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REITs and COVID-19:
15 Key Issues for Boards as They Chart the Course Forward

Many REIT boards are now broadening their focus beyond the immediate firestorms unleashed by COVID-19, to longer-term risk-management and strategic planning issues that take account of the radically changed environment. Following is a list of 15 key issues to be considered with a 3-, 6- and 12-month lens, and beyond. Many boards have already considered these issues in crisis-mode, but it is essential to also reflect on them more broadly as we move into the next phase of response and as expectations for the recovery adjust to take account of the realities on the ground. Of course, the analysis around each of these issues will differ by sector, subsector and company, and there are unfortunately no one-size-fits-all answers:

1. Liquidity: Now that many credit lines have been drawn and other immediate liquidity enhancements implemented, how much runway does the company have in realistic worst-, best- and middle-cases; are additional liquidity measures necessary; when can/should credit lines be repaid; does the company have untapped collateral for cheaper secured financing; should asset sales be considered; should new equity be issued at some point; should a PIPE be considered; what government assistance might be available; and how much cash should the company keep on hand? Our firm's memo on preserving liquidity might be helpful in this regard.

2. Disclosure and Guidance: Given investors', the SEC's, proxy advisors' and other stakeholders' thirst for transparency and insights into the new environment, how best to communicate the impact of COVID-19 and changes in guidance, especially when visibility is so limited? Our firm's memo on upcoming earnings calls may be helpful in this regard.

3. Alterations to Properties and their Operation: As we move into the re-opening "dance," how best to protect the health and safety of employees, tenants, visitors and others. What physical and operational changes to the REIT's properties should be considered?

4. Dividends: What adjustments should be considered, as to amount, timing and stock component?

5. Rent Collections/Growth: The impact on April rent collections is now known, and boards will soon have data on May. What are the implications for collections in the coming months, and, as important, for rent growth/contraction going forward, especially in light of the possible contours of the recovery and resulting changes in supply and demand, tenant strength and ability to pay, potential tenant bankruptcies, ongoing COVID disruption and changes in the way in which we use and interact with various forms of real estate?

6. Lease Modifications: Will the rent deferrals and waivers negotiated so far result in more permanent lease restructurings, and what might those look like? Should any of the deferrals agreed to so far be treated as permanent relief?

7. Loan Modifications: What modifications should be sought in light of any covenant compliance and other issues? If lenders are being asked for relief or runway, what are the costs, and are they warranted? Are there alternatives in the market? Timing issues should also be monitored since many companies are working on modifications and lenders' bandwidth is being tested.

8. Cost Reductions: If cost reductions are or may become necessary, where should they be implemented? For example, are there assets encumbered by non-recourse debt that, given changes in NOI and values, may no longer be worth keeping (assuming no cross-default or other fallout)? Ground leases that should be terminated? Planned developments or re-developments that should be stalled? CapEx that should be deferred?

9. Ongoing Transactions/Construction: Most contracts have now been analyzed to identify issues relating to force majeure, operating and financial covenant compliance, MAC clauses, condemnation issues and the like. Now the question turns to how these issues will be managed and how they will play out. In many cases, a dose of pragmatism and long-term thinking will help in deciding which battles to fight and which to resolve quickly.

10. Stakeholders and Social Responsibility: REITs' responses to the crisis have demonstrated their commitment to the health, safety and welfare of their employees, tenants, communities and other stakeholders. An important question for boards is the extent to which social responsibility and sustainability measures undertaken so far, and perhaps additional measures, should be made permanent and woven into the fabric of the company.

11. Activism Preparedness: Given the precipitous drop in some REIT stock prices and accumulations by activists, it is often prudent to enhance stock surveillance and to consider putting a rights plan on the shelf (or in some circumstances adopting one), in addition to other steps discussed in our recent memo on preparing for threats in the COVID-19 environment.

12. Share Buybacks: The declines in many stock prices, in some cases far south of intrinsic value, will make it tempting to reinstate suspended programs or to initiate new ones, at some point. How and when to do so will be a complicated decision that will need to take account of many of the issues outlined above, as well as anti-buyback political and other cross-winds that have strengthened in the pandemic.

13. Relief/Insurance: Are there government relief programs available and appropriate for the company to tap into (either directly or indirectly through lenders or tenants)? What recovery might be available under business interruption or other insurance, recognizing that many policies have pandemic exclusions?

14. Digital Shift: The question has to be asked whether the pandemic has meaningfully and permanently accelerated the shift from bricks to clicks, what the realistic implications for the company's business model might be, and how the company should adjust. Clearly, some business models have performed better than others in this period, and there may be valuable lessons to be learned.

15. Going on Offense/M&A: It's too soon in most cases, but it may be worthwhile to consider when and how the window might open. Are there potential targets with whom a low-key dialogue should commence? What kind of dry powder might be needed?

In addition, boards must also continue to exercise their usual oversight duties (see our firm's memo with some general thoughts for the board), with extra attention on general risk management issues and on ensuring that the CEO is fully supported through the crisis and recovery.

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