

**REIT**

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NAREIT's Law, Accounting  
& Finance Conference

March 30 - April 1

**2016**



D&O Liability Insurance Program

March 30, 2016

# D&O Liability Insurance Program

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## Agenda

- ◆ NAREIT Program Participation Update
- ◆ REIT Claims Update
- ◆ REIT D&O Underwriting Concerns
- ◆ Selecting Your Primary D&O Carrier
- ◆ Q&A

# D&O Liability Insurance Program

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## NAREIT Membership Participation Update

- Program Growth
- Strengthening Relationships
- Enhancements in Coverage

# REIT Claims Update

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- ◆ Securities Class Actions up 11% from 2014 to 2015
- ◆ Average 4 REITs SCAs/year over past 4 years
  - ◆ 2015: 4 SCAs
  - ◆ IPO/roll-up, financial/accounting, amending by-laws, self-dealing around M&A
- ◆ Increase in non-SCA REIT Claims
  - ◆ Since 2010, average 18 claims/year in NAREIT program (0 SCAs)
  - ◆ 2015: 29 claims in NAREIT program (0 SCAs)
  - ◆ Broader Coverage + REIT Growth + Active Plaintiffs Bar =  
Increased Claims Frequency & Greater Variety of Claims

# REIT D&O Underwriting Concerns

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## ◆ Mergers & Acquisitions

- ◆ Approx. 9 of 10 deals over \$100 million attract litigation
- ◆ Allegations: “Bump-Up” (Target) and “Aiding & Abetting” (Acquirer)
- ◆ Historical Settlements: Non-monetary + Defense Costs + Plaintiff Counsel Fees
- ◆ NAREIT D&O Policy: Removed plaintiffs counsel fee exclusion for Bump-Up
- ◆ End to Disclosure Only Settlements?
  - ◆ Delaware & New York have recently rejected
  - ◆ Too early to tell whether Maryland will adopt a similar stance
  - ◆ If so, could deter frivolous M&A suits (lower frequency), BUT severity/costs could increase as cases drawn out and no quick non-monetary settlements
- ◆ Questions: Rationale for Deal, Consideration, Feedback/Market Reaction, Compensation
- ◆ Best Practices: Evaluate Options/Conduct Fair Process; Documentation

# REIT D&O Underwriting Concerns

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- ◆ Corp. Governance & Shareholder Communication
  - ◆ Cyber Security/Data Integrity/Social Engineering
  - ◆ FCPA and similar anti-corruption statutes
  - ◆ Questions: Controls/Practices/Procedures; How any Incidents were Handled
  
- ◆ Maryland Unsolicited Takeover Act (MUTA)
- ◆ Shareholder Interaction and Communication
  - ◆ Activist Investors/Hedge Funds?
- ◆ Questions: Transparency; Shareholder Feedback

# REIT D&O Underwriting Concerns

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## ◆ Joint Venture/Limited Partners

- ◆ Claims: Unwinding JV partnership; alleged mismanagement of venture
- ◆ Insuring Agreement D; Definition of Controlled Entity
- ◆ Questions: Strategy/Goals; JV partners & history

## ◆ Regulatory/Investigations

- ◆ Accounting practices compliance
- ◆ Financial metrics and disclosure
- ◆ Inquiry coverage; Investigation of the entity by an investigating authority
- ◆ Questions: Interaction/relationship with regulators

# Why the NAREIT D&O Program works for You

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- ✓ Financial Strength
- ✓ Commitment to REIT Industry
- ✓ Deep understanding of REIT structure
- ✓ Consistent Underwriting Approach
- ✓ Policy Language protecting YOUR Board
- ✓ Integrated Claims Model
  - Underwriting and Claims work closely together
  - Experience handling a wide variety of REIT claims, not just SCAs
- ✓ Focus on Value-Added Service



# Contacts

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The integrity of independence.

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