

REAL ESTATE CAPITAL MARKETS

REPORT



SPRING
2024

HUNTON
ANDREWS KURTH

Published in May 2024

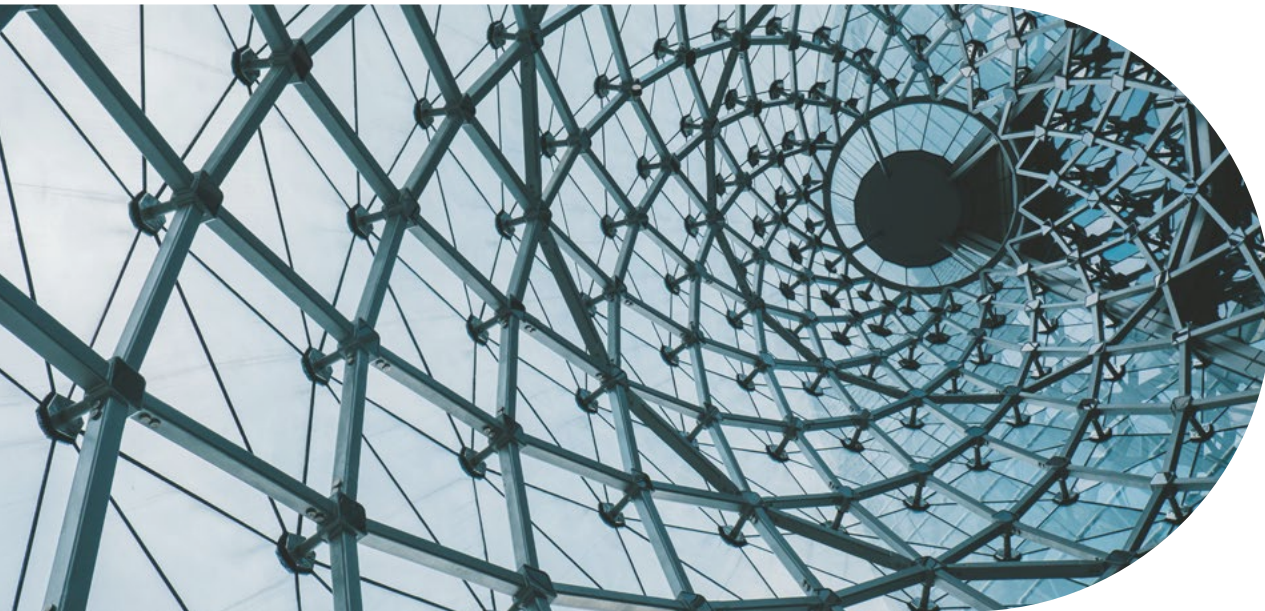


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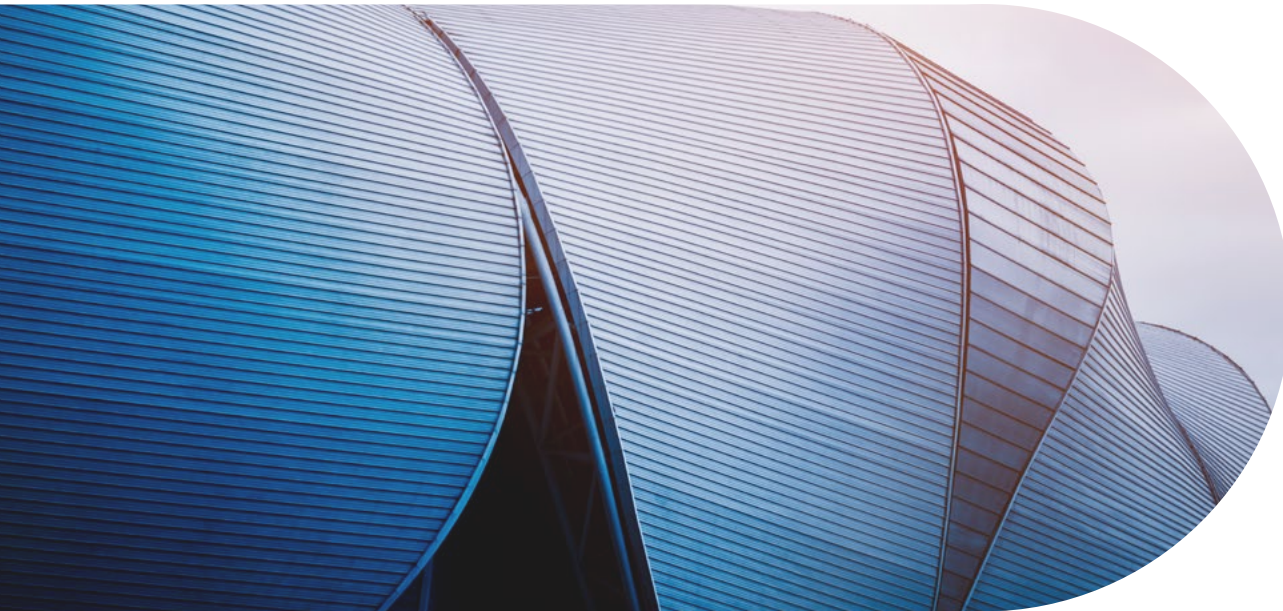
We are excited to share some highlights of our Real Estate Capital Markets practice group from the first part of 2024 with you. Our practice has been very active on a number of fronts this year, despite ongoing uncertainty driven by disappointing economic data and concerns about persistent inflation. Many market participants expect the underlying conditions to continue for a period of time, as the timing and extent of interest rate cuts become less clear. We expect this dynamic, coupled with geopolitical concerns and a looming election here in the United States, will create a volatile capital markets environment in the coming months, particularly for mortgage and equity REITs.

Despite these headwinds, we advised our clients on a diverse range of successful public capital markets transactions during the first quarter and into the second. For example, we represented issuers and underwriters on public offerings by REITs, including issuances of common stock, preferred stock, baby bonds and convertible notes. While market windows were tight, well-prepared issuers (which included both equity and mortgage REITs) were able to raise capital on relatively attractive terms. For example, we represented the initial purchasers and underwriters in a concurrent offering of an aggregate of \$1.15 billion exchangeable senior notes and \$840 million of common stock by Rexford Industrial Realty, Inc. and its operating partnership. Read more about the Rexford transactions in our “Deal Spotlight” beginning on [page 4](#).

We are also actively engaged in the private markets. We are advising on a number of private placements for clients in the mortgage, healthcare and industrial REIT sectors. Working closely with our Real Estate Private Investment Funds practice group, we are also advising a number of proposed real estate funds focused on land banking, mortgage assets and behavioral health facilities. In terms of M&A and similar transactions, while activity has slightly slowed compared to what was a very robust 2023, we continue to work on several proposed REIT combinations (both public and private), as companies continue to seek synergies with well-positioned strategic partners. We are also actively working on an equity REIT spin-off that we hope will be announced later this summer. Finally, our top-ranked securitization practice was busy in the first quarter, as the market was strong for mortgage-related products, particularly non-QM loan deals.

As you know, Hunton Andrews Kurth LLP is extremely committed to thought leadership and providing free legal services to individuals and organizations in our communities who cannot afford to pay. Our nationally recognized REIT tax practice continues to be on the forefront of issues that are of the utmost importance to our REIT clients, and we encourage you to read their two REIT-relevant articles concerning EV charging stations and the treatment of tariffs paid by pipeline users beginning on [page 6](#) and [page 8](#). With respect to pro bono service, we are proud to announce that Hunton Andrews Kurth reached an important milestone in the firm’s longstanding commitment to pro bono service—100 percent of full-time US lawyer participation in pro bono for the 15th consecutive year! See [page 11](#) for more information about this wonderful achievement.

We are grateful to you, our clients, colleagues and friends, for the opportunities to partner with you in your businesses and initiatives and we look forward to working closely with you during the remainder of the year.



DEAL SPOTLIGHT

REXFORD INDUSTRIAL REALTY

Our team recently represented the initial purchasers in connection with a private offering to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended, of \$575 million aggregate principal amount of 4.375 percent exchangeable senior notes due 2027 and \$575 million aggregate principal amount of 4.125 percent exchangeable senior notes due 2029, by Rexford Industrial Realty, L.P., a subsidiary of Rexford Industrial Realty, Inc.

The firm also represented the underwriter in connection with a concurrent public offering of \$840 million of shares of common stock by Rexford Industrial Realty, Inc. to an existing long-only investor based on the West Coast, which shares were borrowed

from third parties by an affiliate of the underwriter, in its capacity as a forward counterparty, and subsequently sold to the underwriter for sale in the offering.

Rexford Industrial Realty, Inc. (NYSE: REXR) is a publicly traded REIT focused exclusively on investing in industrial properties throughout Southern California infill markets.

The Hunton Andrews Kurth team advising on the transactions was led by partners **Kate Saltz, Jim Davidson** and **Rob Smith** and associates **Tianlu Zhang** and **Elizabeth White**. Tax advice was provided by partner **Kendal Sibley**, counsel **Anna Page** and associates **Patrick Tricker** and **Zach Roop**.



TEAM MEMBER SPOTLIGHT

ROB SMITH

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Rob Smith serves as the head of our Real Estate Capital Markets practice and co-head of our firm's global Capital Markets practice. Rob is an experienced, nationally recognized lawyer with over 20 years of experience in advising public and private REITs and other real estate companies on a broad range of capital markets, M&A, securities, governance and SEC compliance matters. Rob has represented parties related to many different types of REITs, including mortgage, retail, office, data center, health care, self-storage and industrial REITs.

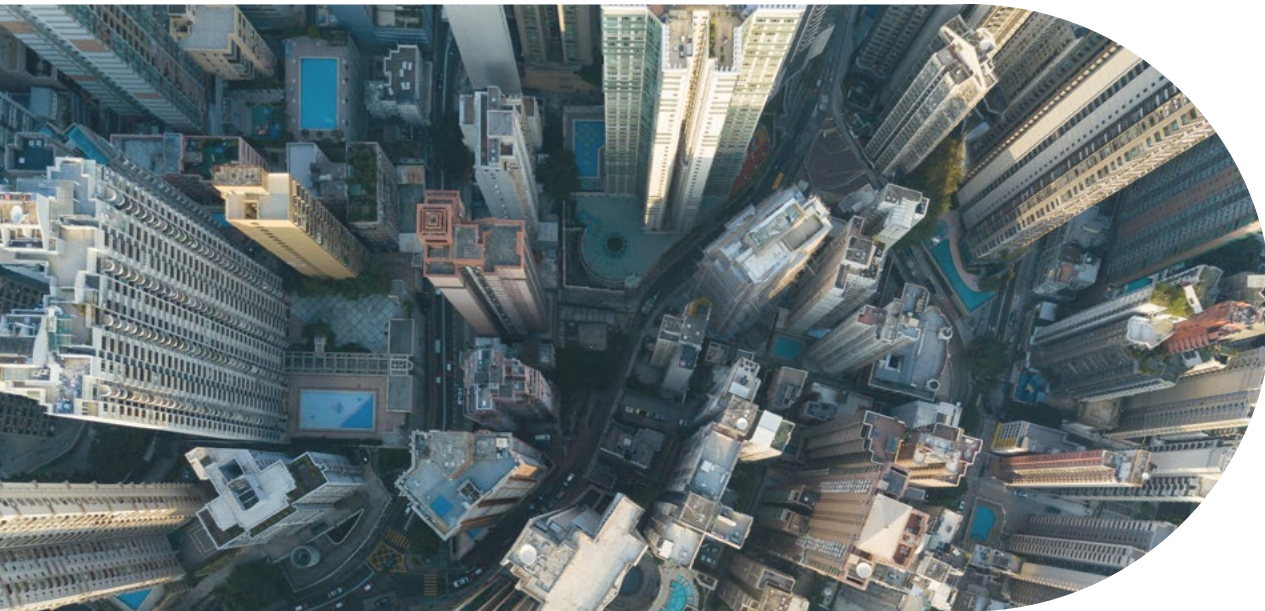
Rob has represented both issuers and underwriters in more than 200 capital markets transactions, including IPOs, follow-on offerings, Rule 144A offerings and other private placements, as well as numerous REIT M&A transactions. He is listed as a leading lawyer for REITs in both *Chambers USA* and *The Legal 500*.

Additionally, since 2017, Rob has acted as outside corporate counsel on a pro bono basis to Project Destined, a national, real estate-focused non-profit organization dedicated to furthering education and diversity in underserved cities.

Rob received his JD from SUNY Buffalo Law School, *magna cum laude*, where he was a Note and Comment Editor of *The Buffalo Law Review*. He received his BA from St. Bonaventure University, *cum laude*.

“Rob is extremely knowledgeable in the REIT industry. He is also very good at pulling in his resources when needed and is extremely responsive.”

Client Testimonial,
Chambers USA, 2023



THOUGHT LEADERSHIP

IRS RULES EV CHARGING STATION REVENUES ARE QUALIFYING RENTS FROM REAL PROPERTY FOR REITS

by George C. Howell, III, Kendal A. Sibley, Allison M. Stelter, Joshua Milgrom, Anna Knecht Page, Patrick C. Tricker, Emily Benedict and Zachary Roop*

In eagerly awaited, albeit non-precedential guidance, the IRS ruled in [PLR 202413004](#) that “[t]he service provided by an EV Station is electricity.” With that, the IRS concluded that the amounts charged for the electricity consumed at the taxpayer’s EV charging stations, as well as increased rents for spaces including the amenity of EV charging stations, are qualifying rents from real property for purposes of the 75 percent and 95 percent gross income tests applicable to REITs. This result is consistent with the Biden Administration’s general posture of favoring green energy initiatives.

In this ruling, the taxpayer plans to acquire and develop outdoor industrial equipment

storage facilities (the Properties). The taxpayer will engage a third-party utility provider that is an independent contractor to provide tenants with utility services, such as furnishing electricity to light the Properties, to power and charge tenant equipment and to power EV charging stations. EV charging stations could be located either in storage areas leased by tenants or in parking areas. Storage areas with EV charging stations will be charged higher rents. Users of EV charging stations will be charged for the electricity they draw, and the taxpayer will remit the amounts collected to the utility provider. The taxpayer will not charge users an access fee to use EV charging stations and will not charge a markup on the electricity drawn from EV charging stations.

The taxpayer represented that it will install EV charging stations only at the Properties where EV charging stations are customary at similar properties in the relevant geographic area, and that the number of EV charging stations at a particular Property will be appropriate for the number of tenants (and their guests and customers) who are expected to use that Property. The taxpayer further represented that while EV charging stations in the parking areas may be accessible by the general public, it expects any such use by the general public to be *de minimis*.

In reaching its conclusion, the IRS stated that “[t]he service provided by an EV Station is electricity” and that charging for electricity drawn from an EV charging station “by a Tenant or a Tenant’s guest or customer... is analogous to the submetering of utilities.” (emphasis added). Submetering of utilities is specifically identified as a customary service under Treasury regulation section 1.856-4(b)(1). Thus, the IRS concluded that the taxpayer’s income from EV charging stations as described in PLR 202413004 would not be treated as impermissible tenant services income (ITSI) and would instead be treated as qualifying rents from real property for the 75 percent and 95 percent gross income tests applicable to REITs.

We note that the taxpayer in this ruling represented that it would not charge a markup on electricity drawn from EV charging stations. In other PLRs dealing with electricity outside of the EV charging station context, the IRS has approved markups on electricity. We further note that the taxpayer in this ruling represented that it expected use of its EV charging stations by the general public to be *de minimis* and that the number of EV charging stations would be “appropriate” for the number of tenants expected to use the property. The concept of limiting the size of an amenity to what is “appropriate” for tenants and their guests or customers is one seen in Revenue Ruling 2004-24, dealing with parking. Based on the taxpayer’s representations, the IRS did not address whether EV charging stations targeted at or expected to be used by the public would also produce qualifying rents, but it is possible that a different analysis could apply on those facts.

**first published on April 10, 2024*



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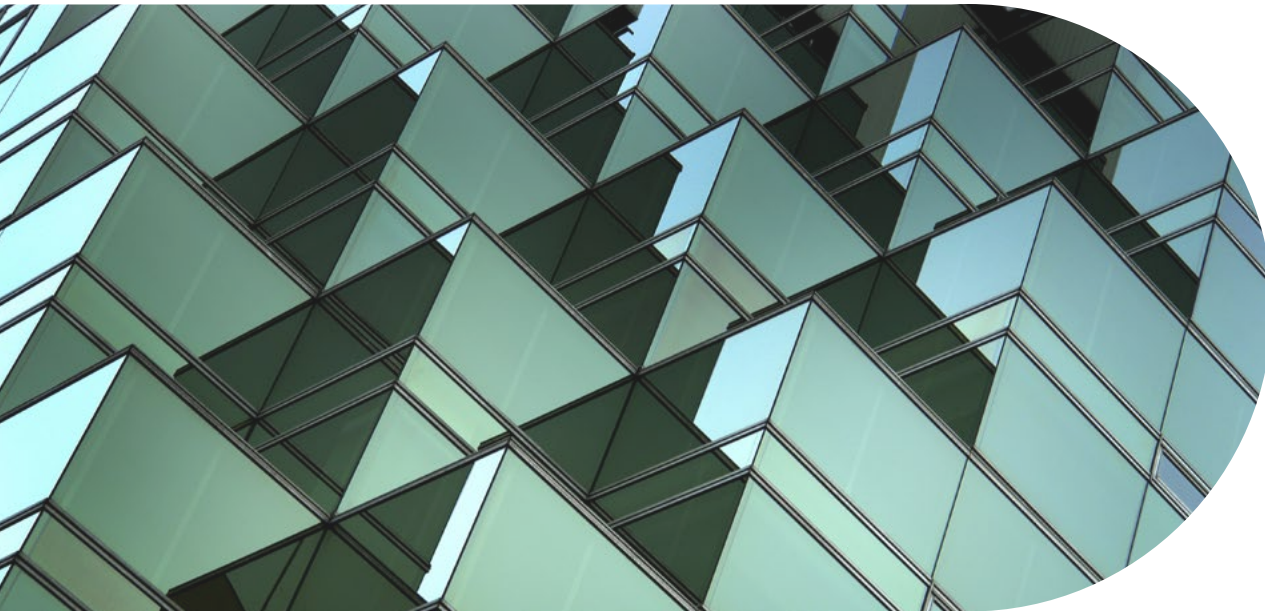


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THOUGHT LEADERSHIP

IRS ISSUES NEW FAVORABLE PIPELINE RULING FOR REITS

By George C. Howell, III, Thomas W. Ford, Jr., Kendal A. Sibley, Allison M. Stelter, Joshua Milgrom, Anna Knecht Page, Patrick C. Tricker, Emily Benedict and Zachary Roop*

The IRS ruled in [PLR 202410005](#) that a REIT's allocable share of tariffs paid by pipeline users qualifies as rents from real property under Treasury regulation section 856(d) for purposes of the 75 percent and 95 percent gross income tests applicable to REITs.

The pipeline at issue was regulated by a government commission. (A prior private letter ruling (PLR 202346008) identified the regulating entity for that taxpayer as the Federal Energy Regulatory Commission, which is responsible for regulating interstate gas pipelines. It is not clear why the regulating entity was not identified in this new ruling.) In PLR 202410005, the commission approves the tariffs that the pipeline owner charges for pipeline use.

The commission also requires a monthly "nomination" process whereby the pipeline users request or "nominate" a specific volume they will use in the upcoming month, and the pipeline owner confirms the amount if certain requirements are satisfied. The pipeline user pays a tariff equal to the number of barrels of oil placed on the pipeline by such user during such month multiplied by the tariff rate. There is no minimum or base tariff due. The pipeline user is contractually obligated to deliver oil and economically compelled to use the pipeline to make that delivery. Pipeline users generally utilize the pipeline "on a continuous and consistent basis for extended periods, often years."

As with prior pipeline rulings, the pipeline owner represented that it would not oversell its capacity, that the pipelines themselves were inherently permanent structures, that pipeline use fees associated with personal property constituted less than 15 percent of the total pipeline use fees and that most services would be performed by an independent contractor or TRS.

Based on these facts, the IRS ruled that the REIT's share of the tariffs was qualifying "rents from real property." Although a prior private letter ruling did involve a regulated pipeline, this is the first ruling to directly address the regulated tariffs and monthly nomination process. In addition, this ruling approves volume-based rent with no minimum amount. Pure volume-based rent was previously approved in PLR 201907001, but the two more recent pipeline private letter rulings both involved arrangements with minimum pipeline use fees.

**first published on April 17, 2024*



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REIT MARKET DATA

TOP 5 SECTORS

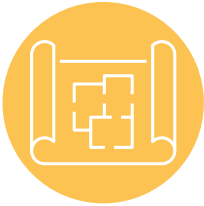
IN CAPITAL MARKETS DEAL VOLUME (YTD)



**RETAIL
REITS: 16**



**INDUSTRIAL
REITS: 14**



**DIVERSIFIED
REITS: 13**



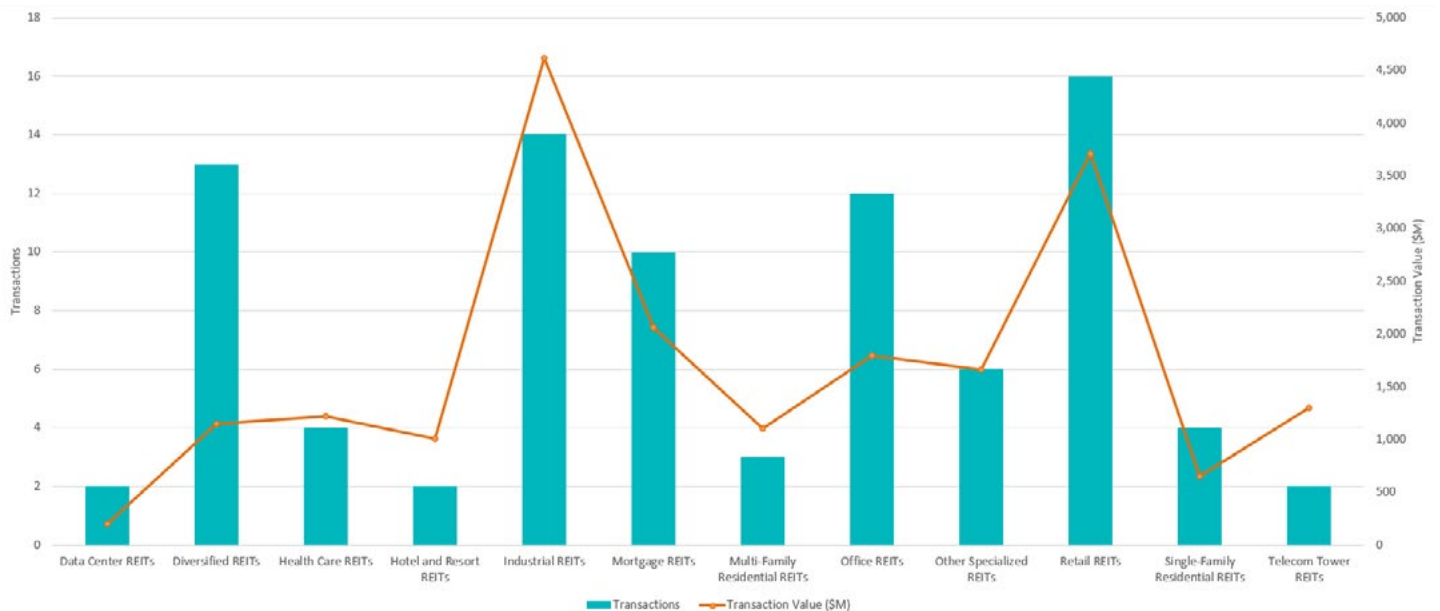
**OFFICE
REITS: 12**



**MORTGAGE
REITS: 10**

REIT CAPITAL MARKET TRANSACTIONS

Q1 24 DEAL COUNTS AND DEAL VALUE BY SECTOR



Source: S&P Capital IQ Pro



CELEBRATING 15 CONSECUTIVE YEARS OF 100% PRO BONO PARTICIPATION

Hunton Andrews Kurth has reached an important milestone in its longstanding commitment to pro bono service—100% of full-time US lawyer participation in pro bono for the 15th consecutive year! In our most recent fiscal year, the firm had donated more than 50,000 hours globally, representing more than 4.5 percent of the firm’s gross billable hours.

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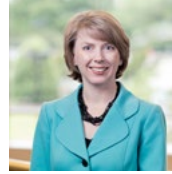
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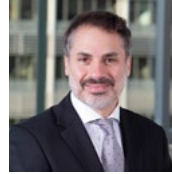
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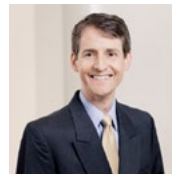
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ABOUT US

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 practice group is particularly well qualified to assist companies accessing the public capital markets as well as private capital sources.



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