



NAREIT's Law, Accounting & Finance Conference

JW Marriott Desert Ridge Resort & Spa Phoenix, AZ

> NAREIT's REITwise 2015 - General Counsel Agenda Panel

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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?



- 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?



■ 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).

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)

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

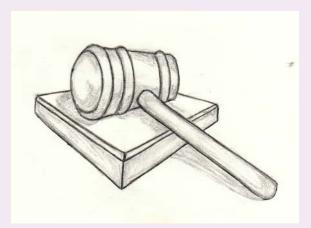
Crisis Management Plans

- 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?

