real estate finance & investment

The newsweekly of the commercial property and capital markets

www.iirealestate.com

A PUBLICATION OF INSTITUTIONAL INVESTOR, INC.

APRIL 20, 2009
VOL. XV, NO. 15

Real World Offices:
On spring break, 666 Fifth hangs out with the locals.

See page 11

ING To Restructure
ING Group is set to split its investment management business off from its bank and insurance business. **ING Real Estate Investment Management** will be rolled into the new company and **Robert Houston**, founder, will be leaving on Aug. 1.

For the full story, visit www.iirealestate.com.

CMBS DEALS PULLED INTO GGP BANKRUPTCY

General Growth Properties, which filed for bankruptcy on Thursday, has pulled a number of properties collateralizing commercial mortgage-backed securities deals into its filing. The move surprised market participants because CMBS deals are set up as bankruptcy-remote, special purpose entities. GGP owns over 200 properties, 158 of which were included in the bankruptcy. Of the 158, roughly 90 are held within CMBS and CRE CDOs. These deals have mortgages with outstanding balances of about $9.5 billion.

A bankruptcy-remote entity is supposed to shield a property in the event of a corporate bankruptcy. This protects CMBS bondholders—who are secured—from having to share proceeds with other creditors, specifically unsecured creditors, in a bankruptcy. The SPEs are supervised by independent directors and it's unclear whether GGP obtained these directors' approval or bypassed them when filing. *(continued on page 11)*

No—Not *That* Maxim

MAXIM MAKING BIG PUSH INTO CMBS

Maxim Group is making a move into the commercial mortgage-backed securities business. To this end, the New York-based boutique investment bank has hired **Rob Cestari** and **Kurt Kaline** from **Winthrop Realty Trust** to head a new CMBS trading desk. The pair will also be in charge of trading commercial real estate collateralized debt obligations and other commercial real estate debt.

Until now, Maxim had only dabbled in the sector. "If you look at the inefficiencies created by some of the banks going away, such as **Lehman Brothers**, there is a need to build up the [trading] platforms," said **Armand Pastine**, head of fixed income. "The market opportunities are self-evident [and] Kurt and Rob are going to create a new focus for us."

The desk is aiming to handle $200 million to $250 million in commercial real estate debt trades per month. It expects to hit this target in a few months, after government proposals *(continued on page 2)*

RREEF TAKING SECOND SHOT AT PHILADELPHIA OFFICE SALE

RREEF is shopping 2000 Market St. in downtown Philadelphia. Sales agent **CB Richard Ellis** distributed marketing materials two weeks ago. A potential price could not be determined. **Robert Fahey**, who is handling the sale at CB Richard Ellis, declined to comment. A RREEF spokeswoman confirmed the listing but declined to give details.

A year ago, **CB Richard Ellis Investors** reportedly was set to buy the 660,000-square-foot, 29-story building for $90 million to $95 million. It is unclear why RREEF, a unit of **Deutsche Bank**, is making another run at selling the tower.

RREEF recently renewed a lease with local law firm **Fox Rothschild**, the tower's second-largest tenant, which was set to expire this year. Fox will occupy 104,000 square feet on four *(continued on page 11)*

Check www.iirealestate.com during the week for breaking news and updates.

At Press Time

Equastone Shopping Small Dallas Offices

Equastone, the San Diego-based private equity firm, is selling three adjacent properties in suburban Dallas via **CB Richard Ellis**. The company hopes Emerald Plaza, The Landmark and 14850 Quorum Drive will fetch as much as $22 million as a portfolio.

The properties total 320,000 square feet and are about 75% occupied by a mix of small tenants. They are being pitched to value-add buyers who could work to increase occupancy, said a person familiar with the deal. The far north Dallas area, where the buildings are located, has average vacancy of about 77%.

Bids are due at the end of April. Equastone may offer seller financing.

Auction Set For 1330 Avenue of the Americas

The auction of 1330 Avenue of the Americas is set for Wednesday. Mezzanine lender **Otera Capital** led a foreclosure on the property after owner **Macklowe Properties** defaulted on the mezzanine debt, which matured Jan. 9. Otera holds the $130 million senior piece of several tranches of mezzanine.

Cadim, an affiliate of Otera, bought a $130 million mezzanine tranche in 2007. Otera. Otera and Cadim are units of Canadian pension fund manager **Caisse de dépôt et placement du Québec**. **Eastdil** is running the foreclosure. The auction will be held at the offices of **Allen & Overy** in New York.

Macklowe bought the 40-story 532,000-square-foot building for $498 million from **Deka Immobilien Investment GmbH** in late 2006. It has a current $240 million mortgage priced at LIBOR plus 150 that matures in 2012 and is 70% leased.

MAXIM MAKING

(continued from page 1)

have been clarified and CMBS trading regains momentum. Until then, the desk expects to clear $100 million in monthly trades.

Maxim is also looking to add up to six staffers to its structured credit sales and trading group, which also includes RMBS and ABS. A number of boutique investment banks are bulking up as they absorb talent from the Street. "We welcome the competition among the growth in boutique shops…It will give firms an opportunity to tier," Pastine said. "It will be an exciting time on Wall Street to be working at a boutique firm"

Cestari and Kaline have worked together for many years, including in the CMBS group at **Nomura Securities International**, where Cestari headed up CMBS trading. Both declined to comment. *—Sarika Gangar*

Tell Us What You Think!

Questions? Comments? Criticisms? Do you have something to say about a story that appeared in *REFI*? Or is there information you'd like to see published? Whether you're irate with something in the marketplace, would like to discuss a new business strategy or crow about a big hire, give us a call. Managing Editor **Samantha Rowan** can be reached at 212 224 3996 or srowan@iinews.com.

real estate *finance & investment*

The newsweekly of the commercial property and capital markets

EDITORIAL

TOM LAMONT
Editor

STEVE MURRAY
Deputy Editor

PETER THOMPSON
Executive Editor [Chicago]
(773) 439-1090

SAMANTHA ROWAN
Managing Editor
(212) 224-3996

SARIKA GANGAR
Senior Reporter
(212) 224-3202

MATT JARZEMSKY
Reporter
(212) 224-3644

STANLEY WILSON
Washington Bureau Chief
(202) 393-0728

HARRY THOMPSON
Hong Kong Bureau Chief
(852) 2912-8097

KIERON BLACK
Sketch Artist

PRODUCTION

DANY PEÑA
Director

LYNETTE STOCK, DEBORAH ZAKEN
Managers

MELISSA ENSMINGER, JAMES BAMBARA, DOUGLAS LEE
Associates

JENNY LO
Web Production & Design Director

ADVERTISING AND BUSINESS PUBLISHING

JONATHAN WRIGHT
Publisher
(212) 224-3566

PAT BERTUCCI, MAGGIE DIAZ, LANCE KISLING
Associate Publishers

BRIAN GOLDMAN
Advertising Production Manager
(212) 224-3216

PUBLISHING

NICK FERRIS
Publisher
(212) 224-3507

RONDA DIMASI
Marketing Manager
(212) 224-3569

LAURA PAGLIARO
Renewals Manager
(212) 224-3896

CHRISTOPHER DUNNE
Associate Marketing Manager
(212) 224-3096

VINCENT YESENOSKY
Senior Operations Manager
(212) 224-3057

DAVID SILVA
Senior Fulfillment Manager
(212) 224-3573

SUBSCRIPTIONS/ ELECTRONIC LICENSES

One year $2,700 (in Canada add $30 postage, others outside US add $75)

DAN LALOR
Director of Sales (212) 224-3045

KEN LERNER
Account Executive (212) 224-3043

REPRINTS

DEWEY PALMIERI
Reprint & Permission Manager
(212) 224-3675
dpalmieri@institutionalinvestor.com

CORPORATE

GARY MUELLER
Chairman & CEO

CHRISTOPHER BROWN
President

STEVE KURTZ
Chief Operating Officer

ROBERT TONCHUK
Director/Central Operations & Fulfillment

Customer Service: *PO Box 5016, Brentwood, TN 37024-5016.*
Tel: 1-800-715-9195. Fax: 1-615-377-0525
UK: 44 20 7779 8704
Hong Kong: 852 2842 6910
E-mail: customerservice@iinews.com

Editorial Offices: *225 Park Avenue South, New York, NY 10003.*
Tel: (212) 224-3996
Email: srowan@iinews.com

Real Estate Finance & Investment *is a general circulation newsweekly. No statement in this issue is to be construed as a recommendation to buy or sell securities or to provide investment advice.*

ISSN# 726-98670

Capital Markets

Nevada Condo Loan Goes Up For Sale

An undisclosed West Coast-based private mortgage fund is selling a $37.5 million mortgage backed by condos and land located in Henderson, Nev. The borrower has defaulted and foreclosure proceedings are underway. Los Angeles-based investment bank **George Smith Partners** is handling the sale.

Developer **Slade Development** was planning 430 units for the site, Vantage Lofts. Eighty units are nearly complete and another 30 are half-way through construction. The surrounding land may be approved for the remaining 320 units, said **David Rifkind**, principal and managing director at George Smith.

The project is targeted towards young professionals and is located close to high-end shopping and the 1-215 Beltway. George Smith is marketing the loan toward investors who want to acquire nearly completed inventory and sell into an eventual housing recovery, Rifkind said.

CDO Delinquencies Jump In March

Delinquencies on commercial real estate collateralized debt obligations jumped from 5.4% in February to 6.5% in March, according to **Fitch Ratings**' CREL CDO Index. Of the 35 CDOs Fitch rates, 28 had at least one delinquent loan. Individual delinquencies range from less than 1% to 22.1% of the CDO's par balance, said **Karen Trebach**, senior director. Since September, the agency has taken negative actions on 20 CDOs and more are expected.

The index includes loans that are delinquent 60 days or longer, matured balloon loans and the current month's repurchased assets. Maturity defaults, which have been a major issue for CDOs, are expected to dog the asset class further. "Excluding the repurchased assets, nearly all of the new additions to the index consist of matured balloon loans," Trebach said. She added that loan extensions dropped from 37 in February to 21 in March.

The agency tracked an increase in the number of repurchased assets, with six repurchased from three different CDOs in March. "One asset manager repurchased two assets from its CDO at par, while the four other assets from two different CDOs were repurchased at an average discount to par of 46.3%, including one defaulted security that was repurchased at 0.001% of par," Trebach said. "In most cases, new higher rated assets were traded into the CDO at a discount within a few days of the repurchases."

Banks To Hotels: No Vacancy

The hotel lending market has dried up, with most lenders shunning the asset class. "Given the limited allocations that lenders have, hotels have become a lower priority," said **Jeffrey Davis**, executive v.p. at **Jones Lang LaSalle Hotels**. The rapid decline in RevPAR, driven by a slowdown in business and group travel, is the worst the industry has seen, he added.

When banks are willing to lend on hotels, it's to refinance loans on cash-flowing properties. Loan terms continue to be on the conservative side, with LTVs south of 55%. "The underwriting is forward-looking…[Lenders] are looking at what the operators are projecting and are applying stress factors," Davis said. Pricing ranges from 8% to 11%.

Still, Davis sees a glimmer of hope from opportunity and mezzanine funds looking to bridge the debt and equity gap. On cash-flowing properties, the funds are providing financing and seeking returns of 20% to 24%, Davis said. Funds are often looking to mix a participation interest with standard interest payments. In this case, returns on the loans, which range from 9% to 12%, are boosted at the end of the term when the fund shares in proceeds from a sale or a recapitalization.

The financing market is almost completely frozen for transitional projects on full-service hotels. Smaller, limited service hotels can still obtain financing in the $10 to $15 million range from smaller regional banks, Davis added.

Davis Cos. Swoops In On Debt Opportunities

Boston-based **The Davis Cos.**, which develops and operates properties in New England, is raising a $200 million fund for purchases amid the downturn. "Right now most of what we're acquiring is debt," said **Jonathan Davis**, ceo. "First we'll be looking at nonperforming loans and ultimately gearing toward REO and real estate hard assets."

To this end, the company has made two hires. **Cappy Daume**, a longtime broker at **Jones Lang LaSalle**, was hired to increase the company's access to properties and assist with the stabilization process, and **Mark Consoli**, chief operating officer of **Northland Investment Corp.**, fits in on the fund side. "Northland [has been] been in the fund format while we've been a one-off investor. Marc brings the fund experience," Davis said.

So far, the company has raised $50 million, mainly from existing high-net-worth investors. It is seeking commitments of $1 million or more from high-net-worth and institutional investors and hopes to have a first closing by the end of July. Davis sees the fund providing $500 million of purchasing power with leverage. It will seek acquisitions in all asset classes throughout the U.S., focusing on the East Coast.

Davis Cos. has sought debt acquisition opportunities for about a year. Last summer, the company bought five notes on apartment, office and light industrial properties for $75 million, paying 75 cents on the dollar. The seller was a bank that had originated the loans for securitization. Davis has also acquired a note on a large Class A apartment complex in suburban Atlanta and the first mortgage on a 300,000-square-foot office flex property in Colorado Springs.

All the loans the company buys are performing or subperforming and it is focusing on distressed loans for future buys. "We're first and foremost real estate operators, so we like the risk-adjusted returns from purchasing performing notes but really we think the great upside opportunities are going to be in the purchase of distressed debt," Davis said.

New Loan Sale Advisory Company Launched

LoanSaleCorp., a new company that arranges the sale of distressed and performing commercial real estate loans, is looking for opportunities to arrange sales for regional lenders and community banks. **Barry Smith**, founder, said that the company will sell loans nationally but will focus on marketing loans to local buyers. "We will heavily market loans to geographic regions," he said.

Smith has been involved with buying and selling commercial real estate loans for many years via affiliate **Compass Capital Corp.** "I've always bought and sold loans from Bank A to Bank B. But now Bank B is no longer a buyer of distressed assets and what is abundant are distressed loans and problem assets. My buyer has changed and I've positioned LoanSaleCorp to take advantage of that," Smith said.

The company will sell loans on a negotiated transaction basis, rather than conducting a bidding process. Each loan will be marketed separately. Potential buyers will be able to review loan data on www.loansalecorp.com and then make an offer on the loan. "From a buyer's standpoint, bidding is not always a favorable method," Smith said. "As a buyer at Compass Capital, I didn't like to spend time bidding and not knowing if I'd win."

Smith, who first broke into loan sales in the 1990s, recalls that at the time, reviewing a portfolio entailed getting on a plane and sitting in a bank's conference room for days. "You would have to go through files page by page and it could take several days to review a few loans," he said. "The world has progressed where you can take files, store them online and review them there."

Crowell Expands Financial Services Team

Washington D.C.-based **Crowell & Moring LLP** is expanding its financial services team in response to an uptick in commercial real estate restructurings. It has hired **Barbara Champoux** from **Sonnenschein Nath & Rosenthal LLP** as a partner and is looking to add three more senior positions. Champoux will also work on distressed loan sales and will advise owner-operators.

The firm has been busy reviewing restructurings within commercial mortgage-backed securities deals on behalf of borrowers, servicers and lenders. "Servicers aren't pushing cases into foreclosure, they're restructuring them," said **Bill O'Connor**, partner at Crowell. "There are no exit strategies, so they're working with borrowers." This is particularly true for retail properties where tenants have gone dark or retrenched.

Lately, the firm has seen some investors bypass servicers improperly and jump straight into discussions with borrowers. Much of the tension draws back to competing interests. "It tests the philosophy of various parts of the capital stack in CMBS," O'Connor said.

Downgrades Loom For Japanese CMBS

Nearly 230 tranches of Japanese commercial mortgage-backed securities may see their ratings cut as conditions deteriorate in the Japanese real estate market. The tranches put on review for downgrade by **Moody's Investors Service** this week join the 111 tranches already on negative watch, bringing the number of affected classes to 339, or JPY1.4 trillion ($14 billion).

Commercial real estate in Japan has suffered as a result of poor economic conditions resulting in banks and other lenders less willing to grant loans. "[Lenders] are more selective in their new loan origination as well as refinancing and will typically only make loans of modest leverage and sponsored by strong corporate names," according to Moody's analysts.

Borrower delinquencies have occurred in 25 loans underlying the CMBS since the first such delinquency occurred last June. In addition, the average price for commercial land in three major metropolitan districts in Japan, including Tokyo, declined this year for the first time since 2004 and debt financing options have become increasingly limited, Moody's analysts said. There is also particular concern over the deals now as JPY1.7 billion ($17 million) in loans underlying the Moody's-rated transactions mature this year and in 2010.

Property Markets

Macquarie DDR Maps Out Portfolio Sale

Macquarie DDR Trust, which announced last week that it will sell 52 shopping centers, is still trying to gauge if it will sell the properties as a single portfolio, in regional sub-groups or as one-off sales. **Holliday Fenoglio Fowler** is marketing the properties.

The Australian-listed real estate investment trust is an equal partnership between a unit of Australian bank **Macquarie** and U.S. REIT **Developers Diversified**. It hired HFF, along with another Macquarie unit and **UBS**, to review its U.S. properties and ultimately market the malls, which are located in 20 states. Macquarie has been trying to raise cash to meet debt covenants since **Mervyn's**, which contributed 10.8% of the REIT's annual base rent, filed for bankruptcy.

Doug Hazelbaker, part of the HFF sales team that is marketing the properties, acknowledged that obtaining financing would be a challenge to a portfolio sale but said there are options for potential buyers. He declined to give details. "There are potential cash transactions out there as well," he added.

The properties, valued by Macquarie at $1.9 billion at the end of 2008, total 12.5 million square feet and have an average occupancy of 88.5%. Major tenants include **Walmart**, **BJ's** and **Best Buy**. They are located throughout the U.S., with concentrations in New York, George, Minnesota, Tennessee and Wisconsin. For a complete list of properties, go to www.iirealestate.com.

Credit Crunch Could Put Brakes On GGP Property Sales

Although **Simon Property Group** and **Westfield America** are seen as the likely candidates to acquire assets from **General Growth Properties**, the credit crunch may slow any large-scale acquisition plans. "Debt is still very difficult to find," said **Rich Moore**, an analyst at **RBC Capital Markets**. The retail real estate investment trust filed for bankruptcy protection this morning.

There have been a number of equity offerings from REITs in recent weeks (REFI, 4/13) but raising significant capital from any source to fund an acquisition will be difficult. In March, retail REIT **Developers Diversified** raised $172.5 million from Germany's **Otto** family (REFI, 2/27) and Simon sold $1.2 billion of debt and equity (REFI, 4/13). But the capital that has been raised would only be a fraction of what was needed to make a large portfolio buy, Moore noted.

GGP has been trying to sell three specialized East Coast retail sites and was reportedly in talks with a buyer willing to pay as much as $400 million for Faneuil Hall in Boston, the South Street Seaport in New York and Harborplace and the Gallery in Baltimore. **Faith Hope Consolo**, chairman of **Prudential Douglas Elliman**'s retail leasing and sales unit, believes that despite the credit crunch, the bankruptcy filing could spur other retail operators to cherry pick.

Market participants were saying that the actual filing, while expected, was also surprising because the REIT has been negotiating with its creditors since October. GGP has lined up $375 million of debtor-in-possession financing from **Pershing Square Capital Management**, which is one of its major investors.

A substantial amount of the REIT's debt was completed via the CMBS market. "We will discover the difference between secured and unsecured creditors," one investor said. "Because CMBS is secured, its investors may find that they are better off in the long run."

Tips For Effective Mothballing

Effectively sealing off a construction site involves more than just locking the windows and turning off the lights. **Carl de Stefanis**, president of White Plains-based advisory **IVI International**, said there is a laundry list of administrative and practical items that need to be done when a development is mothballed, including:

- Auditing construction costs
- Updating appraisals
- Sealing and waterproofing properties
- Setting up fences around property perimeters
- Reviewing existing permits and approvals

It's important to review existing permits and other approvals because there is a chance that they could be yanked or expire before work starts again. "The approval process would, most likely, need to be repeated. This is a costly and time consuming process," de Stefanis said.

After all this, there will still be bills on items such as insurance and taxes, which may ultimately land up on the lender's desk. "If the loan cannot be re-structured, the lender will seek possession… and the developer's equity position has been wiped out," de Stefanis said. "A lot of effort, energy and time goes into a development project. It's a terrible loss."

Institutional Investor NEWS

CHRISTOPHER R. BROWN
PRESIDENT

Dear Reader,

A number of Institutional Investor News readers, who are concerned about violating copyright law, have asked about our **Corporate Access Program (CAP)**. **CAP** members are firms that desire wide distribution for a number of its employees at a discount.

Such arrangements allow corporate subscribers to fully comply with U.S. copyright laws.

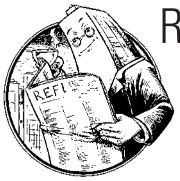
We understand that once in a while, a page or two of interest will be copied and passed on to an associate. Additionally, we are happy to authorize – for a nominal fee – many of our articles and/or tables for use in a report or presentation.

However, the routine copying of our newsletters for distribution to others is unacceptable. That is a blatant, actionable violation of our copyright. While we are flattered that our readers place a high value on our publication, duplication and distribution undermines our efforts to bring you the news and information that you expect from Institutional Investor News. We are currently taking a more active stance to enforce our copyright. Take this opportunity to secure the expanded distribution that your firm needs and avoid violating copyright law.

Please contact Dan Lalor at (212) 224-3045 or dlalor@iinews.com for additional information about our Corporate Access Program or to expand your firm's subscription account.

Sincerely yours,

225 PARK AVENUE SOUTH, NEW YORK, NY 10003
TEL: (212) 224-3377 / FAX: (212) 224-3376 E-MAIL: CBROWN@INSTITUTIONALINVESTOR.COM



Real Estate News Roundup

The Real Estate News Roundup is a summary of publicly reported real estate news briefs. The information has been obtained from sources believed to be reliable, but REFI *does not guarantee its completeness or accuracy.*

Hamptons To Open First U.K. Hotel

Hampton Hotels is set to open its first U.K. hotel. The company, which also opened 14 properties in the U.S. in March, is working with **Hampton by Hilton Corby/Kettering**. The 88-room hotel is located in Northamptonshire.

Direct Investment In Europe Drops 30% In First Quarter

Direct investment in European commercial real estate was down 30% from the fourth quarter of 2008, according to research from **Jones Lang LaSalle**. Investment volume hit €12 billion in Europe the first quarter, which is also an 80% drop from the first quarter of 2008. About 95% of the total investment activity was in core Western and European markets.

Tony Horrell, head of capital markets at **Jones Lang**, said that the firm has ntoed an improving sentiment in the market. "In the last three months we have seen investors seeking high quality and long term good income," he said. "However there is a lack of good prime product and at the same time the accepted definition of the prime asset class has narrowed considerably."

Duke Sells Common Stock

Duke Realty Corporation has sold 65.4 million shares of common stock at $7.65. The offering was underwritten by **Merrill Lynch & Co.**, **J.P. Morgan Securities** and **Morgan Stanley**. The real estate investment trust will use net proceeds of $479.8 million to repay outstanding debt on its unsecured credit line and for general corporate purposes. The underwriters have the option of buying another 9.8 million shares of stock.

CBD Vacancies Rise

Vacancies in central business district office buildings rose from 11.2% in the fourth quarter to 12.5% in the first quarter, according to data from **Cushman & Wakefield**. This is the highest level seen since the first quarter of 2006, when vacancies hit 12.6%, but below the 15.5% seen in the second and third quarters of 2003.

Cushman also tracked at 39.3% drop in CBD leasing activity during the first quarter. Leasing activity dropped to 10.6 million square feet, a significant decline when compared to the same period in 2008 when 17.5 million square feet of space was leased. New construction coming on line and a big jump in available sublease space contributed to the increase.

Carlton Adds Ex-Capmark Exec

Carlton Group has hired **Sal Tarsia** as a managing director in its principal transaction group, *Carlton Strategic Ventures*. Tarsia will be a senior credit officer and will oversee all of the firm's principal investments. He will also oversee all credit and underwriting functions for *CSV Mortgage Capital*, the firm's first-mortgage fund. Previously, he was a senior v.p. at **Capmark Finance**.

Retail Advisory Firm Formed

EDGE Realty, a new firm formed by **Adam Schiller** and **Brian Murphy**, will focus on advisory work in the retail sector. The pair, previously principals at **Endeavor Real Estate Group**, will offering development, brokerage and investment services. The firm's senior executives include a number of former Staubach Retail staffers, including **Greg Bracchi**, **Steve Ewing**, **Mike Leonard** and **Michael Stern**.

Lone Star Bolsters European Staff

Lone Star Management Europe has hired **Angus Dodd** as managing director. Dodd joins from **JER Partners**, where he spent five years overseeing property purchases in the U.K. and Germany. He will focus on the U.K. at Lone Star, which targets distressed investments. Until now, the firm hasn't had a major U.K. presence.

HSBC Puts New York, Paris, London Offices Up For Sale

HSBC is hoping to sell its headquarters office in London as well as office buildings in New York and Paris, according to a report in the *Wall Street Journal*. The bank's 1.1 million headquarters is located in London's Canary Wharf. Other office buildings up for sale include 452 Fifth Avenue and 103 Avenue des Champs-Élysées and 15 rue Vernet in Paris. The bank wants to complete a sale-leaseback on the space.

GUEST COLUMN

What Rights Does A B-Note Holder Have To Replace A Special Servicer? Part II

The ongoing credit crisis and the continuing deterioration of commercial real estate have significantly increased the number of distressed commercial real estate loans. In this environment, it is critical for B-note holders to understand their legal rights.

The right of a B-note holder to replace the special servicer becomes particularly important when an A/B loan is in default because the special servicer plays the lead role in developing and implementing default resolution strategies.

Who Is The Initial Special Servicer Of An A/B Loan?

When the A-note is transferred to a trust in connection with a securitization, the master servicer assumes the responsibility to service the A/B loan. If an event of default occurs with respect to the A/B loan that materially and adversely affects the interests of the A-note holder or the B-note holder (or if the master servicer determines that such an event of default is imminent), the servicing of the A/B loan will be transferred to the special servicer, which is responsible for resolving defaulted loans. The PSA will designate an initial special servicer with respect to all of the loans included in the securitization.

Can The B-Note Holder Replace The Special Servicer?

Most co-lender agreements relating to large A/B loans give the B-note holder the right to replace the special servicer for the associated A/B loan without cause at any time (although some co-lender agreements relating to some older-vintage fixed rate A/B loans may not give the B-note holder this right). The B-note holder should check the co-lender agreement to confirm whether it has the right to replace the special servicer.

What Conditions Must Be Satisfied Prior To Replacing The Special Servicer?

Co-lender agreements and pooling and servicing agreements (PSAs) typically require the following conditions be satisfied in order for a B-note holder to replace the special servicer:

- the replacement special servicer must appear on the rating agencies' approved special servicer lists.
- the replacement special servicer must enter into an agreement assuming the special servicing responsibilities with respect to the A/B loan
- standard legal opinions must be delivered to the securitization trust
- the B-note holder must obtain written confirmation from the rating agencies that the replacement of the existing special servicer would not adversely affect their ratings.

Some co-lender agreements or PSAs may also require as much as 30 days' advance notice to the existing special servicer. The existing special servicing is obligated to continue special servicing the A/B loan until all of these conditions are satisfied.

What Are The B-Note Holder's Responsibilities?

The B-note holder will be driving the replacement process, and it will ultimately be the responsibility of the B-note holder to ensure that all conditions set forth in the related co-lender agreement and PSA are satisfied by the relevant parties. The B-note holder will typically be required to:

- prepare notices and documents evidencing the termination of the existing special servicer and the appointment of the replacement special servicer
- coordinate the negotiation of the related assumption agreement between the replacement special servicer and the related securitization trustee
- arrange for the delivery of legal opinions by the replacement special servicer's counsel
- coordinate with the rating agencies to obtain a confirmation that the ratings of the related securities will not be adversely affected.

How Long Does It Take To Replace The Special Servicer?

If all parties are cooperative, the replacement process generally should take no longer than a month.

What Expenses Are Associated With Replacing The Special Servicer?

In addition to covering its own costs and expenses, the B-note holder typically has to pay the costs and expenses incurred by the securitization trustee and the existing special servicer in connection with the replacement of the special servicer. The costs and expenses of the securitization trustee are primarily comprised of the legal fees of the securitization trustee's counsel. The B-note holder is also responsible for any fees charged by the rating agencies in connection with the issuance of a ratings confirmation.

The B-note holder might also have to cover the replacement special servicer's costs and expenses, depending on the deal negotiated with the replacement special servicer. The B-note holder also often has to pay for the costs and expenses incurred by the existing special servicer. The existing special servicer is generally not entitled to a termination fee, so the costs of the existing special service will typically be limited to legal fees and costs of transferring the servicing file. The existing special servicer may, however, be entitled to receive ongoing workout fees if it has completed a workout of the A/B loan at the time it is replaced.

Can The B-Note Holder Replace The Master Servicer?

No. The master servicer typically can be replaced only for cause and that right is held by the securitization trustee and the holders of a specified percentage of the securities of the related securitization. If the master servicer is in breach of its obligations with respect to the A/B loan, some co-lender agreements and PSAs permit the B-note holder to appoint a sub-servicer with respect to the A/B loan. The appointment of a sub-servicer will typically be subject to satisfying conditions similar to those for replacing the special servicer discussed above.

Why Would The B-Note Holder Want To Replace The Special Servicer?

There are a number of considerations that may lead the B-note holder to decide to replace the existing special servicer, including the following:

Recommended Course of Action. The B-note holder may seek to replace the special servicer because it prefers an alternative course of action with respect to the A/B loan to the course of action proposed by the existing special servicer. B-note holders must bear in mind that replacing the existing special servicer will not necessarily result in the B-note holder's desired course of action being implemented by a replacement special servicer.

Conflict of Interest. Often the initial special servicer (or an affiliate) will own several classes of securities issued in connection with the related securitization, and in some instances the special servicer (or an affiliate) may even own a more subordinate tranche of the A/B loan or related mezzanine debt. The ownership of such securities or debt may put the economic interests of the special servicer in conflict with the interests of the B-note holder.

Reduced Special Servicing Fees. Due to the subordinate nature of B-Notes, all fees payable to the special servicer with respect to the A/B loan will generally be borne by the B-note holder. A replacement special servicer may be willing to accept lower fees to specially service the A/B loan than the fees specified in the PSA. This will reduce the losses allocated to the B-note holder.

Expertise. The level of expertise or experience among firms that serve as special servicer can vary, particularly for non-traditional assets such as vacant land, health care facilities, casinos, properties undergoing significant construction, and properties subject to a propco/opco lease structure. A replacement special servicer may have a more experienced team in dealing with these types of assets than the existing special servicer. Another consideration may be the extent to which a replacement special servicer is actively specially servicing a number of loans and mortgaged properties in the same geographic region where the property securing the A/B loan is located.

Previous Relationship. A B-note holder may have an existing working relationship and track record with another special servicer and the team that will be assigned to the A/B loan. That special servicer may have a better understanding of the B-note holder's views of how to deal with defaulted mortgage loans.

B-note holder is itself an approved special servicer. The B-note holder (or an affiliate) may be on the rating agencies' lists of approved special servicers and wish to appoint itself (or its affiliate) as special servicer to streamline the decision-making process.

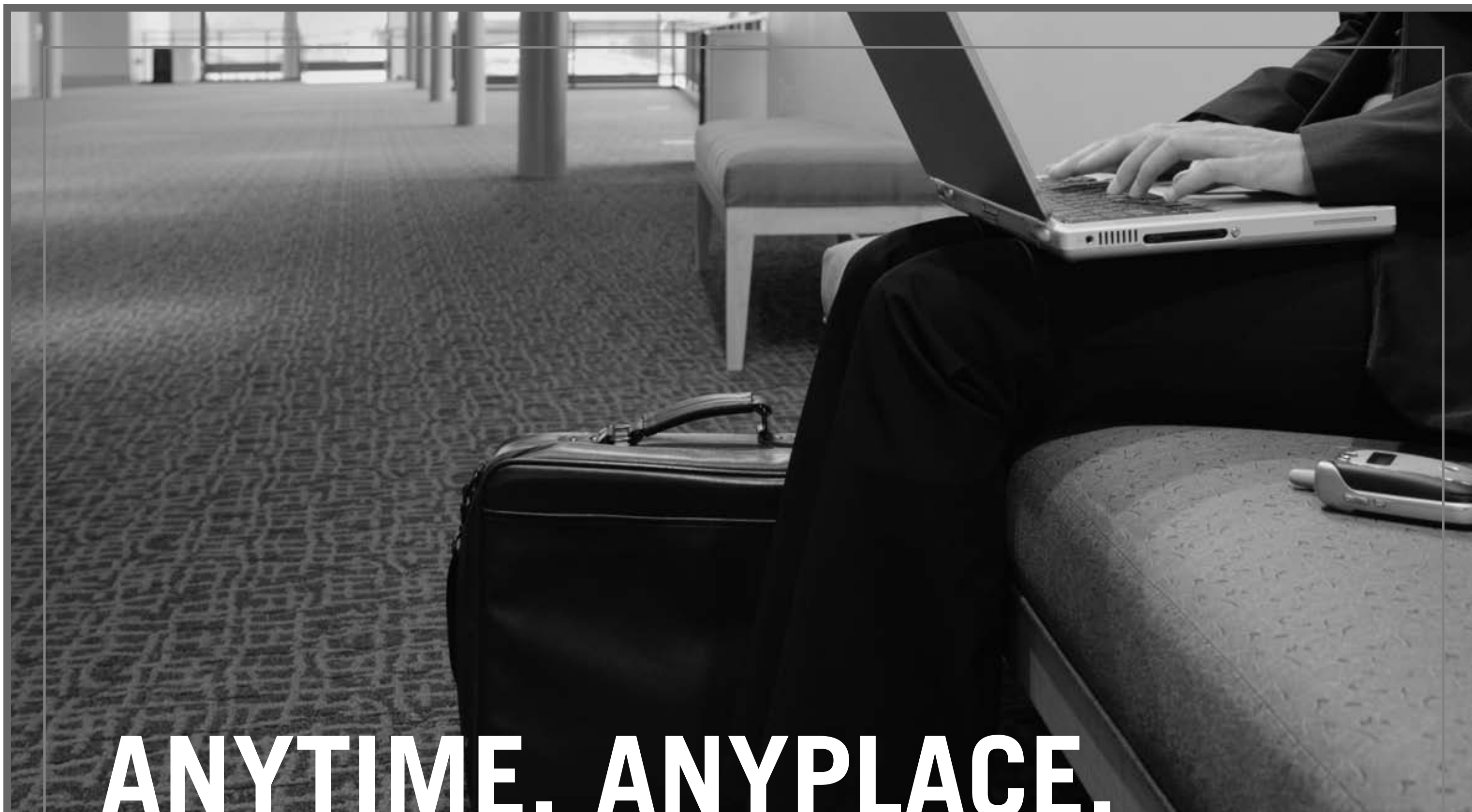
What Are The Disadvantages?

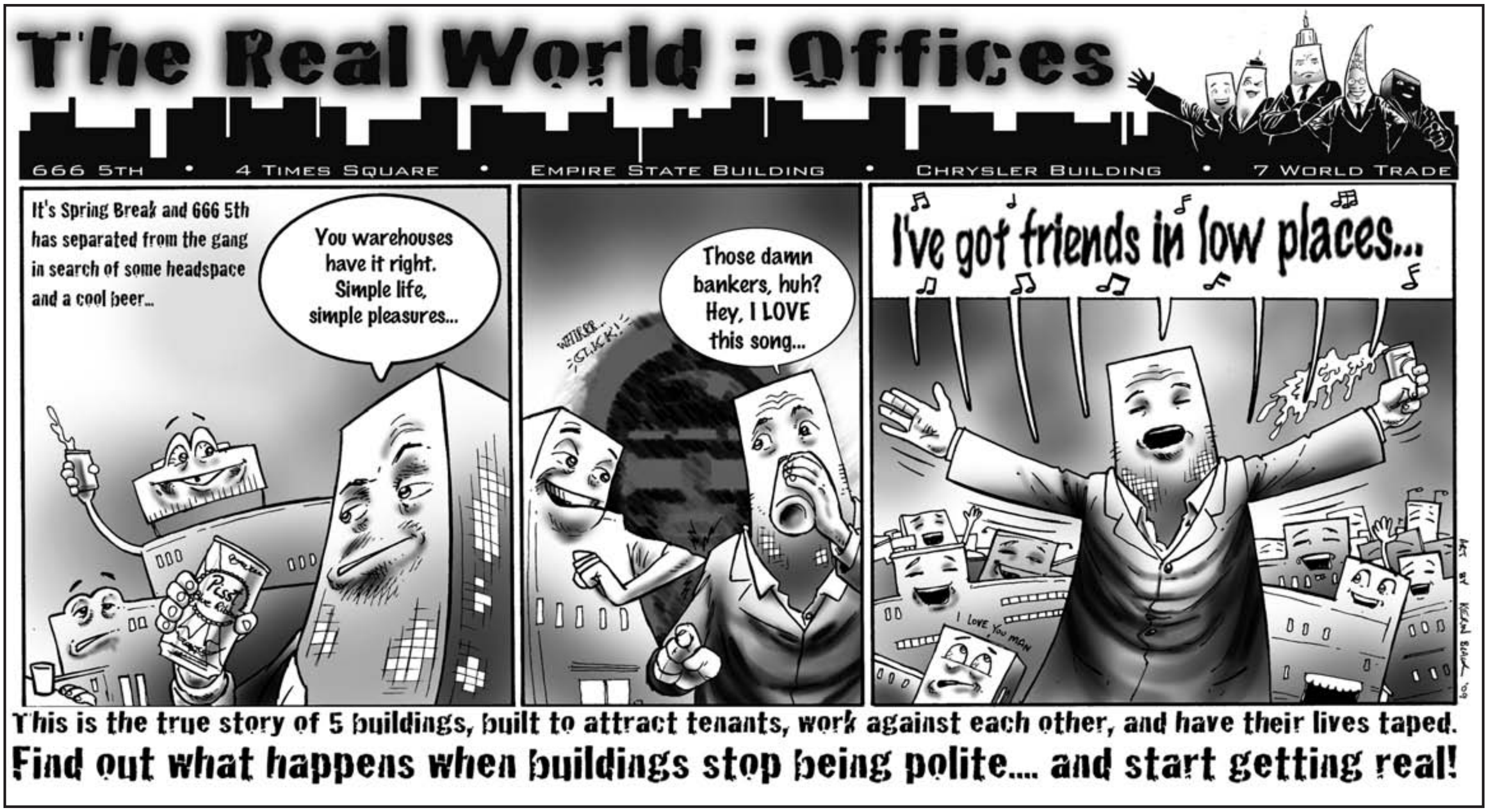
A significant disadvantage is delay. As discussed above, the replacement of the existing special servicer may take several weeks. It will also take some time for the replacement special servicer to get up to speed with respect to the A/B loan. Such delays can lead to a disruption of the workout process and result in inaction at an inopportune time. Thus, a B-note holder must consider the benefits of replacing the existing special servicer against the risks associated with delays in responding to the current circumstances. Another disadvantage is that there are costs associated with replacing the existing special servicer, as discussed above.

When Does The B-Note Holder Lose Its Right To Replace The Special Servicer?

Most co-lender agreements provide that the right of the B-note holder to replace the special servicer shift to the A-note holder if, based on a current appraisal of the mortgaged property obtained by the master servicer or special servicer in accordance with the PSA and a formula specified in the PSA or the co-lender agreement, the projected losses on the B-note exceed a certain level, typically 75% of the principal amount of the B-note. This concept is commonly referred to as a control appraisal event.

This week's guest column was written by ***David Forti*** *and* ***Timothy Stafford****, partners at* ***Dechert****, with assistance from* ***Douglas Carlton*** *and* ***Matthew Ginsburg****, associates.*





RREEF TAKING

(continued from page 1)

floors under a new 15-year commitment. **Arkema**, its largest tenant, occupies 132,000 square feet until 2015. Still, the building is 25% vacant.

As part of the lease, Fox Rothschild is moving its offices within the building, which will open up a block of 100,000 contiguous square feet. "There are a number of large tenants in the Philadelphia market," said an investor familiar with the listing. "But [2000 Market St.] is certainly not the only building that has 100,000 square feet and that's the challenge. It was built in 1972, so it's not a trophy tower."

The Class A or B building—depending on who you talk to—is located in the city's Market West submarket. Downtown Philadelphia office vacancy rose to 12% in the first quarter of 2009 from 10.88% a year earlier, according to CB Richard Ellis. Average rents have fallen slightly to $26.39 from the third quarter of 2008 and are still above levels from a year ago. "Rents are largely holding up but there's not a lot of velocity in the market," one broker said. *—Matt Jarzemsky*

CMBS DEALS

(continued from page 1)

It appears the REIT excluded properties that were part of joint ventures in the filing, according to a report from **Bank of America**. GGP is likely aiming for the court to grant "substantive consolidation," or the permission to pool the SPEs in with unencumbered assets. "The long-term consequences could be very problematic for our business," said **Rick Jones**, partner at **Dechert**. "With a consolidation, the court may blow through the legal isolation that underlies all structured finance."

Including its CMBS loans in the bankruptcy is a signal that GGP wants to extend their maturities and change the terms so that it is not forced to give the keys to the underlying properties to the special servicers. "Bankruptcy is the ultimate trump card," one investor remarked. "The way bankruptcies are set up, no one trumps the bankruptcy judge." He added that is likely that there will be a number of colossal battles between the different parts of GGP's capital structure, including corporate and CMBS bondholders, and over different creditors over the value of assets.

Although winning approval for this type of consolidation is typically difficult, the New York court that is handling the case is known to be amenable to it. This may have been the reason GGP filed its case there versus within its hometown of Chicago, Jones said. It is possible for the court to deny the request but grant other restrictions that carry the same effect. The court, for example, could grant the DIP lender a second lien on the properties included in CMBS deals.

CMBS-backed properties included in the bankruptcy include the Ala Moana Center in Hawaii, Providence Place in Providence, Rhode Island, Lynnhaven Mall in Virginia Beach, North Star Mall in San Antonio, the Grand Canal Shoppes in Las Vegas, Woodbridge Center in Woodbridge, New Jersey, Burbank Town Center in Burbank, Calif., Ridgedale Center in Minnetonka, Minn., and Glenbrook Square Mall in Fort Wayne, Indiana.

Calls to GGP were not returned by press time.

—Sarika Gangar

Filing Prompts Massive Transfer

Loans from at least 74 CMBS deals and CRE CDOs are being transferred into special servicing as a result of the filing. The transfer means that the trusts will have to pony up hefty one-time fees for the transfer—in this case expected to be around $100 million. Still, CMBS spreads in general tightened as the markets had expected the filing. Spreads on the benchmark 10-year, 30% subordination AAA-bonds were trading at swaps plus 880-900.

From The Reporter's Penthouse

Mothballin'

Mothballing buildings in drab plastic and battleship gray chains is almost as depressing as the mainstream media's take on the recession (see related story, page 5). We think that when a property gets mothballed, the developer should think about spicing things up with a dash of color or a bold pattern.

You may be thinking, "If we don't have the budget to finish a building, we definitely don't have the budget to decorate it when we're about to mothball it."

But think about it—there are thousands of professional gift rappers that are out of work at malls all over the country! Hiring them to wrap up your buildings will help the job market and give your development a sense of intrigue. Potential investors will think, "A gift? For moi?"

If you don't have enough time and energy to create a custom design, choose a theme. Everyone likes Scottish Tartan and Mojito Teal is supposed to be the new rage.

Comments? Email reporterspenthouse@iinews.com.

Calendar

- **New York Commercial Real Estate Women** is sponsoring a tour of One Bryant Park/Bank of America Tower—the first skyscraper to be awarded a LEED Platinum certification. The tour will be led by **Tom Bow**, senior v.p. of leasing at **The Durst Organization**, which developed the building in partnership with Bank of America. The event will be held on April 21 from 6:00-8:00 p.m. and the tour will begin promptly at 6:15. For more information, visit www.nycrew.org/programs.

Quote Of The Week

"You would have to go through files page by page and it could take several days to review a few loans. The world has progressed where you can take files, store them online and review them there."—**Barry Smith**, *founder of* ***LoanSaleCorp****., on how technology has made it easier to review distressed real estate loan sales (see story, page 4).*

One Year Ago In Real Estate Finance & Investment

Commercial Mortgage Securities Association directors met with **Christopher Dodd** and other members of the **Senate Banking Committee** to explain differences between commercial and residential real estate and underscore the need for a functioning securitization market…**CIBC World Markets** originated a $63 million floating-rate loan for **Chetrit Group's** purchase of Fort Lee Executive Park, a 600,000-square-foot office park in Fort Lee, N.J…**The Terrapin Group** was shopping Chicago multifamily project 720 Clark St.

Five Years Ago

Corus Bank won new client **Lambert Development Lansing** by providing the San Francisco developer a $31.2 million ground-up condominium loan after offering a non-recourse structure with no pre-sale requirements…Computer mogul **Michael Dell** had reportedly agreed to pay Tokyo-based **Shimizu Corp.** $270 million for the Four Seasons Resort Maui at Wailea…**The Treasury Department** confirmed that the Terrorism Risk Insurance Act does cover losses from nuclear, biological and chemical after an inquiry by lobbyists.

Ten Years Ago

Barclay's Global Investors was developing an actively managed real estate investment trust…**J.P. Morgan** completed Japan's first commercial mortgage-backed securities deal…**CB Richard Ellis Investors** was seeking commitments for a fund that would focus on value-added opportunities.