WINTER/2013-14

RE SOURCE™

A GOODWIN PROCTER PUBLICATION FOR THE REAL ESTATE INDUSTRY

- Bringing Non-U.S. Capital Into (and Back Out of) U.S. Real Estate
- A Wider Play of Shale: A Hydraulic Fracturing Primer
- California Clears Way for Pollution Clean-Up with AB 440
- Which Way is the Exit? Liquidity and Non-Traded REITs

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GOOD NEWS

Goodwin Procter Selected for 65 Tier 1 National and Metropolitan Practice Rankings in *U.S. News-Best Lawyers* 2014 "Best Law Firms" Survey

Goodwin Procter LLP was recently recognized in 105 national and metropolitan practice areas in the 2014 "Best Law Firms" survey by *U.S. News – Best Lawyers*. Goodwin was ranked in 19 national Tier 1 categories and 46 metropolitan Tier 1 rankings. The *U.S. News – Best Lawyers* "Best Law Firms" rankings are based on client and lawyer evaluations, peer review from leading attorneys in their field, and review of additional information provided by law firms.

For the complete list of Goodwin's recognition in the 2014 *U.S. News – Best Lawyers* "Best Law Firms" Survey, please visit www.goodwinprocter.com/RECM.

GOODWIN PROCTER

Solutions to Today's Real Estate Puzzles

We are recognizing two anniversaries with the winter 2013-14 edition of *REsource*. One is the 100th anniversary of the crossword puzzle and the other is the 5th anniversary of the bursting of the U.S. housing bubble.

In 1913, Arthur Wynne, an English journalist working for a New York newspaper, wanted to spice up the games section of the Sunday edition of his newspaper. He created a diamond-shaped grid with no black squares and called it "Word-Cross Puzzle." However, when the game went to press on December 21, 1913, the name was accidentally reversed and the "crossword" was born.

The 2007-2009 recession in the United States is largely attributable to the crisis in the real estate sector brought about by the housing bubble that existed at that time. Although the recession began in 2007, it was on December 30, 2008 that the housing bubble officially burst. On that day, Case-Shiller experienced the largest price drop in the history of its home price index. Since that day, the real estate industry has been picking up the pieces and adjusting to the battered market.

So what do crosswords and real estate have in common? Nothing really, except that they are both puzzling. And like with any puzzle, participants seek efficient and correct solutions. Yet, sometimes solutions can seem difficult to find in this dynamic and ever-changing industry.

Although not easy, if one looks hard enough, there are meaningful clues that present themselves. In this edition of *REsource*, we illuminate such clues. John Ferguson and Ed Glazer explain the enigma that is non-U.S. capital flow for U.S. real estate investment; Greg Bibler and Joanne Gray explore the conundrum of hydraulic fracturing, in their article, *A Wider Play of Shale*; Doug Praw and Brandt Hollander discuss a new California law that will enhance the ability of local agencies and developers to solve the riddle of brownfields; and John Haggerty looks at liquidity issues in the increasingly popular non-traded REIT market and discusses the quandary *Which Way is the Exit?*

In real estate, unlike crossword puzzles, the answers don't appear at the back of the publication. But, perhaps these four articles will provide you with hints in finding solutions to today's real estate puzzles.

– Robert M. Haight, Jr.
Editor-in-Chief

BRINGING NON-U.S. CAPITAL INTO (AND BACK OUT OF) U.S. REAL ESTATE

by John M. Ferguson and Edward L. Glazer

On the heels of a thawing real estate trans–actional market in the United States, many investment managers and real estate owners (including many of the public REITs) are experiencing a corresponding uptick in the availability of institutional capital for this asset class. Not surprisingly, the capital seems to be following the deals.

Following the financial crisis of 2008, many investors ensure "this time will be different." Most have become much more thoughtful and measured about not only the investments they make, but with whom they partner. One key element, however, is not different: the complexity of bringing non-U.S. capital into (and back out of) U.S. real estate.

Aggregating capital from different types of investors is always a challenge. Taxable, tax-exempt, U.S., non-U.S., ERISA pension, and investors of other stripes often have differing – and competing – tax, commercial, and other goals. Then there's the Foreign Interest in Real Property Tax Act (FIRPTA). Because domestically-controlled real estate investment trusts (REITs) are the most tax-efficient FIRPTA planning tool, the greatest challenge continues to be simultaneously satisfying U.S. owners and investors and non-U.S. investors.

Getting Out Isn't Easy

Since June 2007, the most efficient structure from a U.S. tax perspective for non-U.S. investors is to hold each property in a separate, domestically-controlled REIT and to dispose of the property by selling the stock of the REIT. In other words, a non-U.S. investor would seek a majority U.S. partner and would exit not in a traditional real estate transaction, but instead in what is effectively an M&A deal. In such a transaction, the REIT stock buyer would need to preserve REIT status post-closing. In certain property types, sizes, and markets, this may limit the pool of buyers, as one of the REIT rules is that five or fewer individuals (giving effect to certain attribution and ownership look-through rules) not own more than 50% of a REIT. This "5/50 rule" often eliminates individual, family, family office, closely-held partnerships, and certain other potential buyers. A deREITing acquisition would be a disaster for both the seller and the buyer. The buyer would own a C-corporation and could not liquidate without setting off a 35% federal tax on the built-in gain imbedded in the corporation and would have to pay corporate tax on the income of the now C-corporation. Because the REIT would be deREITed retroactive to the beginning of its current calendar year, the seller would lose its desired tax result because the REIT is not a REIT at the time of the sale. In addition, the pool of buyers is further limited because buyers seeking like-kind exchange transactions under Section 1031 of the Internal Revenue Code cannot buy REIT stock, and because some buyers simply just don't want to buy REIT stock.

A non-U.S. investor (and its majority U.S. partner) must realize that when it attempts to sell shares of a domestically-controlled REIT, the potential buyer of that stock essentially needs to get comfortable with two deals: the underlying real estate, and the history, potential liabilities, and tax status of the REIT. At times, there has been resistance from the U.S. investors needed to make a domestically-controlled REIT possible. Some domestic investors are not amenable to bearing their share of the incremental costs of creating and maintaining a REIT structure or (even more so) of implementing the sale of the REIT stock exit strategy, which may result in reduced sale proceeds.

"A non-U.S. investor (and its majority U.S. partner) must realize that when it attempts to sell shares of a domestically-controlled REIT, the potential buyer of that stock essentially needs to get comfortable with two deals: the underlying real estate, and the history, potential liabilities, and tax status of the REIT. "

Selling stock in a domestically-controlled REIT requires that a buyer conduct due diligence and seek additional deal protections such as representations, warranties, indemnities, and possible cash holdbacks relating not only to the real estate, but also with respect to the REIT being purchased. Buying a company, and any potential liabilities which may arise from its historical operations, adds incremental risk. For example, a REIT does not pay U.S. federal income taxes so long as it earns good REIT income, holds good REIT assets, meets certain ownership tests, dividends out 90% of its taxable income, and otherwise qualifies as a REIT. But, if REIT status fails, then C-corporation entity level tax is imposed (typically 35% before state taxes) on its profits. Consequently, in addition to extra deal protections, the transaction may also yield a lower purchase price to offset the incremental assumed risk.

The Cost of Capital

For the non-U.S. investor, however, if properly executed, these burdens are worthwhile; exiting via a sale of REIT stock allows the non-U.S. investor to repatriate its capital free of U.S. federal income taxes. But, from the perspective of the U.S. capital invested in the property (which by definition is a majority of each domestically-controlled REIT seller), the same burdens exist without any corollary gains.

In the context of joint ventures between a foreign

investor and a U.S. operator (such as a public REIT) with the U.S. operator owning more than 50% of the REIT, an added issue arises when the partners do not wish to exit at the same time, thereby raising the prospect of a buy/sell exercise. The non-U.S. partner is not able to buy out the U.S. partner, but instead must replace the U.S. partner with another U.S. partner to retain domestically-controlled REIT status. If the U.S. partner buys out the non-U.S. partner, it would receive a stepped-up basis in the REIT stock purchased (but not in the stock it already owns). Unlike purchasing partnership interests, the U.S. partner in such a scenario is not able to elect to receive a stepped-up basis in the property owned by the REIT. As a result, in such a scenario, if the property has a fair market value significantly in excess of its then tax basis, the U.S. operator is not able to liquidate the REIT without incurring a significant tax on the gain. The U.S. operator must then continue to own the property in the REIT with a lower tax basis, reduced depreciation deductions, and, in the case of a U.S. operator which is itself a REIT, a larger distribution requirement.

Greenshoots

In the context of properties which were well-suited for the domestically-controlled REIT structure in the first instance, namely large properties or portfolios likely to trade in the institutional markets, a transaction could be structured to afford the U.S. tax benefits of selling stock in a domestically-controlled REIT to the non-U.S. partner, while such non-U.S. partner shoulders a greater portion of the corresponding burdens of selling REIT stock.

Specifically, the non-U.S. partner or partners in a joint venture, multi-investor, or fund context could be given the choice at exit to elect between having all the partners sell REIT stock or to instead simply sell in a "normal" real estate transaction. The parties could agree to obtain bids and an understanding of all material terms for both transaction formats.

Once the best alternative bids were established, in the event the non-U.S. partner selected the sale of REIT stock format, the U.S. partner would participate in such transaction, and as a condition thereof the non-U.S. partner would ensure that the U.S. partner is not disadvantaged by having done so. In particular, the sale proceeds would be adjusted to allocate any pricing "haircut" solely to the non-U.S. partner and the non-U.S. partner would either make solely in the first instance, or

otherwise stand behind and make whole the U.S. partner for, any incremental representations, indemnities, or other contractual differences undertaken as compared to those which would have been provided in the simple real estate transaction.

Congress to the Rescue

On November 19, 2013, U.S. Senate Finance Committee Chair Max Baucus (D-MT) released a discussion draft that includes favorable changes to the FIRPTA rules. The discussion draft would override Notice 2007-55 by providing that certain distributions made by a domestically controlled REIT, including liquidating distributions, can be made without foreign investors incurring a FIRPTA tax. Tax-efficient structuring could then be achieved without the need to sell REIT stock. Property could be sold in a traditional real estate transaction and the proceeds of the sale could be distributed to the non-U.S. investor or investors as a liquidating distribution without the non-U.S. investors incurring the FIRPTA tax. In addition, the discussion draft would provide an exemption for FIRPTA to certain foreign pension plans. If these provisions should become law, the tax impediments to bringing non-U.S. capital into U.S. real estate would be significantly reduced. ■

John M. Ferguson, a partner in the firm's Business Law Department, is the co-chair of its Real Estate Private Investment Funds Practice. Contact John at 212.813.8827 or jferguson@goodwinprocter.com.

Edward L. Glazer, a partner in the firm's Tax Practice and its nationally recognized Real Estate, REITs & Real Estate Capital Markets Group, focuses principally on structuring and implementing tax-oriented commercial transactions of all types. Contact Ed at 617.570.1170 or eglazer@goodwinprocter.com.

A WIDER PLAY OF SHALE

A HYDRAULIC FRACTURING PRIMER

by Gregory A. Bibler and Joanne M. Gray

Hydraulic fracturing or "fracking" is a process in which millions of gallons of fluid and material are injected into a deep well at very high pressures to engender, expand, or restore fractures, typically in the geologic formation known as shale. Through this process, substantial oil and gas reserves that otherwise would remain trapped can be profitably exploited. After three to ten days of intensive development activities, the well may produce oil and gas for 20, 30, or more years. Landowners may participate in these profits by leasing subsurface oil and gas mineral rights to operators, in return for royalties on the resources recovered.

So what's not to like? Along with its substantial economic potential, fracking poses significant environmental and land use challenges. In the short term, the accumulation, injection, management, and disposal of millions of gallons of fracking fluid create multiple opportunities for releases to the environment. More generally, drilling, fracking, and operating oil and gas wells are intensive industrial activities that generate noise, air emissions, waste, and traffic. All of these raise unwelcome risks, including potential conflicts with existing or future development and land uses, and tort claims for alleged injuries to natural resources, persons, or property.

How Does it Work?

A well is drilled thousands of feet through the aquifer and intervening rock layers to reach the producing geologic formation (e.g., shale). As the well is drilled, often vertically and then horizontally, steel casings are inserted and cemented in the well bore. Done correctly, this should ensure that fluid injected into the completed well, and oil and gas induced to flow around and into the well, remain isolated from any nearby structures or underground drinking water supplies.

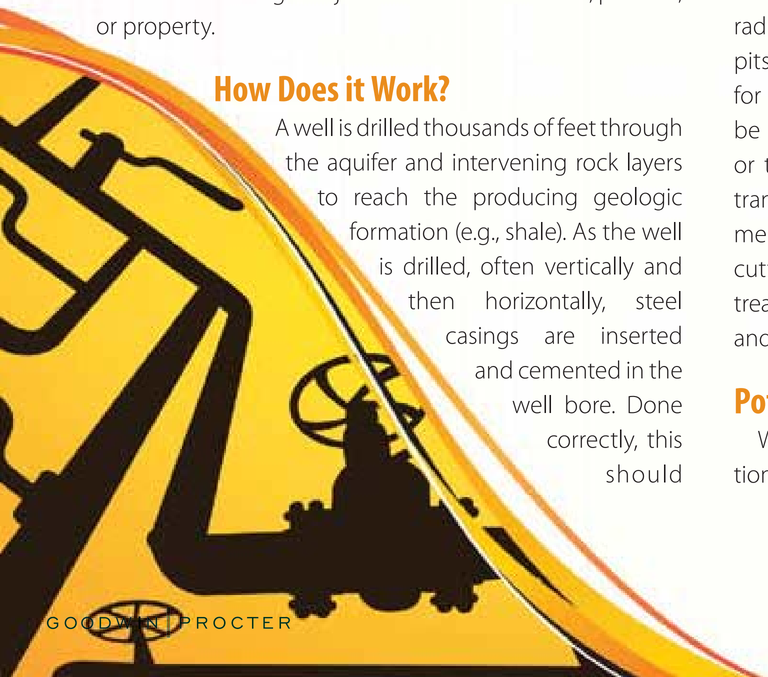
Fracking begins only after the well has been installed. Water mixed with chemicals and other materials is injected into the well and out through penetrations into the target zones. Various mixtures are used in different sequences depending on the needs of the particular formation. In addition to water, fluids injected in stages may include acids, "slickwater," "proppant," gelling agents, and biocides.

Three to five million gallons of fresh water, mixed with two percent or less of fracking chemicals, are injected per well. Eventually the volume and pressure of the fluid injected cause the formation to fracture. Sand and other "proppants" injected into the fractures keep them open. If the formation is productive, trapped oil and/or gas will flow through the fractures. Once the well is in operation, oil and gas will move into the well and be collected at the surface for off-site distribution.

Most of the fluid injected into the well returns to the surface as "flowback" that must be properly managed. In addition to fracking chemicals, flowback may include materials from the formation, such as naturally occurring radioactive material. Flowback typically is stored in tanks or pits before it is either disposed of or treated and recycled for reuse. Depending on local requirements, flowback may be disposed of on-site, either by injection into deep wells or treatment and discharge to nearby surface waters, or transported off-site for disposal at publicly owned treatment works or other facilities. Other wastes, such as drill cuttings and other solid wastes, production brines, and treatment sludges also may require proper management and disposal.

Potential Environmental Impacts?

Well construction, hydraulic fracturing, and fuel production are intensive industrial activities. They require substan-



tial infrastructure. Access roads, well pads, pipelines, chemical mixing, water and wastewater storage, fuel handling, and other facilities must be constructed and operated, typically by multiple crews employed by different independent contractors. These activities generate traffic, noise, air emissions, disruptions and other impacts. Disposal of fracking fluid in underground injection wells also has been associated with localized seismic disruptions or "manmade earthquakes" when employed near geological faults. For that reason, the state of Ohio, for example, requires seismic monitoring for new disposal wells.

Each phase of well installation, development, and operation presents opportunities for accidental spills and releases of fuel, wastes, and chemicals to the environment. In several documented cases, in fact, spills of fracking fluid from pipelines, well pads, and wastewater impoundments have resulted in impacts to waterways and nearby pasture land.

Whether, and under what circumstances, fracking may cause groundwater pollution is a matter of substantial controversy. The question has been under investigation by federal and state environmental agencies for years. Since 2009, dozens of civil lawsuits related to fracking have been filed in at least eight states, making a variety of claims, many of which are still pending. Some of the claims are for groundwater contamination, charging that fracking fluids leaked from wells into aquifers, or that stray gas migrated into drinking water supplies. Other claims include earthquake damage, air pollution, and excessive noise. Plaintiffs in nearly all of these suits have been landowners who either leased mineral rights to well operators or owned properties in close proximity to land where fracking was done. Some of the cases include personal injury claims, whether for actual physical injury or illness due to exposure to alleged contamination, or for costs for medical monitoring relating to fear of developing cancer or other illness.

Keeping Up With the Joneses?

If a landowner is presented with the opportunity to lease mineral rights and allow fracking, the chances are very good that adjoining landowners have been or will be presented with the same opportunity. Fracking is highly resource intensive. An area comes into "play" only when geoseismic or other data demonstrate that there is an economic quantity of oil or gas to be found there. Oil and gas deposits of sufficient scale to warrant exploitation using fracking are unlikely to be circumscribed within one property's boundaries. Operators prefer to install many well pads in the same vicinity so that connecting infrastructure can be built, and crews, material, and equipment can be readily moved from one site to the next. Once they have been developed, oil and gas production wells may operate for many decades.

Whether land should be made available for oil and gas production using hydraulic fracturing, and under what circumstances, is a long-term decision not only for individual property owners, therefore, but also for the community.

Landowners should work together with local and state regulators to evaluate and address large-scale impacts, including water withdrawal and reuse plans, air emission controls, truck routes and schedules, pipeline and wastewater retention locations and protections, and waste management and disposal requirements. Before any site work begins on their properties, landowners should ensure that all logistical details and potential risks inherent in the project have been spelled out in a comprehensive contract backed by appropriate financial assurance.

Allocating Risks

Fracking is a big deal. It has the potential to change the energy resources of nations and the financial fortunes of landowners. However, landowners must be aware of the risks and how to allocate those risks through indemnification and insurance, access and operating conditions and limitations, location and maintenance of all temporary and permanent structures, and management and disposal of flowback and other wastes. ■

Gregory A. Bibler, a partner in the firm's Environmental Practice, focuses on environmental litigation, enforcement, corporate compliance, contaminated site management, and allocation of environmental risks in business transactions. Contact Greg at 617.570.1621 or gbibler@goodwinprocter.com.

Joanne M. Gray, a partner in the firm's Litigation Department, serves as chair of its Specialty Litigation Group and chair of its Products Liability & Mass Torts Practice. Contact Joanne at 212.459.7440 or jgray@goodwinprocter.com.

CALIFORNIA CLEARS WAY

by Douglas A. Praw and Brandt Hollander

On October 5, 2013, California Governor Jerry Brown signed into law AB 440 (Gatto), a bill authorizing local agencies to exercise certain environmental remediation powers previously enjoyed by California redevelopment agencies (RDAs) prior to their dissolution in 2012.

The new legislation becomes effective January 1, 2014 and will be codified as Health and Safety Code Section 25403. The new law is a significant advance in empowering local agencies to address blighted properties under their jurisdiction. Thanks to AB 440, local agencies will now have the tools needed to remediate brownfields in their communities and return the properties to the marketplace in a positive way.

The New Law

AB 440 gives local agencies the right to obtain environmental information from property owners, compel cleanup of blighted property, and recover the full costs of remediation from polluters. Importantly, the new law immunizes both the local agencies and property owners as well as lenders and subsequent purchasers from environmental liability arising from previously existing contamination after the completion and approval of remediation actions undertaken under the new law. Because this immunity runs with the land to immunize future purchasers, it will diminish the risk associated with environmental remediation and will boost the land's resale value.

While the new law does not confer on local agencies the eminent domain power previously enjoyed by RDAs, the law does give local agencies a right of entry to blighted properties to effect remediation. Further, whereas RDAs could act only within designated redevelopment areas, under the new law, local agencies will be able to address environmental damage to any "blighted" property within their jurisdiction. Local agencies will be able to use this power to compel owners of contaminated property currently left fallow to remediate the environmental damage to their property and thereby return the property to productive use. According to the new law's champion, California State Assemblyman Mike Gatto (D-Los Angeles), "with this bill, the state is giving local governments the tools they need to clean up contaminated areas, limit their liability, and pursue new economic opportunities."

Polanco in Full Effect

In the past, RDAs used powers granted by the Polanco Redevelopment Act (California Health & Safety Code, §§ 33459 et seq.). This Act gave RDAs the power to clean up environmentally polluted properties, restoring them to productive use. A good example of the impact the use of Polanco powers can have on a community is the Bay Street redevelopment in Emeryville, California, where an RDA was able to condemn contaminated property, remediate the environmental damage, and sell the property to a private developer so that it could build a multiuse development.

> ***"Whereas RDAs…could condemn a brownfield and remediate the property before selling it to a private owner to be developed, under the new paradigm, a private buyer will have to purchase the contaminated property as-is and work with the local agency to remediate the land while the private party remains in possession."***

For the Emeryville project, the RDA pieced together five

FOR POLLUTION CLEAN-UP

sites to assemble a 22-acre parcel. The parcel was comprised of property that had previously been used for, among other things, a steel drum recycling operation and a paint and pesticide plant - uses which had contaminated the soil with 47 different toxic materials including pesticides, heavy metal, and volatile organics. After assembling the parcel, the RDA remediated the site over a three year period. Once the contamination had been dealt with, the RDA sold the property to a private developer. The development now includes affordable and market rate housing, retail, a movie theater, parking, and a hotel. The development has been a boon to the local community and the RDA was ultimately able to recover 90% of the remediation costs.

The Emeryville project is just one of many success stories of RDAs using Polanco powers to transform heavily polluted property into thriving community hubs. These past successes helped generate the tremendous bi-partisan support for AB 440, which passed both the Assembly and Senate by a nearly unanimous vote. Policymakers on both sides of the aisle were anxious to reactivate what had been such a useful tool for California communities and empower local agencies to carry on the work of the RDAs. However, the local agencies operating under the new law will need to adopt a slightly different approach than was used by many of the RDAs.

Whereas RDAs, like the one in Emeryville, could condemn a brownfield and remediate the property before selling it to a private owner to be developed, under the new paradigm, a private buyer will have to purchase the contaminated property as-is and work with the local agency to remediate the land while the private party remains in possession. This new approach will require a different arrangement between developers and local agencies. In the past, after it had completed a remediation project, an RDA would often sell a property by negotiating a disposition and development agreement (DDA). The DDA would require the developer to take certain actions after taking control of the property and ensured that future development of the property conformed to the RDA's vision.

Under the new paradigm, developers and local agencies will need to enter into a new form of agreement, likely similar to an owner participation agreement (OPA), which was another form of arrangement used by RDAs. Under an OPA, the developer and the local agencies agree to work together to remediate environmental damage while the property is owned by the developer and not the local agency. These arrangements, which provide for remediation to occur while the property is privately owned, require a tremendous amount of cooperation between developers and local agencies, especially for properties with remediation plans which are particularly difficult or speculative. This is because this approach requires private developers to incur the holding costs of owning the property during the remediation period and to rely on the local agencies to complete the remediation as quickly and efficiently as possible in order for the developers to complete economically viable projects.

Conclusion

While differences exist between AB 440 and the Polanco powers previously enjoyed by RDAs, the new law creates an exciting new tool for local agencies to address blight and contamination in their communities and promises to have a significant impact on development in California going forward. ■

Douglas A. Praw, a partner in Goodwin Procter's Business Law Department and a member of the Real Estate, REITs & Real Estate Capital Markets Group, has extensive experience in a wide range of real estate and public finance matters. Contact Doug at 213.426.2664 or dpraw@goodwinprocter.com.

Brandt Hollander, an associate in the firm's Business Law Department and a member of the Real Estate, REITs & Real Estate Capital Markets Group joined the firm in 2013. Contact Brandt at 213.426.2606 or bhollander@goodwinprocter.com.

WHICH WAY IS

by John T. Haggerty

Non-traded REITs are investment vehicles aimed at providing retail investors with the opportunity to invest in real estate on a long-term and diversified basis – mitigating the risks that come from single property investments. Conventional wisdom used to view non-traded REITs as occupying a quiet, low-profile niche in the real estate investing world. Over the last decade, however, these investment vehicles have attracted investor capital at impressive rates and deployed that capital to build large portfolios of quality assets that rival the size and quality of more traditional institutional real estate funds or exchange-traded REITs. Non-traded REITs expect to raise approximately $18 to $20 billion during 2013, which will far exceed the prior annual record of $11.7 billion in 2007. With this level of capital inflow, the non-traded REIT sector will grow 20% year over-year in 2013, whereas the larger exchange-traded REIT sector is expected to grow by 5% in 2013.

Typically, non-traded REITs are marketed to large numbers of retail investors and may have 40,000 to 50,000 shareholders. Because of this large shareholder base, the REIT must register with the SEC and make public filings regarding its business with the SEC. Unlike other public REITs, however, non-traded REITs are not listed on a stock exchange. As a result, until a liquidity event occurs, investors cannot readily exit their investment, though non-traded REITs generally have a redemption feature that allows a limited number of investors per year to exit through a cash redemption.

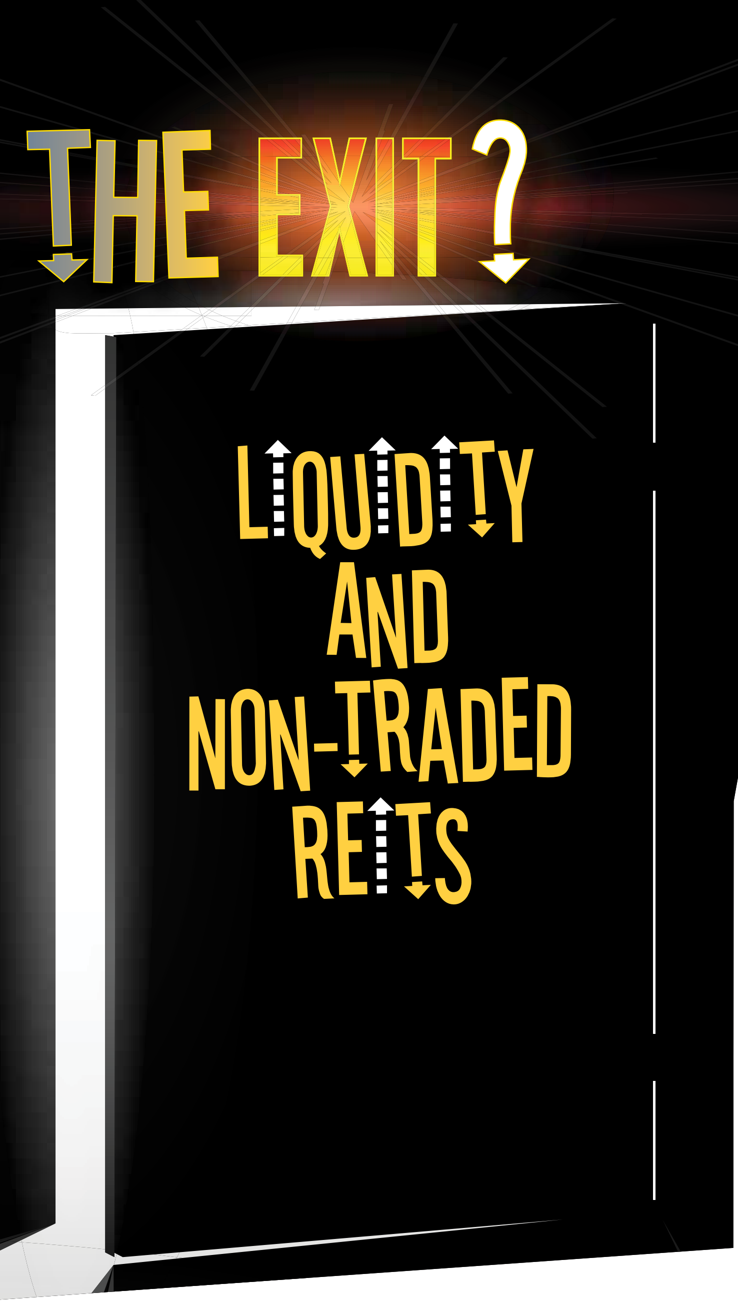
Non-traded REITs are marketed and managed with the objective of having a limited investment horizon, often 5 to 7 years. There are clear benefits to having capital committed for the long term from the perspective of building a portfolio that can survive real estate cycles or provide time for a strategy to mature. At some point, however, non-traded REITs need to provide their investors with liquidity. Robert A. Stanger & Co. estimates that non-traded REITs valued at more than $45 billion will be pursuing liquidity events in the next two years.

But what are these liquidity events?

Exits

To address these issues, non-traded REITs have been pursuing alternative liquidity transactions, such as:

1. **Mergers.** Non-traded REITs have pursued stock-for-stock (or mixed cash/stock) mergers with an exchange-listed company. The investors receive publicly traded stock that they can sell or hold at their election. The resulting company has a management team with a public track record and may be a more attractive investment because the larger size provides greater diversification and, sometimes, better leverage ratios. This strategy is represented by deals such as Cole Credit Property Trust II, Inc.'s merger with Spirit Realty Capital, Inc., or Corporate Property Associates 16 – Global Incorporated's merger with W.P. Carey Inc.
2. **Exchange Listings.** Some non-traded REITs pursue a listing of their shares on a stock exchange, usually combined with an internalization of management. For example, the stock of Columbia Property Trust, Inc. began trading on the NYSE on October 10, 2013. Investors continue to own shares in the same assets, but now have the ability to sell their shares at their election and realize any gains. Some non-traded REITs, such as DCT Industrial Trust and Retail Properties of America, pursued a listing strategy in conjunction with a public offering of new shares.
3. **Roll-Ups.** Other non-traded REITs pursue a strategy of combining with another non-traded REIT with the same sponsor and/or with the sponsor itself. Generally, this strategy is combined with, or soon followed by, a stock exchange listing. This strategy is represented by deals such as the combination of Cole Credit Property Trust III, Inc. and Cole Holdings Corporation to form Cole Real Estate Investments, Inc., or the combination of American Realty Capital Properties, Inc. with American Capital Realty Trust II, Inc. When the sponsor



itself is involved, the level of complexity increases as the resulting entity must address potential conflicts between two lines of business: (i) the "hold and operate properties" side of the house, and (ii) the sponsor's historic business of sponsoring non-traded REITs and possibly other investment vehicles.

Addressing Downward Price Pressure

In any of these liquidity strategies, the REIT must contend with the risk of significant downward price pressure on its trading value from the significant number of investors who are likely to seek an exit. Initially, non-traded REITs attempted to address this issue through the use of lock-ups, allowing shares to become transferable in phased-in stages. More recently, REITs have addressed the issue through modified "dutch auction" issuer tender offers. The REIT makes a tender offer to acquire a specific amount of its own shares for a price within a specified range, effectively setting a floor for the trading price. Concurrently with its NYSE listing, Columbia Property Trust executed an up to $300 million issuer tender offer that expired on November 8, 2013. An issuer tender offer can be an effective way to support the trading price and provide historic long-term investors with liquidity, though it requires having access to a significant amount of cash and the willingness to use it for this purpose. A final alternative is for the newly listed company to implement a share repurchase program to absorb excess sales pressure. Again, this alternative requires capital, but can be spread out over a longer period than a tender offer.

Continued Growth

Public visibility for non-traded REITs has never been higher. Some of the highest profile real estate deals of 2013 involved non-traded REITs (or REITs that began as non-traded REITs) —such as the merger of American Realty Capital Properties, Inc. and Cole Real Estate Investments, Inc. announced on October 23, 2013, which will result in the world's largest net lease REIT with an enterprise value of $21.5 billion. Economic fundamentals partially account for the growth of the non-traded REIT sector. Like other investors, retail investors are seeking yield in a low-interest-rate environment and non-traded REITs provide a stable source of dividends. These factors are unlikely to change in the near future. With the growth of non-traded REITs comes the growth of exit strategies, such as those described above. ■

John T. Haggerty, a partner in Goodwin Procter's Business Law Department, is a member of its M&A/Corporate Governance Practice and its nationally recognized REITs Practice. Contact John at 617.570.1526 or jhaggerty@goodwinprocter.com.

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Los Angeles, California 90017

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