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EDITORIAL OPINION

St. Valentine's Day Massacre

Yesterday, February 14th, history repeated itself. Eighty-eight years ago, in 1929, four men, some dressed as police officers, ordered seven gang members in Chicago to line up against the wall. There were no chocolates dispensed. And the flowers came later (at the funeral) because all seven men were hit with a spray of machine gun fire and were killed. This Valentine of lead was attributed to none other than Al Capone, Public Enemy Number One.

Yesterday's St. Valentine's Day Massacre redux involved numerous men, some dressed as proxy solicitors, who lined retail investors in American Realty Capital Retail Centers of America ("RCA") up against a wall of sophisticated jargon and hit them with thousands of mailings and telephone calls to approve a merger with American Finance Trust ("AFIN") in a transaction which likely will ultimately cripple the value of the RCA investors' holdings. When the smoke cleared, the RCA investors narrowly approved the merger with 50.21% voting for it and 50.02% supporting a nec-

essary charter amendment. The balance of the investors either voted NO or did not vote (a de facto NO vote).

The Proxy Solicitation Machine Gun appeared to use a silencer to camouflage the "bullets" below which were being fired into the RCA investors during the past two months:

- The RCA Special Committee entangled RCA in a complicated, affiliated party, mostly non-cash transaction with AFIN that took about one year to complete.
- The total consideration per share to RCA investors is \$0.95 in cash and 0.385 shares of AFIN, but the investors were not informed of the current value of AFIN.
- The transaction failed to provide liquidity to the RCA investors in that AFIN is a non-traded REIT which, although it has been approved for listing on the NYSE, is unlikely to list anytime soon due to current market conditions where

retail REITs are trading at significant discounts to NAV.

- The Special Committee of RCA failed to include Lincoln Property Company, the retail real estate experts who assembled and currently manage the RCA portfolio, in any of the negotiations and has left unanswered the role of Lincoln in the future management of the RCA assets after the merger.
- The RCA Special Committee endorsed placing RCA investors into a post-merger, externally advised REIT with a twenty-year, virtually non-cancellable management agreement with AR Global and a potential internalization fee payable to AR Global of over \$110 million.
- The RCA Special Committee failed to avail itself of protections built into the RCA Charter relating to modifications to the terms of the advisory agreement and protections that would require RCA investors to have the option of receiving cash consideration equal to fair market value of their shares in any merger with another non-traded REIT.
- The Proxy Statement touted a transaction price of \$10.26 per RCA share as the consideration paid to RCA investors in the merger. But a further review of the disclosure suggests a value as low as the mid \$8s.

The 2017 St. Valentine's Day Massacre of the RCA shareholders is one for the ages in terms of assaults on the sensibilities of investors. The investors are now at the mercy of an apparently conflict ridden board and an onerous management agreement with a brutal exit clause that will likely overhang the value of the merged entity. The only remaining safety valve may be a pending class action lawsuit that may seek to recover the damages inflicted upon the RCA investors.

Who should get the flowers of condolence? The RCA investors. Who gets the chocolates? Likely AR Global, thanks to a structure which imposes a twenty-year virtually non-cancellable management contract on the RCA investors. We will not be surprised to see AR Global monetize that contract sometime in the future in a huge payday by selling it to a third-party management company – a payday bought at the expense of the RCA investors.

One last thought: The 1929 St. Valentine's Day Massacre was a precursor to the end of the regime of Al Capone. The sheer brazenness of this brutal act brought about extensive and determined scrutiny on Capone from law enforcement and the IRS – scrutiny that ultimately led to his conviction and an end to his reign. One is left to wonder if history will repeat itself in yet another way ... ■