareholders. See "Go-Shops and Window Shops" below for variations on this customary framework.

[6] In many stock-for-stock deals, the non-solicitation provisions apply equally to both the buyer and the target. Often both parties are subject to the same termination fee, though in a minority of transactions the buyer will pay a higher termination fee in view of its larger size.

Competing Offers. If a credible competing unsolicited offer materializes after a definitive merger agreement has been signed, a REIT merger agreement might typically address a handful of actions:

- **Is it a "Superior Proposal"?** Before a target can take any action in furtherance of the competing offer, the target board generally must first determine that the competing bid constitutes, or is likely to lead to, a superior proposal. While usually heavily negotiated, a typical REIT merger agreement might define "superior proposal" as:
  - an unsolicited written bona fide acquisition proposal by a third party for 50% or more of the target or its assets;
  - on terms that the target board determines in its good faith judgment, after consultation with outside legal counsel and financial advisors, would be more favorable to the target and its shareholders from a financial point of view, than the transaction reflected in the initial merger agreement.

  In making its determination, the target board must take into account all financial, legal, regulatory, timing and any other aspects of the proposed interloping transaction, including the identity of the competing bidder, the form of consideration, the bidder's ability to finance the proposal, any break-up fees, expense reimbursement provisions, conditions to consummation and feasibility and certainty of consummation.

  If – and only if – the target board determines that the competing offer constitutes, or is likely to lead to a superior proposal, then the target may engage in negotiations with the interloping bidder, including sharing confidential due diligence information. At some point, these negotiations may reach a point that the interloper submits a credible bid that the target board believes constitutes a superior proposal that would justify terminating the merger agreement.

Practice Note. A somewhat seismic shift occurs in the legal and practical dynamics of a transaction when a target board formally determines that a competing offer constitutes a superior proposal. At this point, a binding deal headed towards closing can suddenly turn into a public auction. On one hand, the board's duty to maximize shareholder value kicks in at high gear and, at the same time, the legal strings that bind target to the initial buyer begin to fray. For this reason, savvy buyers will sometimes attempt to ***(continued on next page)***

(continued from previous page) avoid getting to the point where a target board is compelled to make an "is it a superior proposal" determination. For example, a buyer might pre-emptively and voluntarily sweeten the deal or make other concessions that have the effect of making it less likely that target's board will reasonably conclude that a competing offer is superior.

- **Buyer Matching Right(s).** Once a target takes the step of determining that a competing offer actually constitutes a superior proposal, most agreements trigger a "buyer matching right" that interposes a brief period (e.g., 3 business days) during which the buyer has the ability to match or better the competing offer and keep its negotiated deal on track. Some agreements strictly limit the number of times the buyer has the right to match competing offers, while other agreements provide the buyer with the right to match numerous times, often subject to specified minimum bid increments. All of the REIT M&A agreements we surveyed included some form of buyer matching rights, with the vast majority (approximately 90%) also providing the buyer with multiple match rights. The most typical formulation included for an initial notice/matching period of 3, 4 or 5 days, followed by a shorter period for subsequent match rights. Most transactions measured days as business days (e.g., a 5 business day notice/matching period would mean at least a calendar week) but a small minority of the agreements surveyed employed calendar days or hours as a measurement (e.g., an initial notice/matching period of 72 hours, followed by subsequent periods of 48 hours). In over 50% of cases, subsequent notice/matching periods were limited to 2 business days or less.

- **Fiduciary Termination Right.** When a competing offer is determined by the target board to constitute a "superior" proposal and the buyer declines to match it, by far the most common construct is that the target board may elect to pay a termination fee (which is ultimately borne by the topping bidder, see below under "Termination Fees"), terminate the merger agreement and accept the competing offer. The vast majority of the REIT deals we surveyed reflect this construct, which is consistent with the broader M&A market. A fiduciary termination right – even one subject to procedural hurdles such as matching rights – guarantees that the target board has the ability to pursue the transaction most favorable to its shareholders.

  In practice, however, the fiduciary termination right is rarely exercised, either because boards generally do a pretty good job ferreting out the highest available offer before signing a definitive agreement and/or due to the advantage secured by the initial buyer by virtue of being the first mover, including having matching rights and the right to receive a fee from the target upon termination. Indeed, none of the REIT M&A transactions we surveyed during the 2012-2017 period involved the exercise of a fiduciary termination right by a target board.

- **Force-the-Vote.** A minority of buyers insist that the target board not have the contractual right to terminate the signed agreement upon receipt of a "superior" proposal. Rather, the target board would have only the right to inform shareholders of the competing proposal and to withdraw its recommendation that shareholders approve the original transaction. The buyer would then have the option to either (a) terminate the merger agreement and receive a termination fee, or (b) require that the target nevertheless hold an up-or-down shareholder vote on the original deal and let the shareholders decide whether to continue with the original buyer deal or not – i.e., buyer can "force the vote". This construct is seldom used in public REIT M&A and appeared in only two of the deals surveyed. In all-cash transactions in particular, buyers would typically perceive little value in insisting on a force-the-vote construct because it is likely to be obvious to shareholders whether a competing offer is better or not.

Practice Note. Customary deal protections can do much towards reasonably safeguarding a hard-negotiated deal, but be careful not to overdo it! For example, if the target board has no fiduciary termination right, buyer has the right to "force the vote" and one or more significant target shareholders have signed voting agreements pursuant to which they have committed to vote in favor of the transaction, then the deal is likely "over protected". As a result, the target board may be accused of having breached its fiduciary duties and chilling the market by signing up a deal that does not leave adequate room for the target to receive, consider and accept a competing superior offer. See the discussion below under "Post-Signing Litigation".

Changing or Withdrawing Recommendation. Another common negotiation point relates to whether a target board should have the right to terminate a signed merger agreement based on a circumstance other than a competing offer to allow boards to fulfill their duties to shareholders – so-called "gold in the backyard" cases.

Essentially, this refers to a scenario when, after signing a merger agreement, something occurs or is discovered that suggests that target is significantly more valuable than the parties knew at the time the definitive agreement was signed. Approximately 80% of the deals surveyed included some variation of this provision allowing a target board to change or withdraw its recommendation when it would be inconsistent with the board's duties not to do so. Of these deals, approximately 74% added an additional "intervening event" or "change of circumstances" requirement – generally, requiring a change in facts occurring after the merger agreement is signed that was not reasonably foreseeable. In the vast majority of these deals, the target could change or withdraw its recommendation but had no corollary right to terminate the agreement, though in each case the buyer could elect to terminate in the face of a changed recommendation. It is worth noting, however, that in none of the surveyed deals did a target board rely on this provision to change its recommendation. Considering the relative transparency of the asset class, we do not anticipate these rights to have significant practical meaning in the REIT M&A context.

6. GO SHOPS AND WINDOW SHOPS. While, as discussed above, the typical REIT merger agreement will contain strict "no-shop" provisions that restrict a target from soliciting or even entertaining competing offers, a "go-shop" provision affirmatively empowers target and its advisors to actively solicit a better deal for target shareholders for an agreed period of time immediately following signing, following which the traditional no-shop period begins. If the target board determines that a "superior" offer has been received (subject to the buyer's ability to match), the target will have the right to terminate the initial definitive agreement and pay the jilted would-be acquirer a termination fee, which is typically lower during the go-shop period than the break-fee payable for termination in connection with a superior proposal during the no-shop. See the discussion below under "Window Shopping" for other variations on the strict "no-shop" construct.

Intuitively, buyers are reluctant to expend resources diligencing, negotiating and signing up a definitive merger agreement only to serve as the stalking horse for a go-shop buyer. The vast majority of business combination transactions in the REIT sector thus do not include a go-shop. Since January 2012, 13.0% of overall public REIT transactions included a go-shop and all but one of these were in instances when the related-party nature of the transaction made a go-shop preferable.

Go-shop provisions are typically included in one of two types of transactions, either when there is a related-party component to the transaction or when a thorough pre-signing market check was not completed:

- Go-shops are quite common in transactions in which the parties are related, often in the context of an external manager acquiring its managed REIT client. A go-shop in this scenario ensures a public and independent process for verifying that the price offered by the external manager, who obviously knows target and its assets better than anyone, is in fact the best price reasonably available. All of the related-party transactions included in our review included a go-shop period, with the go-shop period ranging from 30 to 45 days. Of note, in none of these transactions was a superior proposal received as a result of the go-shop.
- Go-shops may also be useful where a target board reasonably concludes that accepting a current and credible cash bid on the table is in the best interests of shareholders — without conducting a robust pre-signing market check. For example, if the cash bid comes at a price per share that represents a meaningful premium both to the current trading price and to management's own internal estimates for the stand-alone business, the board could conclude that commencing a full-blown auction process at this point is unlikely to produce a higher, equally credible bid and might in fact prompt the current bidder to take its offer off the table. However, in consideration of its overarching duties to shareholders, the board would then insist on a post-signing go-shop period to offset the lack of an exhaustive pre-signing market shop of the company.

  In stock-for-stock strategic combinations, conversely, the need for a pre-signing market check is less pronounced. A strategic combination, by definition, is a play for the long term; it is not about finding the highest available cash price at a given moment in time. Thus if the board is presented with a strategic combination that, in its view, both fairly values target shares and provides for continued upside in the surviving entity, the board might reasonably determine to approve that transaction without a pre-market check or post-signing go-shop period.

Window Shopping. Another variation involves so-called "window shop" deals, in which the traditional prohibition on target actively soliciting competing offers is retained but the terms of the agreement are otherwise calibrated to make it somewhat easier for unsolicited competing bids to be made and entertained. In this vein, as discussed

further below under "Termination Fees; Expenses", a small minority of recent REIT M&A transactions employed a "two-tier" termination fee structure in which the target termination fee was set substantially lower during a fixed initial period (e.g. 30-45 days similar to a go-shop period) but increases thereafter. This construct can be viewed as something of a hybrid between the common no-shop framework and a go-shop, with interlopers more incentivized to bid during the initial period.[7]

7. CONDITIONS TO CLOSING. Once a deal is signed (and any go-shop period has expired), proceeding to closing timely and efficiently becomes the parties' primary focus. On one hand, the target will seek to ensure that closing conditions beyond its control do not introduce obstacles to closing, which could delay getting the consideration into the hands of shareholders, or worse, jeopardize the deal entirely. On the other hand, the buyer needs to ensure that the company it agreed to buy at signing is the one it actually acquires at closing, complete with all necessary consents, the satisfaction of bargained-for covenants and the bring-down of the target's representations and warranties.

To that end, pretty much every REIT business combination transaction provides for the following basic conditions to closing:

Basic Conditions to Closing

- there has been no injunction or other court or regulatory order restricting the closing
- the requisite shareholder vote has been obtained, including that of shareholders of the acquiring company in a stock deal, where necessary
- the mutual representations of the parties remain accurate subject to a high "material adverse effect" standard and the parties have complied with their respective covenants in all material respects

Basic Conditions to Closing (continued)

- nothing that has a material adverse effect has occurred with respect to the company to be acquired (or the buyer in many stock-for-stock deals)
- when consideration is payable in stock, that the shares have been duly listed on the relevant securities exchange
- target tax counsel delivers an opinion to the effect that target qualifies as a REIT; in stock-for-stock deals, buyer tax counsel's delivery of a REIT qualification opinion covering buyer's REIT status is also uniformly required
- in a transaction involving a significant stock component, tax counsel delivers an opinion that the stock transaction will qualify as a tax-free reorganization

Practice Note. While the definitive agreement will typically call for delivery of buyer's REIT qualification opinion and any tax-free reorganization opinion at closing, the SEC Staff will often insist on having one or both of these opinions attached as exhibits to the Form S-4 registration statement filed in connection with the transaction, as a condition to its effectiveness. Deal participants must thus be prepared for delivery of these opinions many weeks ahead of closing.

For transactions in highly regulated sectors, a condition tied to receipt of all necessary regulatory approvals would also generally be standard.[8]

There are situations, however, in REIT M&A transactions when a party may be unwilling to sign the definitive agreement unless additional conditions to its obligation to close are added. The most common non-standard condition is one tied to receipt of lender or other third-party consents, including joint venture partners and ground lessors. Sellers are loath to have success of the deal hinge on the consent of a third party, while buyers are unwilling to close over the risk of not having material consents in hand at closing. This can simply be a risk allocation issue. In high profile REIT M&A transactions, private equity purchasers and other buyers have been known to take on the consent risk, anticipating that, based on their experience or otherwise, they will ultimately be able work something out with any third parties whose consents to closing may be required. Buyers willing to take on such risk may thus be at a competitive advantage relative to other potential purchasers in a competitive process scenario.

In addition, in a stock-for-stock combination the target

[7] As a practical matter, a variation on the "two-tiered" termination fee structure ended up playing out in Blackstone's 2007 acquisition of Equity Office Properties Trust ("EOP"). The termination fee payable by EOP was initially set at a low 1.0% of the equity value but was incrementally ratcheted up by amendment to the agreement each time Blackstone agreed to increase the price it would pay in response to competing offers.

[8] While REIT M&A transactions are subject to the general antitrust rules, the FTC's Premerger Notification Office currently applies the "ordinary course of business" exemption under Section 18(a)(c)(1) of the Hart-Scott-Rodino Act to qualifying acquisitions by REITs acting in conformity with applicable IRS rules.

might insist that a certain number of its sitting board members be appointed to the surviving company's board as a condition to closing. In a jurisdiction where appraisal rights are available to dissenting shareholders, buyer may insist on a condition tied to a maximum number of dissenting shares. Our review of definitive agreements signed during the six-year period from 2012 to 2017 indicates that approximately 58% of all deals signed during this period included one or more non-standard conditions. These included (in order of prevalence):

Common Non-Standard Conditions to Closing

- receipt of lender and/or other third-party consents, including joint venture partners and ground lessors
- completion of agreed restructuring and/or assets sales to third parties
- appointment of agreed target board members to surviving entity board
- amendment of surviving entity organizational documents to reflect the agreed-upon post-closing structure
- completion/delivery of target "earnings and profit" studies
- settlement of specified pending litigation (unrelated to the transaction)

8. TERMINATION FEES; EXPENSES. As discussed under *"Deal Protection Provisions*" above, there are specific scenarios where the termination of a definitive agreement requires one party (usually the target[9]) to pay a termination fee to the other. The size of a termination fee is one of the most commonly negotiated points in a public M&A deal and is significantly influenced by both Delaware case law and lore among practitioners, pursuant to which a termination fee that is "too high" may be a breach of the target board's duties if the fee has the effect of making target so expensive so as to effectively preclude potential competing bids. How high is "too high" depends on all of the surrounding facts and circumstances, particularly the equity value of the deal and the level and quality of market canvassing that the target board engaged in prior to signing the merger agreement. Based on our survey, average and median termination fees[10] in REIT M&A deals from 2012-2017 were as follows:

Termination Fees (as a Percentage of Equity Value)

	Average	Median
Enterprise Value > $1B	3.14%	3.21%
Enterprise Value < $1B	4.35%	3.29%
All Deals	3.39%	3.22%

Practice Note. REIT M&A agreements typically limit the payment of a termination fee to a REIT party in any one year to the amount that the REIT can then receive without causing it to fail the applicable REIT gross income test for that year, determined assuming the fee is nonqualifying income, unless the REIT receives an opinion or an IRS ruling that the payment should not be nonqualifying income. Any resulting cut back in the amount paid carries forward to be paid in the next year, to the extent it can be absorbed in the next year as nonqualfying income, and so on for up to five years. Unpaid amounts remaining after such period are lost. Conditioning release of the fee in excess of what could be absorbed as nonqualifying income on receipt of an opinion should establish "reasonable cause" under the REIT income test cure provisions, thus allowing the REIT to maintain REIT status even if the IRS were to successfully assert that the excess fee payments received on the basis of an opinion caused the REIT to fail its income tests. Such provisions are not effective in protecting REIT status, however, unless the condition of obtaining an opinion or ruling precludes the immediate accrual for tax purposes of the excess amounts, and, starting in 2018, REITs will need to consider the application of new Code section 451(b), added as part of the Tax Cuts and Jobs Act and which requires inclusion of amounts for federal income tax purposes no later than when taken into account as revenue for financial statement purposes.

Expenses. When a termination fee is payable, this often represents the sum total of the remedy payable by the terminating party. In a number of the reviewed

[9] As noted above, in stock-for-stock deals with a reciprocal no-shop framework, the buyer could also have an obligation to pay a termination fee.
[10] For purposes of calculating the average and median termination fees, we included the full amount of any expense reimbursement called for to be paid in addition to the termination fee. Also, in the case of go-shops or two-tiered termination fees, we used the larger termination fee.

transactions, however, a terminating target was also required to reimburse the buyer for its expenses up to a specified cap. Whether to tack on expense reimbursement to a termination fee is a negotiated deal point. In approximately 15% of the REIT M&A transactions we reviewed, reimbursement of expenses was required in addition to payment of the termination fee. This may just be a bit of "window dressing" to allow parties to show a lower absolute number for the termination fee but courts are likely to look at the total amount paid, regardless of whether it is broken into components, when evaluating termination fees. Indeed, the nominal termination fee was set at substantially less than 3.0% of equity value in many of these cases.

Independent of whether or not a termination fee is payable, expense reimbursement up to the specified cap is commonly required in REIT M&A transactions when the merger agreement is terminated due to the failure of target shareholders to approve the transaction at a meeting duly held for this purpose. Likewise, many merger agreements provide for expense reimbursement to buyer if the agreement is terminated due to target's uncured breach of its representations and/or obligations under the agreement under circumstances not involving an interloping offer and payment of a termination fee.

Two-Tiered Termination Fees. As noted above under *"Go Shops and Window Shops"*, a minority of deals have used a two-tiered termination fee structure whereby a substantially lower termination fee is payable if the target board elects to terminate the definitive agreement to accept a "superior" proposal received as a result of third-party discussions initiated during a go-shop or window-shop period. The reduced termination fee in these instances is typically 50% or more less than the full termination fee payable after expiration of the go-shop or window-shop period. In the deals we surveyed over the 2012-2017 period, first-tier termination fees were in the 1.0-to-1.7% of equity value range, jumping up to the 2.4-to-3.25% range as above once the go-shop or window-shop period expired.

9. REMEDIES. Another frequent area of negotiation in M&A contracts revolves around what remedies the parties have if, in a situation where neither party has the contractual right to terminate the agreement, one party nevertheless materially breaches its obligations under the agreement, e.g., one party simply refuses, or otherwise fails, to close despite all relevant conditions having been satisfied. In all of the deals surveyed, the buyer had the right to seek specific performance in court to force the target to comply with its contractual obligations. Targets, on the other hand, had specific performance rights in approximately 85% of the surveyed deals, while in the remaining approximately 15% of transactions, target's remedies were limited to terminating the agreement and requiring the buyer to pay a "reverse termination fee" as liquidated damages. Included within the deals providing target with specific performance rights were a small number of deals that limited remedies to a reverse termination fee if buyer failed to close due to failure of financing and those in which target also had the option to terminate the agreement and accept a fixed reverse termination fee as liquidated damages.

Deals in which target's remedies are limited solely to a reverse termination fee effectively set an "option price" for the buyer, i.e., the cost to the buyer of walking away from the deal. These generally only appear in cash deals with private buyers (often funds) who may have internal policies requiring a cap on potential liability. In the deals surveyed, reverse termination fees were an average/median of approximately 2.4 times higher than the target's termination fee payable in the event of a fiduciary termination right.[11]

10. LITIGATION. Like other public M&A transactions, REIT M&A transactions frequently generate litigation, typically involving claims for alleged breach of fiduciary duty and/or material omissions in relevant SEC filings, such as the proxy statement. Of the 50+ transactions announced in the 2012–2017 period, approximately 75% resulted in litigation along these lines[12], the resolution of which varied, but over two thirds of the cases were dismissed and no deals were enjoined by a court:

Litigation Resolutions

44%	were dismissed in conjunction with a negotiated settlement
15%	were dismissed by the court pursuant to a motion by defendants
10%	were dismissed voluntarily by plaintiffs without a settlement
31%	are still pending/unresolved

In years prior to 2016, in order to remove any risk to deal certainty and in recognition that paying plaintiffs' counsel

[11] One outlier was excluded in this calculation.
[12] The majority of deals in which no litigation was brought involved non-traded REITs, which may attract fewer shareholder lawsuits due to the lower public profile of the target.

was often less expensive than defending even frivolous cases, many cases were settled. A typical settlement might require defendants to make some additional disclosures of information and pay plaintiffs' attorneys a modest fee, though in some cases the settlement fee amount was significant. In the cases we surveyed, most of the fees were under $1 million, but two were much greater—$7 million and $9.4 million, respectively.

Settlement Fees

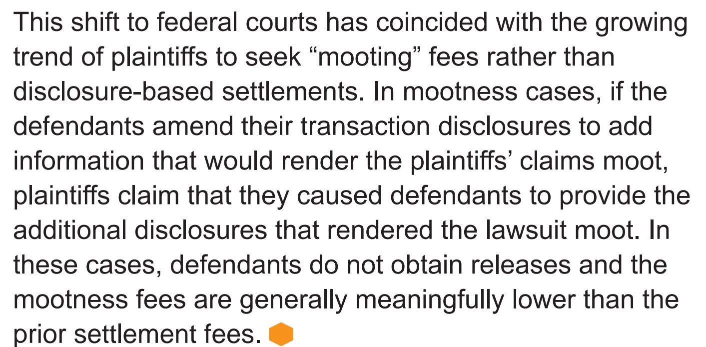
Lowest Fee	$175,000
Highest Fee	$9.4 million
Average Fee	$455,731*
Median Fee	$500,000

* Exclusive of two outlier fees of $7 million and $9.4 million, respectively. Inclusive of these outliers, the average settlement fee was $1.5 million.

In all but two of the cases, all settlement amounts were paid to plaintiffs' counsel rather than to shareholders. In the exceptions (the same two cases with the outlier attorneys' fees) an additional $22.6 million and $7 million, respectively, were paid to shareholders as additional consideration.

While plaintiffs generally seek to enjoin the transaction early on, when corrective disclosures can still be made, in only 25% of all cases during the survey period did plaintiffs move for a preliminary injunction and no court enjoined any of the surveyed transactions. We note that there is a newly developing trend of cases being filed post-closing, in which the plaintiffs seek damages instead of an injunction for the same disclosure-based claims under the federal securities laws.

An important development in REIT M&A litigation that has emerged over the past five years is the shift away from state courts and state law claims to federal courts and federal securities law claims. In addition, in early 2016, Maryland, where a majority of public REITs are organized, along with some other states, began to disfavor disclosure-based settlements pursuant to which plaintiffs' attorneys were paid fees but shareholders did not receive any additional consideration. At least partially as a result, a large majority (85%) of REIT merger-related lawsuits filed since early 2016 have been brought in federal court and allege federal claims—usually violations of Section 14(a) of the Securities Exchange Act of 1934 and rules promulgated thereunder—rather than more traditional state-law based claims of breach of director duties and against buyers for aiding and abetting those breaches. Prior to 2016, only a small minority (18%) of REIT M&A lawsuits were brought in federal court.



This shift to federal courts has coincided with the growing trend of plaintiffs to seek "mooting" fees rather than disclosure-based settlements. In mootness cases, if the defendants amend their transaction disclosures to add information that would render the plaintiffs' claims moot, plaintiffs claim that they caused defendants to provide the additional disclosures that rendered the lawsuit moot. In these cases, defendants do not obtain releases and the mootness fees are generally meaningfully lower than the prior settlement fees.

Index of REIT M&A Transactions 2012-2017

Date Announced	Target	Acquirer	Sector
Aug 2012	Sunrise Senior Living, Inc.	Welltower (Health Care REIT, Inc.)	Healthcare
Sep 2012	American Realty Capital Trust, Inc.	Realty Income Corporation	Single-Tenant Net Lease
Jan 2013	CreXus Investment Corp.	Annaly Capital Management, Inc.	Mortgage
Jan 2013	Spirit Realty Capital, Inc.	Cole Credit Property Trust II, Inc.	Single-Tenant Net Lease
June 2013	Colonial Properties Trust	Mid-America Communities, Inc.	Residential
Juy 2013	American Realty Capital Trust IV, Inc.	VEREIT, Inc (f/k/a American Realty Capital Properties, Inc.)	Single-Tenant Net Lease
July 2013	Corporate Property Associates 16 – Global Incorporated	W.P. Carey Inc.	Single-Tenant Net Lease
Sep 2013	Thomas Properties Group, Inc.	Parkway Properties, Inc.	Office
Oct 2013	Cole Real Estate Investments	VEREIT, Inc (f/k/a American Realty Capital Properties, Inc.)	Single-Tenant Net Lease
Dec 2013	BRE Properties, Inc.	Essex Property Trust, Inc.	Residential
Feb 2014	Inland Diversified Real Estate Trust, Inc.	Kite Realty Group Trust	Retail
June 2014	American Realty Capital Healthcare Trust, Inc.	Ventas, Inc.	Healthcare
Aug 2014	Griffin American Healthcare REIT II, Inc.	Northstar Realty Finance Corp.	Healthcare
Sep 2014	Glimcher Realty Trust	Washington Prime Group, Inc.	Retail
Oct 2014	Aviv REIT, Inc.	Omega Healthcare Investors, Inc.	Healthcare
Oct 2014	AmREIT, Inc.	Edens Investment Trust	Retail
Nov 2014	Signature Office REIT, Inc.	Griffin Capital Essential Asset REIT, Inc.	Office
Apr 2015	Associated Estates Realty Corporation	Funds managed by Brookfield Asset Management, Inc.	Residential
Apr 2015	Excel Trust, Inc.	Funds managed by Blackstone Property Partners, L.P.	Retail
May 2015	Trade Street Residential, Inc.	Independence Realty Trust, Inc.	Residential
June 2015	Gramercy Property Trust, Inc.	Chambers Street Properties	Office/Industrial
June 2015	Home Properties, Inc.	Lone Star Real Estate Fund IV (U.S.), L.P.	Residential

Date Announced	Target	Acquirer	Sector
June 2015	SmartStop Self Storage, Inc.	Extra Space Storage Inc.	Storage
July 2015	Industrial Income Trust Inc.	Global Logistic Properties Limited	Industrial
Sep 2015	Strategic Hotels & Resorts, Inc.	Blackstone Real Estate Partners VIII L.P., an affiliate of The Blackstone Group L.P.	Lodging
Oct 2015	BioMed Realty Trust, Inc.	Blackstone Real Estate Partners VIII L.P., an affiliate of The Blackstone Group L.P.	Office/Healthcare
Oct 2015	Landmark Apartment Trust, Inc.	Starwood Capital Group/Milestone Apartments Real Estate Investment Trust	Residential
Oct 2015	Campus Crest Communities, Inc.	Harrison Street Real Estate Capital, LLC	Residential
Nov 2015	Plum Creek Timber Company, Inc.	Weyerhauser Company	Timber/Specialty
Dec 2015	American Residential Properties, Inc.	American Homes 4 Rent	Residential (Single Family)
Dec 2015	Inland Real Estate Corporation	DRA Growth and Income Fund VIII, LLC and DRA Growth and Income Fund VIII (A), LLC	Retail
Feb 2016	Apollo Residential Mortgage, Inc.	Apollo Commercial Real Estate Finance, Inc.	Mortgage
Feb 2016	Rouse Properties, Inc.	Funds managed by Brookfield Asset Management, Inc.	Retail
Apr 2016	Apple REIT Ten, Inc.	Apple Hospitality REIT, Inc.	Lodging
Apr 2016	Hatteras Financial Corp.	Annaly Capital Management, Inc.	Mortgage
Apr 2016	Zais Financial Corp.	Sutherland Asset Management Corporation	Mortgage
Apr 2016	Parkway Properties, Inc.	Cousins Properties Incorporated	Office
Jue 2016	Northstar Realty Finance Corp.; Northstar Asset Management, Inc.	Colony Capital, Inc.	Diversified
Aug 2016	Post Properties, Inc.	Mid-America Communities, Inc.	Residential
Aug 2016	American Realty Capital Global Trust II, Inc.	Global Net Lease, Inc.	Single-Tenant Net Lease
Sep 2016	American Farmland Company	Farmland Partners Inc.	Agriculture (Specialty)
Sep 2016	American Realty Capital – Retail Centers of America, Inc.	American Finance Trust, Inc.	Retail

Date Announced	Target	Acquirer	Sector
Nov 2016	Equity One, Inc.	Regency Centers Corporation	Retail
Nov 2016	CNL Lifestyle Properties	EPR Properties and Och-Ziff Real Estate	Lifestyle
Feb 2017	Silver Bay Realty Trust Corp	Tricon Capital Group Inc.	Residential (Single Family)
Apr 2017	Felcor Lodging Trust Incorporated	RLJ Lodging Trust	Lodging
May 2017	Sentio Healthcare Properties, Inc.	Kayne Anderson Real Estate Advisors	Healthcare
May 2017	Care Capital Properties, Inc.	Sabra Health Care REIT, Inc.	Healthcare
June 2017	American Realty Capital Healthcare Trust III, Inc.	Healthcare Trust, Inc.	Healthcare
June 2017	Parkway, Inc.	Canadian Pension Plan Investment Board	Office
June 2017	First Potomac Realty Trust	Government Income Properties Trust	Office/Industrial
June 2017	Dupont Fabros Technology, Inc.	Digital Realty Trust, Inc.	Tech/Specialty
June 2017	Monogram Residential Trust, Inc.	Investor group led by Greystar Real Estate Partners	Residential
Aug 2017	Starwood Waypoint Homes	Invitation Homes Inc.	Residential (Single Family)

CONTACT THE AUTHORS

REITS M&A AND CAPITAL MARKETS

JOHN HAGGERTY
Partner
+1 617 570 1526
jhaggerty@goodwinlaw.com

YOEL KRANZ
Partner
+1 212 813 8831
ykranz@goodwinlaw.com

GIL MENNA
Partner
+1 617 570 1433 | +1 212 813 8812
gmenna@goodwinlaw.com

TAX

NEAL SANDFORD
Partner
+1 617 570 1632
nsandford@goodwinlaw.com

SECURITIES LITIGATION

DEBORAH BIRNBACH
Partner
+1 617 570 1339
dbirnbach@goodwinlaw.com

Michael Pickett also contributed to the drafting of this article.

www.goodwinlaw.com

This informational piece, which may be considered advertising under the ethical rules of certain jurisdictions, is provided on the understanding that it does not constitute the rendering of legal advice or other professional advice by Goodwin Procter or its lawyers. Prior results do not guarantee a similar outcome. Goodwin Procter is an international legal practice carried on by Goodwin Procter LLP and its affiliated entities. For further information about our offices and the regulatory regimes that apply to them, please refer to http://www.goodwinlaw.com/Legal-Notices. © 2018 Goodwin Procter. All rights reserved.