



## NAREIT's Law, Accounting & Finance Conference

JW Marriott Desert Ridge Resort & Spa  
Phoenix, AZ

®

# NAREIT's REITwise 2015 - General Counsel Agenda Panel

# General Counsel Agenda Panel

## PANELISTS:

**Dan Adams, Goodwin Procter**

**Frank Burt, Boston Properties**

**Shirley Goza, QTS Realty Trust**

**Elizabeth Sacksteder, Paul Weiss**

## TOPICS:

**1. In-house as Gatekeepers**

**2. Governance Risk & Compliance in 2015**

**3. Crisis Management Plans**

**4. Enforcement Issues**

**5. Dodd-Frank Claw Back Rules**

# In-house as Gatekeepers

## What is risk/what are the components of risk?

- Financial
- Compensation
- Fraud
- Property/Casualty
- Third-Party Claims Liability
- Reputational
- M&A

# Calculated Risk

- What is the role of economics?
- Integration of the lawyer as a member of the business team
- The creative legal solution—the lawyer as a value-add
- The business' responsibility for its own decisions



# Where does compliance report in your organization?

- Legal?
- CEO?
- CFO?
- Board?
- Stand-Alone?
- Executive level?



# Investigations

- Who should conduct them?
- Why or why shouldn't legal conduct investigations?
- Who does investigations in your organization?



# Governance Risk and Compliance in 2015

- How worried should a company be about their ISS or Greenstreet score?
- What do we know about the new ISS rules and how they've changed?
- What problems have people seen with the ISS methodology and its application?

# Governance Risk and Compliance in 2015



- How is MUTA driven by Greenstreet in a way that is different from ISS?
- What are you seeing with regard to REITS being on the NY comptroller list (8/75).



# Governance Risk and Compliance in 2015

## ISS QuickScore 3.0 - New

- Annual Board Evaluation Policy
- Recent Board Action that “Materially Reduces” shareholders’ rights?
- Number of women on Board - now scored
- Number of Financial Experts on Audit Committee — now scored
- If the company has an “unequal voting structure,” does it have a sunset provision?
- Is there a controlling shareholder? (this is a zero-weight factor)

# Governance Risk and Compliance in 2015

## ISS Scoring Problems?

- Subjective weights?
- Peer group selection
- Less than 80% S/H vote for director
- Non-executive directors with more than 9 years of service
- Relativity of score – broad groups
- Total stockholder return (TSR) – financial rather than governance measure

# Crisis Management Plans

- Anticipation of the unexpected
- The comprehensive crisis management plan
- Training



# Enforcement Issues

- E-discovery – “threat of litigation”
- Section 16 Enforcement Actions
- NLRA “mutual aid and protection”
- Social media for Reg FD releases
- Non-deal roadshows



# Dodd-Frank Claw Back Rules

- Policies being adopted prior to rule release?
- How do you drive the right incentives?

