

REAL ESTATE CAPITAL MARKETS

NEWSLETTER

SPRING
2023

HUNTON
ANDREWS KURTH

Published in May 2023



TABLE OF CONTENTS

LETTER FROM OUR TEAM	3
TEAM MEMBER SPOTLIGHT: MAYME DONOHUE	4
DEAL SPOTLIGHT: REXFORD INDUSTRIAL REALTY, INC.	5
THOUGHT LEADERSHIP: PAY VERSUS PERFORMANCE PROXY DISCLOSURE: TAKEAWAYS FROM MAJOR PLAYERS IN THREE REIT SECTORS	6
SELECTED MARKET DATA	13
UPDATE: DIVERSITY & INCLUSION	14
CONTACT US	15
ABOUT US	16

We are pleased to present the Spring 2023 edition of our Hunton Andrews Kurth *Real Estate Capital Markets Newsletter*.

As most of you know, the first quarter of 2023 was extremely volatile. The year began with some expectation that the Federal Reserve might ease interest rate hikes (and perhaps even pivot toward lowering rates). However, employment data continued to be quite strong, leading to significant market uncertainty. These conditions became more pronounced as it became apparent that there was stress in the banking system, particularly with respect to certain regional banks.

These conditions made raising capital in the real estate space quite difficult, particularly as many REITs traded below asset values. In addition, the volatility in the financial markets made pricing and executing transactions difficult, with market windows being quite short. Not surprisingly, deal volume continued to be low on a relative basis. Despite these conditions, we were pleased to advise our clients on a variety of transactions, ranging from large public notes offerings, newly established “at the market” offering programs, and M&A activity. We also continued to advise clients on less traditional capital raising activities, as REITs and other real estate companies sought creative ways to tap the markets.

In news related to our practice, we announced that **Mayme Donohue** was admitted as a partner in April 2023, a well-deserved promotion. We are thrilled for Mayme, who has been a member of our capital markets practice since graduating from law school (learn more about Mayme on [page 4](#) in our “Team Member Spotlight” column). In addition, our tax partner **Laura Jones** spoke at firm-sponsored REITwise 2023: Nareit’s Law, Accounting & Finance Conference in March 2023 on tax issues related to renewable energy.

Finally, we would be remiss if we did not mention our celebration of Diversity Month in April 2023. As our readers know, we are fully committed to Diversity and Inclusion in all of its forms, and we welcome discussing this very important topic with you, and the opportunity to partner with our clients and other industry participants to collectively make a difference. See more about our Diversity and Inclusion efforts on [page 14](#).

We are pleased to share some highlights of our recent activity, as well as some thought leadership and information about our team. Thank you, again, for your continued confidence in the work that we do together.



TEAM MEMBER SPOTLIGHT

MAYME DONOHUE

Partner | Richmond | mtonohue@HuntonAK.com | +1 804 787 8021

Mayme Donohue counsels clients on securities law matters, real estate capital markets transactions, mergers and acquisitions and corporate governance issues. Committed to business-focused solutions, Mayme regularly answers complex securities law questions for REITs and other real estate companies and is experienced providing advice on reporting requirements under US securities laws and Nasdaq and NYSE rules.

Promoted to partner in April 2023, Mayme works with clients to achieve results that make both legal and financial sense. Mayme enjoys counseling REITs and other real estate companies in a broad range of capital markets transactions, including securities offerings, tender offers and derivative transactions.

Mayme also understands the impact of disruptive technologies on our financial systems and across industries. She possesses in-depth knowledge on blockchain and distributed ledger technology. She is a founding member of the firm's blockchain working group and metaverse working group.

Pro bono work and community service are fundamental to Mayme's practice. She serves as the President of the Virginia Equality Bar Association and spends hundreds of hours strengthening the community through pro bono projects and on the various nonprofit boards on which she serves.

“ While guiding companies through strategic transactions, I value the strong connections built with clients during the course of accomplishing their important business goals. ”



DEAL SPOTLIGHT

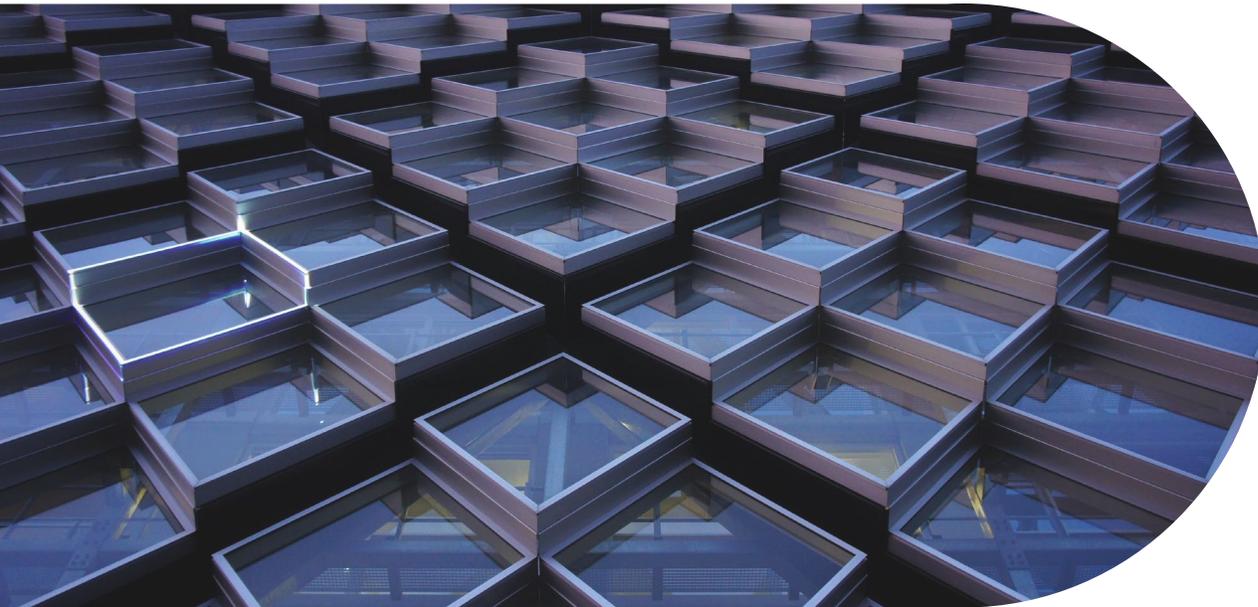
REXFORD INDUSTRIAL REALTY, INC.

In March 2023, Hunton Andrews Kurth LLP represented the underwriters, led by J.P. Morgan Securities LLC, PNC Capital Markets LLC and Wells Fargo Securities, LLC, in connection with the offering of \$300 million of 5% Senior Notes due June 15, 2028 by Rexford Industrial Realty, L.P., a subsidiary of Rexford Industrial Realty, Inc.

Hunton Andrews Kurth has served as designated underwriters' counsel for Rexford in more than 20 real estate capital markets transactions aggregating approximately \$9.3 billion, including representing the sales agents in connection with the establishment of a \$1.25 billion common stock at-the-market (ATM) offering program in February 2023.

Rexford Industrial Realty, Inc. (NYSE: REXR) is a publicly traded REIT that creates value by investing in, operating and redeveloping industrial properties throughout infill Southern California, the world's fourth largest industrial market and consistently the highest-demand with lowest-supply major market in the nation.

The Hunton Andrews Kurth team was led by partners **Kate Saltz** and **Jim Davidson** and associates **Tianlu Zhang**, **Alice Yao** and **Greta Chwalek**. Tax advice was provided by counsel **Anna Page** and associate **Patrick Tricker**.



THOUGHT LEADERSHIP

PAY VERSUS PERFORMANCE PROXY DISCLOSURE: TAKEAWAYS FROM MAJOR PLAYERS IN THREE REIT SECTORS

EXECUTIVE SUMMARY

After analyzing proxy statements of the top ten Lodging/Resorts REITs, Retail REITs and Mortgage REITs, we believe that the new PvP Rule¹ has not resulted in investors receiving a better picture of executives' pay for several reasons, including:

- CAP does not convey actual compensation,
- boards have affirmatively said they do not use the PvP Rule information,
- CAP to SCT Total is not correlated to size of SCT Total, and
- negative CAPs do not mean what they appear to mean.

Further, based on the results of our analysis and discussions with clients and REIT investors, we believe that the variety of approaches the

REITs took and the information they provided may lead to disclosure changes by registrants next proxy season or additional guidance from the SEC, or both. The Appendix to this article provides the list of REITs we surveyed, our selection process and a summary of the PvP Rule.

Amount of “Compensation Actually Paid” Does Not Equal Actual Amount of Compensation Paid

We believe that “compensation actually paid” (as defined by the PvP Rule, “CAP”) does not provide investors with a better sense of what registrants actually paid their executives.

A number of the REITs hold similar views, and over 25% of the REITs essentially stated so in their proxy

statements. Four of the Lodging/Hospitality REITs, two of the Retail REITs and two of the Mortgage REITs wrote that the amounts shown as CAP for their NEOs “do not reflect the actual amount of compensation earned by or paid to [the NEOs]” (or similar statement).

Two of the 30 REITs (in two different sectors) went further. Each provided a table labeled “Realized Pay vs Compensation Actually Paid” or “2022 Realized Compensation.” In both cases, it was the first year these REITs presented such tables in their proxy statements.

Moreover, we understand anecdotally that several major institutional investors have conveyed to some of the REITs their focus on realized pay and their lack of interest in CAP as defined by the PvP Rule.

¹ We refer to Item 402(v) Regulation S-K, related amendments to Schedules 14A and 14C and Regulation S-T and related SEC guidance collectively as the “pay versus performance rule” or “the PvP Rule.”

In our view, more registrants will consider providing a realized or realizable pay table to combat potential misimpressions that investors can have from reading the PVP Rule disclosure. (In fact, even prior to the PVP Rule, a realized or realizable pay table has been a common practice by other registrants.)

Some REITs Affirmatively Stated That Their Boards Did Not Use the PVP Rule Information

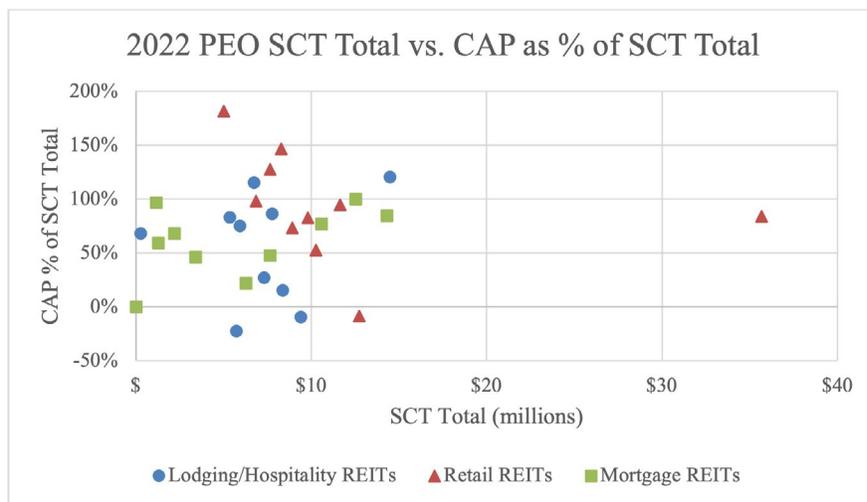
Statements regarding whether the information presented in the PVP Table and section was used to structure or determine any component of its compensation program were not common, and frequency varied by sector. Half of the Lodging/Hospitality REITs affirmatively stated that their boards (or committees thereof) did not incorporate the PVP information when making compensatory decisions. Three of the Mortgage REITs, but only two of the Retail REITs, made similar disclosure.

As a proxy for the general level of interest in the new disclosure, we have also heard anecdotally that neither investors nor analysts are asking questions or making any comments about the new PVP Rule disclosure when speaking with the registrants.

CAP to SCT Total—Enormous Range and No Correlation With Size of SCT Total

We looked at CAP as a percentage of the corresponding SCT Total (a measure we call “CAP to SCT Total”). Although the range of CAP to SCT Total among REITs within the same sector and across sectors alike proves that the PVP Rule has succeeded in providing information that is appreciably different from information investors have been seeing for years, a question remains as to whether the additional information is useful to investors.

The following chart illustrates the range of dissimilarity both within each sector and across all three sectors.



The chart also illustrates that CAP to SCT Total is not correlated with the size of SCT Total, regardless of REIT sector. CAP to SCT Total can be almost the same for both large and small SCT Totals, and CAP to SCT Total can be large or small relative to nearly the same SCT Total (i.e., the distance between coordinates of any two data points along approximately the same horizontal or vertical line can be large).

Negative CAP? Inconceivable!

Whether or not conceivable at the time of the PVP Rule’s promulgation, the negative percentages shown above stemmed from negative CAPs. Four of the REITs (across all three sectors) disclosed negative CAP for their PEOs in 2022. A negative CAP suggests that an executive had to pay more to the company than the company paid to the executive. But, of course, no entity would seek repayment from executives whose CAP was negative.

A negative CAP can occur based on the required method of calculation. Negative values resulted primarily from significant changes in fair value of unvested equity awards from period to period, particularly when equity awards with multi-year measurement or vesting periods comprise a sizable portion of executive compensation.

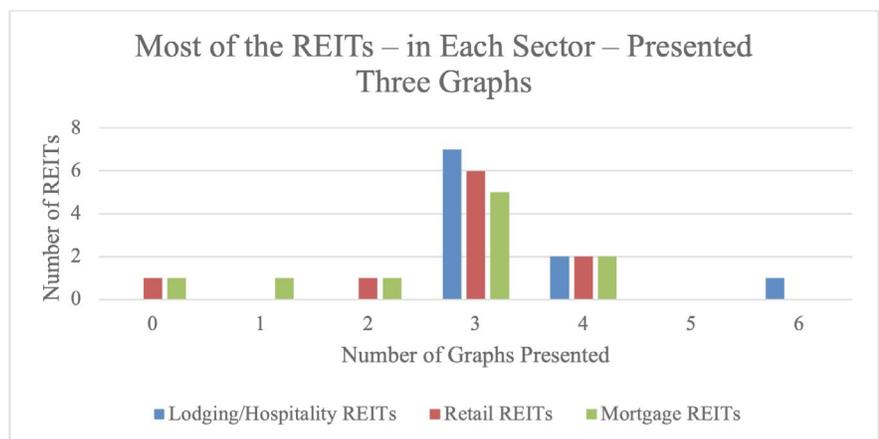
Frequent Cross-References to CD&A for More Complete Discussion

Many of the REITs decided it would be appropriate in the PVP section to refer shareholders back to the CD&A section of the proxy statement, sometimes just generally and other times for specifics. But this practice, too, varied by sector.

	Lodging/ Hospitality	Retail	Mortgage
Percent referring shareholders back to the CD&A	60%	50%	30%
Percent of such references at the beginning of the PVP section	83%	40%	100%

Pictures Instead of Thousands of Words

The vast majority of the REITs chose to present graphs in lieu of narrative descriptions of the three relationships between certain data from the PVP Table. Given the choice to present graphs rather than narrative descriptions to show or describe the relationships, 28 of the 30 REITs across all three sectors opted for graphs (from one to six). Moreover, 22 of the 28 did not provide any commentary with the graphs (beyond merely stating that the graphs would follow).



For Peer Group TSR, Published Indexes Predominated

Given the PVP Rule’s flexibility for registrants to use an index or to generate peer group data for the new table, all but two of the 30 REITs used a published industry index, even in cases where the registrant specified a peer group in its CD&A whether for benchmarking purposes or calculating compensation based on relative TSR performance.

The following table shows the variety of indexes used (and their frequency) by the REITs for the PVP Table:

Lodging/Hospitality	Retail	Mortgage
Dow Jones U.S. Hotel & Lodging REITs (2)	MSCI US REIT (1)	Bloomberg REIT Mortgage (8)
Dow Jones U.S. Select Real Estate Hotels (1)	Bloomberg REIT Shopping Center (2)	FTSE NAREIT Mortgage REITs (2)
FTSE NAREIT Equity Lodging/Resorts (2)	FTSE NAREIT Equity REITs (5)	
FTSE NAREIT Equity REITs (3)	FTSE NAREIT Equity Shopping Centers (1)	
MSCI U.S. REIT/Hotel & Resort REIT (1)		

CSMs Were Uniformly Present, But Uniformity Within Sectors Varied by Sector

The PVP Table must also include one other financial performance measure of the registrant’s choosing (the “CSM”).

CSMs were uniformly present in the PVP Tables, with one exception. However, within each sector, and, not at all surprisingly given the different business models of each sector, across the three sectors, there was little to no uniformity of CSMs used. Among the Lodging/Hospitality REITs, there were eight unique CSMs for the nine Lodging/Hospitality REITs that presented CSMs.

Lodging/Hospitality	Retail	Mortgage
AFFO Per [Diluted] Share (2)	AFFO Per [Fully] [Diluted] Share (5)	Distributable Earnings (8)
Hotel Adjusted EBITDA (1)	[Nareit] FFO Per [Diluted] Share [Adjusted] (3)	Relative Annual Economic Return (1)
Company Adjusted EBITDA (1)	Core FFO Per Share (1)	Total Economic Return (1)
Adjusted EBITDA (1)	Comparable FFO Per Share (1)	
Hotel EBITDA Per Key (1)		
Comparable Hotel EBITDA (1)		
Relative TSR (1)		
Modified FFO Per Share (1)		

Whether and how registrants disclosed their rationale for selecting their CSMs varied considerably. In all three sectors, some registrants disclosed their selection rationale (some of which was quantitative), but just over one-third of the REITs did not.

	Lodging/ Hospitality	Retail	Mortgage
Percent providing a CSM	90%	100%	100%
Percent disclosing CSM selection rationale	78%	50%	60%
Of selection rationale disclosed, percent providing quantitative basis	29%	0%	0%

Additional Performance Measures Provided

The PVP Rule's flexible requirement to present a tabular list of at least three but not more than seven performance measures (including at least one financial measure but optionally including non-financial measures), resulted in a range of responding disclosure.

	Lodging/ Hospitality	Retail	Mortgage
Number of financial performance measures listed	35	40	32
Financial performance measures as percent all performance measures listed	97%	87%	91%
Of performance measures listed:			
Largest number	5	6	6
Smallest number	3	3	3
Average number	4.0	4.6	3.9

CONCLUSION

We are hard-pressed to see how investors have appreciably benefitted from the new PVP Rule disclosure. Our analysis revealed that, among other things, CAP does not equate to realized compensation, boards and institutional investors seem not to be using the information, and CAP to SCT Totals for companies having the same SCT Total can be wildly different (and vice versa). As with other significant SEC rulemakings on executive compensation, we expect additional Staff guidance after proxy season concludes, and that market practice is likely to coalesce around certain commonalities going forward.

APPENDIX

The REITs Surveyed

Lodging/Hospitality REITs	Retail REITs	Mortgage REITs
Apple Hospitality REIT, Inc. (APLE)	Agree Realty Corporation (ADC)	AGNC Investment Corp. (AGNC)
DiamondRock Hospitality Company (DRH)	Brixmor Property Group Inc. (BRX)	Apollo Commercial RE Finance, Inc. (ARI)
Host Hotels & Resorts, Inc. (HST)	Essential Properties Realty Trust, Inc. (EPRT)	Arbor Realty Trust, Inc. (ABR)
Park Hotels & Resorts (PK)	Federal Realty Investment Trust (FRT)	ARMOUR Residential REIT (ARR)
Pebblebrook Hotel Trust (PEB)	Kimco Realty Corporation (KIM)	Blackstone Mortgage Trust, Inc. (BXMT)
RLJ Lodging Trust (RLJ)	Kite Realty Group Trust (KRG)	Claros Mortgage Trust, Inc. (CMTG)
Ryman Hospitality Properties, Inc. (RHP)	National Retail Properties, Inc. (NNN)	Franklin BSP Realty Trust Inc. (FBRT)
Service Properties Trust (SVC)	Phillips Edison & Co. (PECO)	Ladder Capital Corp (LADR)
Sunstone Hotel Investors, Inc. (SHO)	Simon Property Group, Inc. (SPG)	MFA Financial, Inc. (MFA)
Xenia Hotels & Resorts, Inc. (XHR)	Spirit Realty Capital (SRC)	Starwood Property Trust, Inc. (STWD)

REIT Selection Methodology

As of May 10, 2023, 223 registrants with SIC code 6798 (real estate investment trusts) or 7011 (hotels and motels) and a December 31 fiscal year-end had filed definitive proxy statements for their annual meetings in 2023. We analyzed 30 of those proxy statements.

To select the 30, we determined the market capitalizations, as of March 31, 2023, of all of the entities in Nareit's REIT Directory in three of the 13 sectors it identifies—Lodging/Resort REITs, Retail REITs and Mortgage REITs—and selected the top 10 by market capitalization in each of those sectors.

We list the REITs we surveyed at the end of this article. Collectively, their market caps total over \$156 billion. To provide a sense for the range and relative size of the 30 REITs surveyed, market capitalization statistics by sector follow (\$ in billions):

	Lodging/Hospitality	Retail	Mortgage
Average	\$3.3	\$9.9	\$2.3
Highest	\$11.7	\$41.3	\$5.8
Lowest	\$1.5	\$3.7	\$1.0
Total	\$33.3	\$99.4	\$23.4



We refer to Item 402(v) Regulation S-K, related amendments to Schedules 14A and 14C and Regulation S-T and related SEC guidance collectively as the “pay versus performance rule” or “the PVP Rule.” We refer to the 30 REITs we surveyed as “the REITs” and to the REITs by sector as “the Lodging/Hospitality REITs,” “the Retail REITs” or “the Mortgage REITs,” as applicable. We make no claim that the REITs are a representative sample of the entities in their sectors or of all REITs generally.

Though one of the Lodging/Hospitality REITs and seven of the ten Mortgage REITs are externally managed or advised, all eight of their proxy statements included a section addressing the PVP Rule, so we were able to gather data from them for this article. However, when analyzing certain data within and across sectors, we had to account for the following circumstances for three of the Mortgage REITs: one conducted its initial public offering in November 2021, one did not pay its officers before 2022 and one does not pay its PEO any compensation directly. To compensate for the resulting lack of compensation amounts for 2021 and 2020 for the former two REITs, we excluded them from our analysis that required those amounts (i.e., discussion of SCT Totals and CAPs from 2021 and 2020 below do not include those two REITs), and to compensate for the lack of compensation amounts for any year for the latter REIT, we instead used the amounts it disclosed as the averages for its non-PEO NEOs.

A Brief Description of the PVP Rule’s Requirements

Several institutions have published excellent descriptions and guidelines for how to comply with the PVP Rule. Solely for context for this article, we provide the following summary of the rule’s key and most pertinent requirements.²

- a precisely prescribed table (the “PvP Table”) setting forth five years (initially just three) of data, including the Summary Compensation Table’s Total Compensation amount (the “SCT Total”) for the PEO and the average for the non-PEO NEOs and the Compensation Actually Paid amount (the “CAP”) as defined by and calculated in accordance with the PVP Rule for the PEO and the average for the non-PEO NEOs;
- clear descriptions—whether by graphs or text, or both—of the relationships between three certain sets of data from the PvP Table; and
- a list of three to seven registrant-selected performance measures (financial measures are required and non-financial measures are optional).

² Summarized and quoted from Adopting Release No. 34-95607.



Mark Wickersham
Real Estate Capital Markets



Alice Yao
Real Estate Capital Markets



Greta Chwalek
Real Estate Capital Markets



Anthony Eppert
Compensation

SELECTED MARKET DATA: TOP 5 REIT INDUSTRIES IN TERMS OF CAPITAL MARKETS DEAL VOLUME



**RETAIL
REITS: 15**



**HEALTH CARE
REITS: 15**



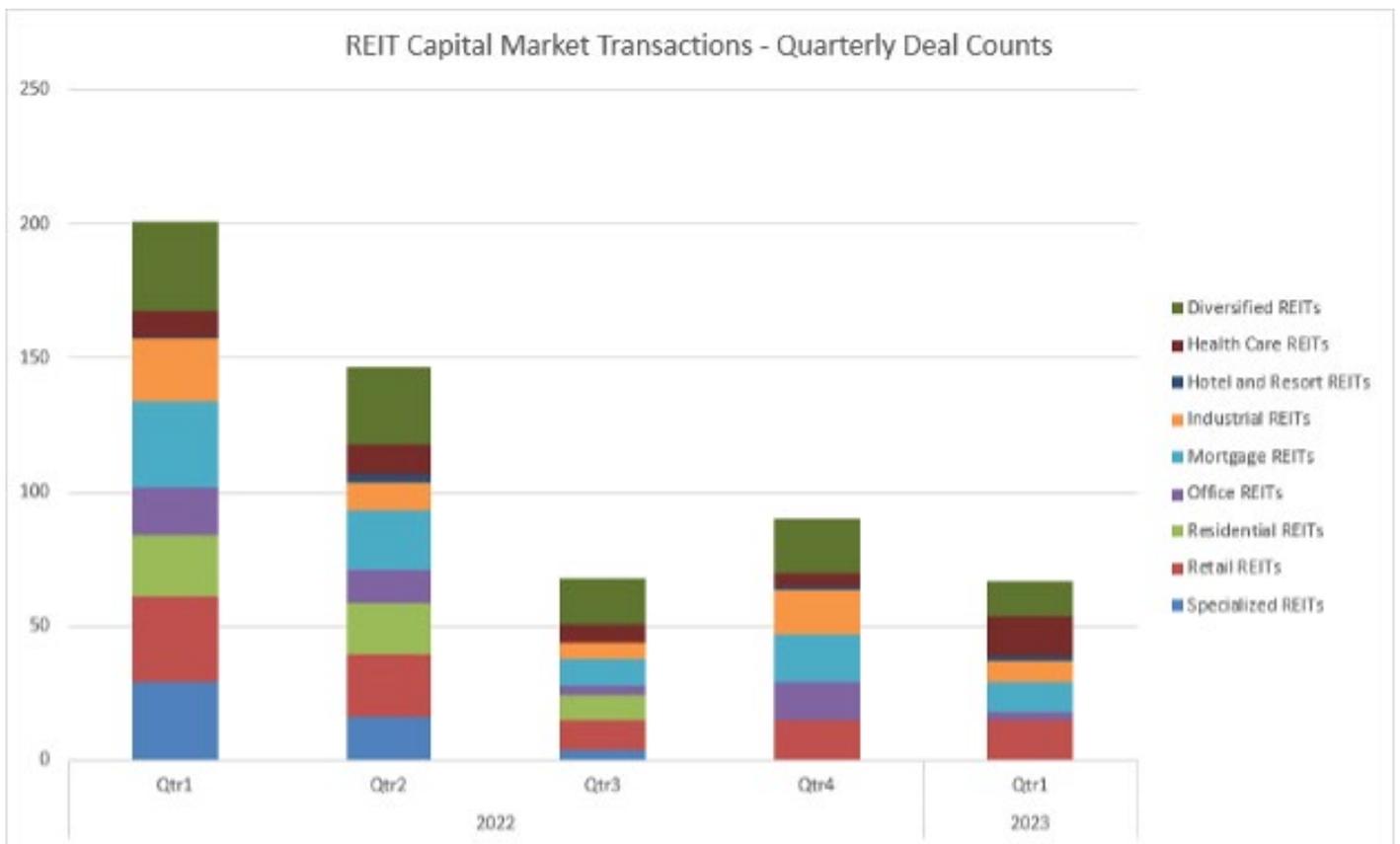
**DIVERSIFIED
REITS: 13**



**MORTGAGE
REITS: 11**



**INDUSTRIAL
REITS: 5**





HUNTON ANDREWS KURTH AGAIN AFFIRMS COMMITMENT TO EQUALITY WITH 100% US PARTICIPATION IN DIVERSITY & INCLUSION INITIATIVES

We are pleased to share that in fiscal year 2023, 100% of the firm's full-time US attorneys participated in Diversity & Inclusion initiatives, programs and events. For the past three consecutive years, almost 700 Hunton Andrews Kurth attorneys contributed more than 30,000 D&I hours to this endeavor, allowing us to reach 100% firm-wide participation.

Diversity and inclusion are core values at the firm. Our mission is to build and leverage a diverse and inclusive community that promotes a culture of collaboration, respect, involvement and empowerment. Our goal is to be intentional about our

D&I initiatives and to keep D&I top of mind in all that we do. Achieving 100% participation in D&I activities reflects the firm's commitment to the mission by all of our lawyers and staff.

The firm's commitment to diversity and inclusion is longstanding. We established our first diversity committee over 30 years ago. We believe that a diverse and inclusive workforce optimizes the delivery of excellent client service and creates an innovative, more productive work environment for our lawyers and professional staff.

CONTACT US



James V. Davidson
Partner, Houston
j davidson@HuntonAK.com
+1 713 220 3649



Anna Knecht Page
Counsel, Richmond
a page@HuntonAK.com
+1 804 788 7214



Mayme Beth M. Donohue
Partner, Richmond
m donohue@HuntonAK.com
+1 804 787 8021



Kate Saltz
Partner, Richmond
k saltz@HuntonAK.com
+1 804 788 8642



Steven M. Haas
Partner, Richmond and Washington, DC
s haas@HuntonAK.com
+1 804 788 7217 (Richmond)
+1 202 778 2220 (Washington, DC)



Kendal A. Sibley
Partner, Richmond
k sibley@HuntonAK.com
+1 804 788 8697



George C. Howell, III
Partner, New York and Richmond
g howell@HuntonAK.com
+1 212 309 1228 (New York)
+1 804 788 8793 (Richmond)



Robert K. Smith
Partner, Washington, DC
r smith@HuntonAK.com
+1 202 955 1611



Samuel M. Kardon
Counsel, New York
s kardon@HuntonAK.com
+1 212 309 1189



Allison M. Stelter
Counsel, Richmond
a stelter@HuntonAK.com
+1 804 788 8672



James A. Kennedy, II
Partner, Richmond
j kennedy@HuntonAK.com
+1 804 788 7302



Mark W. Wickersham
Partner, Richmond
m wickersham@HuntonAK.com
+1 804 788 7281



Joshua Milgrom
Counsel, New York
j milgrom@HuntonAK.com
+1 212 309 1015

ABOUT US

Hunton Andrews Kurth LLP consistently ranks as one of the most experienced law firms with respect to real estate capital markets transactions, representing issuers, underwriters, sponsors and lenders in connection with structuring and financing publicly and privately owned real estate companies, including in particular real estate investment trusts (REITs). The firm regularly receives top tier national rankings for its work as both issuer's and underwriter's counsel in *Chambers USA*, *The Legal 500*, *Bloomberg* and *Refinitiv*.

Hunton Andrews Kurth has extensive experience in taking real estate companies public, both as REITs and as C corporations, and in subsequent financing transactions. We have handled approximately 155 IPOs and Rule 144A equity offerings and more than 1,100 capital markets transactions involving more than 210 REITs and other real estate companies. In the course of those and other engagements, we have worked closely with the leading investment banking firms, accounting firms and other professionals active in the real estate finance industry. As a result, our Real Estate Capital Markets Group is particularly well qualified to assist companies accessing the public capital markets as well as private capital sources.



HUNTON ANDREWS KURTH

© 2023 Hunton Andrews Kurth LLP. Attorney advertising materials. Hunton Andrews Kurth, the Hunton Andrews Kurth logo, HuntonAK and the HuntonAK logo are service marks of Hunton Andrews Kurth LLP. These materials have been prepared for informational purposes only and are not legal advice. This information is not intended to create (and receipt of it does not constitute) an attorney-client or similar relationship. Please do not send us confidential information. Past successes cannot be an assurance of future success. Whether you need legal services and which lawyer you select are important decisions that should not be based solely upon these materials. Photographs are for dramatization purposes only and may include models. Likenesses do not necessarily imply current client, partnership or employee status. Hunton Andrews Kurth LLP is a Virginia limited liability partnership. Contact: Walfrido J. Martinez, Managing Partner, Hunton Andrews Kurth LLP, 2200 Pennsylvania Avenue, NW, Washington, DC, 202.955.1500.