Marks Paneth & Shron LLP
Certified Public Accountants & Consultants
IT ALL ADDS UP.®

REVENUE MAXIMIZATION FOR LANDLORDS: MONETIZING EXISTING LEASES

2013

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LETTER OF INTRODUCTION

Revenue Maximization: Monetizing Existing Leases

In these uncertain economic times, we realize that even the most seasoned property owners are reviewing their portfolios in order to find ways to maximize revenue. As a proactive firm serving the real estate industry for over 100 years, we at Marks Paneth & Shron LLP (MP&S) are always looking for ways to assist our clients — both new and old — by providing value-added services.

To that end, we offer a team of experienced, knowledgeable professionals who are highly skilled in performing lease audits and providing lease consulting services with the goal of recovering "hidden" revenue. These professionals work with property owners to perform audits of leases that provide for contingent rental payments including, but not limited to, percentage rent, participation payments, subletting profits and operating escalations.

As the leader of the MP&S revenue maximization team, Susan H. Nadler is fluent in the nuances and subtleties that often exist in leases that provide for contingent rents. Susan has been serving the real estate industry for over 22 years and has broad experience working with both landlords and tenants. Her tenacity and resolve to assist her clients in collecting all rents to which they are entitled has resulted in her clients recovering significant amounts of revenue. For several examples of actual revenue recovered for clients, please turn to the case studies presented beginning on page 9.

In addition to performing audits of tenants who are subject to paying contingent rents, Susan and her team are also available to assist you in reviewing or preparing contingent rent computations (such as operating escalations, common area maintenance charges, porter wage charges and real estate tax escalations) performed by your internal accounting department and to review your existing leases to ensure you are billing all amounts allowable under the lease terms.

Our experience and depth of knowledge allows us to identify and resolve issues quickly, efficiently and effectively, while at the same time maintaining a positive relationship with the tenants that we are auditing and your internal accounting department.

Landlords are often times pleasantly surprised to find out that there are very significant amounts of revenue available for collection from their existing leases and tenants. Would you like to be one of them?

If you would like to schedule a complimentary consultation to discuss how your company could benefit from a revenue maximization review or to discuss any of our lease or real estate services, please contact Susan Nadler by phone at 212.503.6304 or by email at snadler@markspaneth.com.

We look forward to speaking with you and further exploring how MP&S can add value to your organization.

Sincerely,

William H. Jennings, CPA
Partner-In-Charge
Real Estate Group

Marks Paneth & Shron LLP (MP&S) is a large, regional professional services firm with more than 500 people, of whom 65 are partners and principals. We offer a wide range of accounting, auditing, tax, consulting, restructuring, bankruptcy and advisory services, as well as litigation and corporate financial advisory services to domestic and international clients in selected industries.

MP&S, whose origins date back to 1907, has a long history of providing attentive and responsive client service. Client satisfaction and retention are reflected in our industry rankings. MP&S is the 16th largest firm in the New York area (*Crain's New York Business*) and the 34th largest firm in the nation (*Accounting Today*). For the past three consecutive years, readers of the *New York Law Journal* (NYLJ) have ranked MP&S among the top three forensic accounting providers serving the New York legal community. MP&S is the only mid-sized firm to be ranked among the top three firms in the category of forensic accounting.

Our services are provided by industry-focused, experienced practitioners. The most important element of our culture is our unrelenting client focus. We recognize that our success depends entirely on how well we serve our clients, and nothing takes precedence over our commitment to meet each client's continuing need for effective, insightful, responsive and professional service.

The firm maintains four offices. Our headquarters are in Manhattan and we have additional offices in Westchester County, Long Island and the Cayman Islands. We serve an international client base, and no single client represents more than 2 percent of our total revenue.

Accounting Industry Leadership

Our firm's stature as a leading professional services firm is further enhanced through the activities of our partners, principals and staff. Our professionals continually write and speak on matters of interest to a broad range of industries. They are actively involved in many industry organizations including the New York State Society of Certified Public Accountants.

Affiliate Relationships

Our ability to serve our clients is enhanced by the following affiliations.

- MP&S Valuation Solutions LLC ("MP&S Valuation")-MP&S Valuation offers a group of highly skilled valuation consultants who support the real estate services group of MP&S. Staffed with a senior project management team with over 80 years of combined valuation experience, MP&S Valuation group includes financial analysts, and valuation engineers and appraisers who understand the art and science of appraisal and valuation. Real estate appraisals and valuations are performed by specialized staff who are Members of the Appraisal Institute (MAI), SCGREAs (State Certified General Real Estate Appraiser), MRICs (Members of the Royal Institution of Chartered Surveyors) and ASAs (Accredited Senior Appraisers with the American Society of Appraisers). MP&S Valuation works with property owners of all classes of properties including commercial, residential, industrial and manufacturing, public utilities and independent power producers. Services performed include fair market value determinations of tangible and intangible assets, cost segregation studies, purchase price allocations required under ASC 805, Section 1060, rehabilitation tax credits studies, highest and best use studies and financial modeling, among others. This affiliate is 50% owned by Marks Paneth & Shron LLP.

- **Morison International -** MP&S is committed to providing our clients with highly professional services on a global level. This is facilitated by our membership in Morison International (MI), a leading international association of independent accounting firms, business advisors and financial consultants.

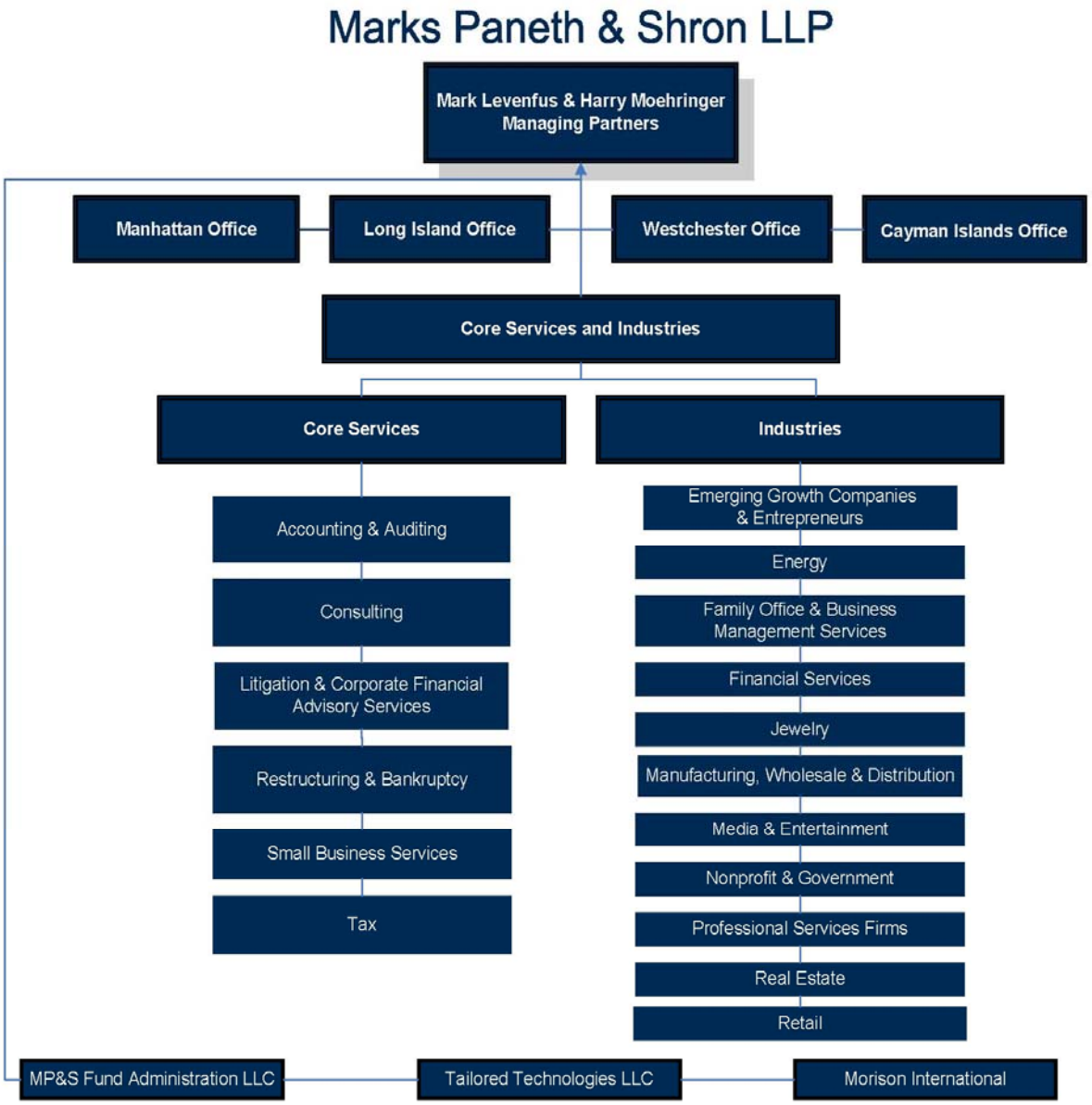
  MI is a global association of leading independent accounting and consulting firms serving clients with complex needs across multiple jurisdictions and continents. MI provides high-quality, full-service member firms worldwide with the ability to meet the cross-border needs of the most complex business models.

  Our membership in MI affords us the opportunity to collaborate with other outstanding professional services firms around the world.

  MI is ranked 9th in the list of associations of independent firms as published in the *International Accounting Bulletin*.

- **Tailored Technologies LLC -** This wholly owned subsidiary of MP&S delivers practical thinking and a proactive approach to solving the business challenges of small to medium-sized companies and nonprofit organizations. Tailored Technologies offers a variety of consultation services to help clients identify their most pressing business issues and develop solutions that enable their people, processes and information technology systems to work together more efficiently. These professionals assist with accounting software selection, project management, process improvement, business continuity planning, IT department assessments, network services as well as IT audits and reviews. Tailored Technologies counts the real estate industry as one of its primary concentrations.

- **MP&S Fund Administration LLC** – MP&S Fund Administration LLC is a wholly owned subsidiary of MP&S, which supports investment fund managers and facilitates compliance with the appropriate regulatory, financial and tax reporting requirements. Additionally, MP&S Fund Administration LLC assists with anti-money laundering (AML) compliance.



Lease Audits

MP&S is highly skilled in auditing leases that include provisions for contingent rental payments. We have been very successful in helping our clients recover significant sums of money as a result of our diligence. We leave no stone unturned when reviewing tenant records in order to determine if rents have been unpaid. Our goal is to help property owners monetize existing leases by recovering unreported revenues.

At the same time, it is very important to us that we maintain a very professional approach when dealing with the landlord's tenants in order to ensure that the landlord/tenant relationship remains harmonious.

Some of the contingent rent provisions in leases that we audit include: percentage rent; subletting profits; transaction payments; other charge-backs, including tenant reimbursement for third-party professional fees in connection with estoppels certificates and lease modifications; operating expense escalations; common area charges and gross-up provisions. We have audited tenants in a variety of industries, including commercial office buildings; retail spaces and complexes; the hospitality sector (hotels, restaurants, entertainment complexes and theaters); industrial space; bio-technology and not-for-profits.

A typical lease audit involves the following steps:

- MP&S preliminary review of contingent lease provisions and tenant financial statements, if available.
- MP&S communicates preliminary findings/observations to landlord.
- MP&S prepares preliminary tenant information request.
- Landlord contacts tenant to inform them that a lease compliance review will be performed and transmits preliminary information request to tenant.
- Kickoff meeting or call between tenant and MP&S to discuss preliminary information request, timing and deliverables.
- MP&S review of detailed tenant information.
- MP&S issues draft report of findings to landlord.
- Meeting with landlord to discuss findings.
- Finalize draft report after discussion with landlord.
- Landlord delivers report with findings to tenant.
- MP&S answers any questions posed by tenant and deals with any issues presented by the tenant. In short, MP&S will deal with all matters pertaining to the lease audit until a resolution is reached.
- If requested, MP&S can negotiate settlement agreements with tenants or provide litigation support services as needed.

LEASE SERVICES

In addition to lease audits, MP&S also has a wide breadth and depth of experience providing the following lease-related services to Landlords:

- Lease structuring and review including "what-if" analyses
- Preparation of lease abstracts and lease data validation services
- Acquisition due diligence, including reviewing leasing assumptions included in net operating income (NOI) projections
- Review of Argus cash flow models
- Review of contingent rent calculations prepared by in-house accounting personnel, including specific tenant CAM, operating and real estate tax escalation pools
- Consulting services, including lease administration and best practices

The term "audit" as used herein is not and should not in any way be construed to be synonymous with the terms "audit," "audit procedures," "compilation," "review" or any form of "attestation" service as described in the pronouncements on professional standards issued by the American Institute of Certified Public Accountants.

REAL ESTATE INDUSTRY EXPERIENCE

The real estate environment is dynamic and requires maintaining a constant focus on trends in leasing, development, financing and proposed tax and regulatory changes.

Marks Paneth & Shron LLP (MP&S) has served the real estate industry for more than 100 years. We have built a solid track record assisting many of the industry's premier commercial and residential real estate owners, builders, developers, owners, investors, property managers and real estate investment trusts in making smart financial decisions. We are the trusted advisors to some of the top real estate developers, owners and management companies in the New York area as well as many of the most prominent real estate families.

Experienced, Knowledgeable Real Estate Advisors to Serve You

Serving the real estate industry is a core focus of MP&S and accounts for approximately 25% of the firm's revenue. Our clients benefit from the breadth and depth of our industry knowledge as well as our customized approach to service delivery and our commitment to offering personalized attention and staff continuity. With more than 100 professionals, including 15 partners and principals who focus on the real estate industry, we bring a wealth of industry expertise to each engagement. Our real estate advisors provide a full range of services to both real estate businesses as well as real estate owners, operators and investors. The MP&S partner who leads your engagement will be actively involved in all services provided by our firm.

Our services are provided by industry-focused, experienced practitioners. The Real Estate group is comprised of:

15 – Partners and Principals
6 – Directors
9 – Managers
71 – Staff

Our team also includes dedicated tax practitioners -many of whom are attorneys as well as CPAs- who have a deep expertise in the Real Estate industry.

In addition to our lease related services, some of the additional real estate services that we provide include, but are not limited to:

Accounting and Auditing

- Audits, reviews and compilations
- Attestation and special purpose reporting, including certiorari and operating expense escalation
- Cost certifications
- GAAP consulting
- Forecasts, projections and budgets
- HUD and DHCR reporting

Transactional Services

- Due diligence - acquisitions and dispositions
- Agreed-upon procedures
- Workouts and restructuring
- Tax credits
- Litigation support and dispute resolution
- Fraud investigations
- Bankruptcy and receivership services
- Technology consulting
- Business Valuations

REAL ESTATE INDUSTRY EXPERIENCE

Tax Services
- Tax planning and consulting
- Cost segregation studies
- Section 1031 like-kind exchanges
- Estate and gift planning
- State and local taxation
- International taxation
- Tax compliance, including preparation of income tax returns

Technology Consulting
- Accounting software selection
- Project management
- Process improvement
- Business continuity planning
- IT development Assessment
- Network services
- IT Audits

Our professionals participate in industry conferences and associations and are members of:

- AICPA Center for Audit Quality and the Employee Benefit Plan Audit Quality Center
- Associated Builders and Owners of Greater New York Association (ABO)
- American Institute of Certified Public Accountants (AICPA)
- Institute of Management Accountants
- National Association of Real Estate Investment Trusts (NAREIT)
- New York Association of Affordable Housing
- New York State Society of Certified Public Accountants (NYSSCPA)
  - Real Estate Committee
  - Multistate Taxation Committee
- Real Estate Board of New York (REBNY)

Our partners and principals have been profiled in *Real Estate Weekly*, *New York Real Estate Journal*, *The Wall Street Journal* and have also been featured on television on NY1 and Bloomberg TV, among others.

Thought leadership written by our partners has appeared in Commercial Investment Real Estate, the Real Estate Financial Journal and New York Law Journal.

Case Study 1

Type of Lease: Ground Lease for Entertainment/Retail space. Tenant was required to pay Landlord 10% of Net Proceeds (Total Receipts less closing costs and Tenant's Basis, as defined) upon a property refinancing.

Client: Landlord/Ground Lessor

Engagement: Review of Tenant's Calculation of a Transaction Payment due to the Landlord upon a refinancing of the property. Based on Tenant's calculation, Tenant reported that zero was due to the Landlord.

MP&S Findings: Tenant reported closing costs that were $1.681MM more than the Tenant incurred and was permitted to deduct in computing Net Proceeds. Additionally, MP&S discovered that the Tenant increased its Basis in the property by $1MM for voluntary reserves that Tenant set aside as per an agreement between partners. Such voluntary reserves were not allowed to be included in Basis unless the Tenant's lender required the funds to be reserved at closing. Additionally, Tenant could not provide support for costs included in Basis totaling $3.812MM and, as such, these costs were disallowed. The Tenant also included capitalized Unincorporated Business Taxes and a refundable security deposit in its calculation of Basis, both of which were not permitted under the Lease. In summary, based on MP&S's review, the Tenant's calculation of Net Proceeds went from a six figure negative number and zero Transaction Payment due to the Landlord, to positive Net Proceeds of $781,000.

Revenue Recovered: **Landlord recovered $120,806 (including interest) and Tenant was responsible for paying 100% of MP&S fees incurred in reviewing the Tenant's calculation.**

Case Study 2

Type of Lease: Class A Office space – over 1,700,000 square feet in Midtown Manhattan. Tenant (Ground Lessee) was required to pay Percentage Rent on operating profits.

Client: Landlord/Ground Lessor

Engagement: Review of Tenant's calculation of Percentage Rent due to the Landlord.

MP&S Findings: Tenant made multiple errors in the calculation of Percentage Rent that resulted in an underpayment of amounts due Landlord:

i.) Tenant excluded interest and investment earnings on operating and certain reserve escrows that were required to be included in the calculation of Percentage Rent.

Case Study 2 (continued)

ii.) Tenant calculated Percentage Rent using an accrual basis of accounting where the lease required a cash receipts and disbursements method. Tenant's use of the accrual basis resulted in the continual deferral of Percentage Rent due to the Landlord.
iii.) Certain charitable and political expenditures deducted by Tenant were not deductible for purposes of the Percentage Rent computation.
iv.) Tenant reduced operating profits by the costs incurred for capital assets and leasehold improvements. Under the terms of the lease, these costs were not allowed as deductions.
v.) Tenant deducted partnership level tax preparation and tax planning costs for the owners of the property that were not includable in the calculation of operating profits for Percentage Rent purposes.
vi.) Tenant deducted excess, above-market insurance premiums paid to a related party captive insurance company.

Revenue Recovered: **Landlord recovered $123,000 from the Tenant.**

Case Study 3

Type of Lease: Multiple leases in a portfolio, including retail, hospitality and office properties.

Client: Landlord

Engagement: Review of in-place leases to identify areas of potential revenue recovery.

MP&S Findings: MP&S identified that several of the leases contained provisions where the tenant could be billed for certain costs incurred by landlord, such as architectural review, legal costs associated with the exercise of renewal options, and legal costs associated with subordination, non-disturbance and attornment agreements.

The client was unaware of these reimbursement provisions in the leases. MP&S reviewed invoices that the Landlord/client paid to certain third-party vendors and identified amounts that could be charged back to Tenants.

Revenue Recovered: **Landlord was able to recover over $65,000 during the two-year period during which recovery was allowed under the lease.**

Further, MP&S helped Landlord understand the reimbursement provisions of the leases and develop a system to ensure all future reimbursable costs are charged back to tenants.

Case Study 4

Type of Lease: Retail space – prime frontage on the Upper West Side of Manhattan.

Client: Landlord

Engagement: Review of Tenant's calculation of rent credits taken during a six year period and review of subletting profits.

MP&S Findings: A portion of the leased space had been subleased to a third-party sublessee. The Lease required the payment of Additional Rent to Landlord based upon sublease profits. A review of the Tenant's books and records revealed that tenant had recognized a substantial profit on the sublease, but failed to make the required Additional Rent payments to Landlord.

In addition, the lease was made to a not-for-profit lessee who had been granted various rent credits contingent on the performance of certain charitable functions. During the course of the lease, the not-for-profit lessee abandoned the performance of the charitable function at the property but continued to claim the full rent credit.

Revenue Recovered: **Landlord recovered in excess of $1,200,000 from the Tenant and the Tenant was responsible for paying 100% of MP&S fees incurred in performing the lease review.**

In addition, the sublessee had become a holdover tenant in the space. MP&S identified that the security deposit of the sublessee (which continued to be held by the lessee) should be transferred to the landlord.

Case Study 5

Type of Lease: Four leases for Class A Office space in Midtown Manhattan.

Client: Landlord

Engagement: Review of lease provisions and Landlord's calculation of rent credits available to Tenants.

MP&S Findings: MP&S determined that the Landlord made several errors in accounting for rent credits granted to the four Tenants. The errors greatly benefited the Tenants.

These leases granted the Tenants significant rent credits for costs incurred by the Tenants in the original development and build-out of the office towers. These rent credits, indexed to inflation, as provided for under the leases, allowed the Tenants to effectively reduce rents due to the Landlord over the remaining terms of the leases.

Case Study 5 (continued)

MP&S identified that the Landlord had failed to record certain rent credits which had previously been taken by the Tenants. Thus, the Landlord had overstated the remaining rent credits that the Tenants were entitled to.

Revenue Recovered: **Landlord notified Tenants of the errors and corrected the rent credits available to Tenants for future offset. As a result of this review, future rent credits available to Tenants were reduced by approximately $16,100,000. Landlord will realize future rent collections in this same amount.**

Case Study 6

Type of Lease: Class A Office space – over 1,000,000 square feet in Midtown Manhattan. Tenant (Ground Lessee) was required to pay Percentage Rent on operating profits.

Client: Landlord/Ground Lessor

Engagement: Review of Tenant's calculation of Percentage Rent due to the Landlord.

MP&S Findings: Tenant made multiple errors in the calculation of Percentage Rent that resulted in an underpayment of Percentage Rent due landlord:

i.) Ownership of the property was transferred during the six-year review period allowed under the lease. The acquiring Tenant excluded operating revenues for the month of acquisition from the Percentage Rent calculation.
ii.) Tenant excluded subtenant late fee income that should have been included in the calculation of Percentage Rent;
iii.) Tenant misclassified and erroneously excluded a certain category of Subtenant reimbursement from the calculation of Percentage Rent;
iv.) Tenant excluded interest and investment earnings on operating and certain reserve accounts that were required to be included in the calculation of Percentage Rent.
v.) Leasehold improvements were not deductible under the terms of the lease.

Revenue Recovered: **Landlord recovered approximately $175,000 from the Tenant and the Tenant was required to pay a portion of MP&S fees incurred in performing the lease audit.**

Case Study 7

Lease Consulting- Acquisition Due Diligence

Client: A major real estate pension fund ("Buyer").

Engagement: Buyer was considering an acquisition of a Class A commercial building located in Boston, Massachusetts. The timeframe for completion of due diligence with respect to reviewing the building's leases and cash flow projections and the performance of an audit in accordance with Rule 3-14 of Regulation S-X of the Securities and Exchange Commission, was a mere 2 weeks. Shortly after that period, the books and records would be off-limits and the purchasers would have to submit their final bids.

The engagement entailed reviewing all of the leases and comparing the lease cash flow projections used in the Argus underwriting model to the actual leases; determining whether there were any remaining Landlord obligations with respect to the leases (i.e. Tenant improvements, work credits, etc.); analyzing samples of Tenant contingent rent payments (expense, real estate taxes, electric, and other operating income reimbursements), and performing a pre-closing review of closing adjustments and pro-rations. At the conclusion of the engagement, an agreed upon procedures report was issued identifying our findings and recommendations.

MP&S Findings: As a result of our review of the leases, we identified a $6,500,000 overstatement in the Argus underwriting model that was prepared by the seller. The lease cash flow projection was overstated, resulting in a preliminary bid for the property that was higher than it should have been given that rents were materially overstated. A mere 3 words which were erroneously added to the end of a sentence in a step-up clause, was all it took for the rent to change dramatically downward; however, due to the wording of the lease, this fact was easily missed by others who had already reviewed the leases and prepared the cash flow models.

Revenue Recovered: **This finding resulted in a purchase price adjustment in favor of our client, the buyer, of approximately $4,500,000. In addition, the team made a number of recommendations concerning maximizing revenue on the closing adjustments which proved to be very beneficial to our client.**

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Susan H. Nadler, CPA, is a Partner at Marks Paneth & Shron LLP. She has been practicing public accounting since 1989. Ms. Nadler has extensive experience serving the real estate industry and works with many of New York City's leading developers, owners, operators and investors providing accounting, attest, consulting and tax services.

Her broad background includes preparing and auditing certiorari filings, special purpose financial statements and operating escalations; performing due diligence on major real estate acquisitions and mezzanine lending arrangements and preparing and reviewing complex cash flow models and financial projections. She also advises her clients on debt financing and loan covenants.

Ms. Nadler has considerable expertise conducting lease audits where she assists owners in maximizing their portfolios by identifying uncollected contingent rent payments including percentage rent, escalations, subletting profits and participation payments. She also helps owners structure leasing arrangements and performs operational audits to identify ways to strengthen internal controls and increase cash flows and work-flow efficiencies.

Ms. Nadler has worked with a number of private equity funds with capital commitments in excess of $3 billion dollars as well as with their investment advisors and sponsors. She leads audits of the funds, reviews multistate income tax returns and tax projections and advises on complex waterfall distribution calculations. She has also performed Sarbanes-Oxley 404 consulting for investment managers and led the team in assisting management in implementing, documenting, testing and providing remediation solutions for their systems of internal controls in order to comply with the Sarbanes-Oxley Act.

For the nonprofit sector, Ms. Nadler has consulted with and advised public foundations on implementing corporate governance policies; maintaining compliance with government grants and adopting sound, cost-effective internal control policies and procedures. She has also overseen Circular A-133 audits and cost certifications.

For the hospitality industry (specifically independent restaurants), Ms. Nadler has performed operational audits, percentage rent reviews, audits of financial statements, structured compensation agreements and reviews of income tax returns.

To share her expertise, Ms. Nadler leads seminars for accounting professionals on a wide range of accounting, auditing and taxation subjects. These classes are accredited for continuing education purposes. She also sits on the Continuing Professional Education (CPE) Committee of Marks Paneth & Shron where her responsibilities include accessing the educational needs of the firm's staff and management, recommending CPE course curricula and developing course materials.

Susan H. Nadler (Continued):

Ms. Nadler has authored several articles including "Revenue Recovery: Lease Audits Can Reveal Hidden Income Potential" in the January/February 2010 issue of *Commercial Investment Real Estate* magazine and "Real Estate Financial Reporting: Understand the Differences Between U.S. GAAP Versus Income Tax Basis Accounting; Then Choose the Option that's Best for your Company", that was published in the *Real Estate Financial Journal* in Winter 2011. She is also a member of the National Editorial Board of *Real Estate Advisor,* a bimonthly newsletter that focuses on the real estate industry.

Ms. Nadler earned her Bachelor of Business Administration in accounting from Hofstra University. She is based at Marks Paneth & Shron's midtown Manhattan headquarters. She resides in Oceanside, New York.

Areas of Specialty:
Audit and Accounting
Real Estate
Lease Audits
Financial Services
Nonprofit
Hospitality
Due Diligence
Internal Controls Remediation

States Licensed In:
New York

Education:
Hofstra University
Bachelor of Business Administration in Accounting

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  Member, Real Estate Committee
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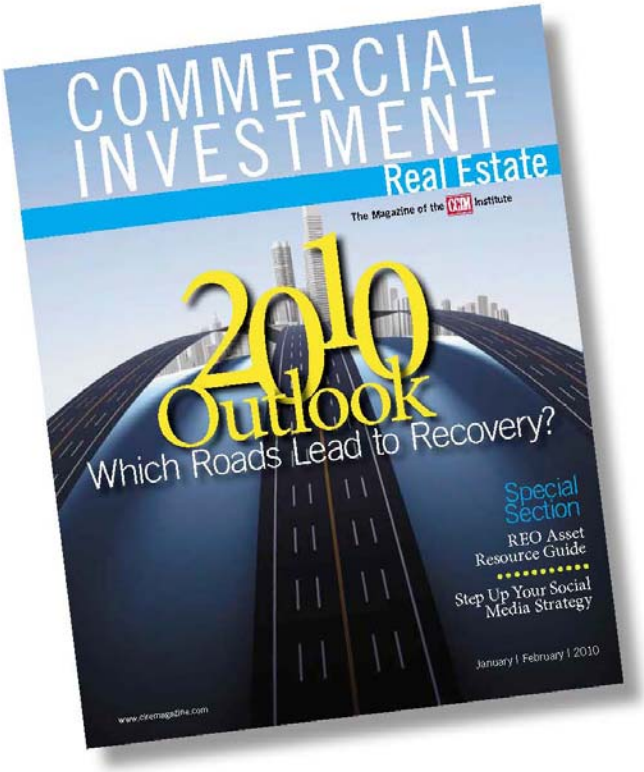

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Revenue Recovery

Lease audits can reveal hidden income potential.

by Susan H. Nadler, CPA

With the commercial real estate industry still in an economic tailspin, now is the time for property owners to look at their existing portfolios and monetize any untapped opportunities. In addition, the new year presents the perfect opportunity for landlords to review lease terms and billing procedures and begin asking the right tough questions — questions that can mean the difference between positive cash flow and money left on the table.

Landlords cannot afford to forgo revenue at any time. However, revenue opportunities often hide in complex lease terms, elude inexperienced staff, or fall through the cracks due to communication and coordination gaps. In other instances, revenue opportunities may not be negotiated into leases, although they should be.

A lease audit may be the solution to lost revenue challenges. It's one of the best ways to find hidden revenue potential among existing tenants under current lease terms.

Missed Opportunities

Consider the following missed revenue opportunities. All of these scenarios translate into significant sums of money left on the table.

Neglecting to Bill Based on Current-Year Estimates. A major commercial landlord and owner of a class A office building in midtown Manhattan wrote into its leases that tenant escalations could be billed based on current-year estimates. However, it chose not to do so to avoid having to return potential overpayments when expenses were trued-up at year-end. Billing based on current-year estimates would have kept the landlord's cash-flow neutral. Instead, the landlord had to wait 90 days after year-end for the retro billings to be done and more than 120 days to collect them. A typical true-up for this landlord was $1 million (15 months) resulting in a forgone $67,000 per month in cash flow.

Lenient Rent Collection. An owner purchased a property and for the first time had a retail tenant (in this case a restaurant). The tenant was required to pay fixed rent plus percentage of sales. A lease audit found that the lease only required the tenant to report sales figures

annually within 90 days of the year-end close. However, the tenant hit the threshold for additional rent in month six. If percentage rent was required to be paid quarterly, the landlord would have received additional income nine months earlier.

Lack of Attention to Critical Detail. A commercial landlord interested in buying a Boston property when market rents were $45 per square foot was performing due diligence on two leases for one tenant, which included step-ups in year 10 based on a certain consumer price index. The leases were almost identical except that one of the leases erroneously added three words to the step-up rent clause: "minus base rent." These three words changed the base rent in year 10 to a maximum of $1.72 psf. It was a simple error that the owner, a sophisticated investor, had overlooked during lease negotiations. Upon discovery of this error during a lease audit, the buyer was able to negotiate a $5 million purchase price reduction to account for the decreased cash flow from the lease.

Targeting Problems

A lease audit can help find these types of deficiencies and offer recommendations for improvements to billing processes, procedures, and internal controls so that these issues don't reappear in the future. It also can flag other problems, such as those caused by lack of internal coordination among departments. Most commercial leases allow owners to pass through over time their cost of capital expenditures, with interest, if the expenditure results in property cost savings. But realizing this revenue opportunity requires communication and cooperation between the operations department that maintains the property and accounting personnel.

For example, if an owner purchased a new energy-efficient heating, ventilation, and air-conditioning system for $1 million — the cost of which can be passed through to tenants over a reasonable period of time (generally not more than 10 years) — yearly cash flow would increase by $100,000 per year before factoring in interest. But to do this, the operations team must calculate and document the cost savings and alert the accounting team. A lease audit can help uncover the communication gap between departments and offer remedial solutions so that revenue doesn't fall through the cracks in the future.

Steps for the New Year

This year commercial landlords should resolve to give their leases and billing procedures a workout with a detailed lease audit. When conducted by skilled professionals, a lease audit is the best way to make sure that commercial leases will produce the maximum possible revenue during the coming year.

Lease audits are always timely. But the start of the year is a particularly opportune time to get leases in shape. For many landlords and tenants, January 1 begins a new calendar-year cycle for calculating escalations, surveying electricity usage, and reviewing other pass-through costs. Lease adjustments and improved billing practices at the start of the year will translate into more revenue and cash flow throughout the year. A good audit at the start of the year typically will involve these steps.

Review Lease Abstracts. Make sure that terms are accurate and that all billable items are entered into the billing system correctly. In particular, the review should focus on step-ups, base amounts, free rent periods, escalation calculations, and rent commencement date. Often, a lease will establish a rent commencement date sometime after the space build-out. But too often landlords are not timely in billing rent because the build-out's completion date has not been communicated to accounting. Operations must coordinate with accounting so that billing can start on the effective date. Update escalation calculations and review for rent adjustments that should be made based on changes in consumer price indexes. Gather support for — and calculate — fair-market value rent step-ups that are due.

Audit Tenants. If tenants are subject to paying contingent rent such as percentage of sales or subletting profits, ensure that all revenue is being properly reported. For retail tenants, visit the tenant on-site and look at the tenant's reporting systems and operations.

Do an Electric Survey. Bring in an energy consultant and quantify electric usage and costs in tenant spaces. Alert accounting to any increases that can be billed.

Review Escalation Calculations. Have an independent party review escalation calculations for accuracy. If costs are expected to rise, are you billing based on current-year estimates rather than prior-year actuals? Consider whether you will be performing any cost-saving capital improvements that should be included in current-year escalation billings and whether any gross-ups should be factored into estimates to get to the occupancy level specified in the lease. With vacancies on the rise, 2010 gross-ups could be significant.

Review Miscellaneous Billings. For some properties, miscellaneous building revenue such as net tenant service charges, overtime HVAC, and condenser water can be extensive. Are there procedures in place to ensure these charges are billed on a timely basis? Are all billable items being captured by your current system? Review leases and costs of sales to determine if any increases in HVAC and condenser water rates are allowed and/or necessary due to cost increases.

Review Internal Controls. Are you as effective and efficient as possible at getting billings — especially retro billings — out quickly? Can you generate accurate revenue data on the fly so that you immediately know what the property is generating? Improved billing systems lead to better cash flow throughout the year.

Hire Skilled Consultants. Lease audits are demanding. A good lease audit requires professionals who are aware of finance, accounting, and operational issues, as well as the realities of the marketplace. Landlords would be well-advised to engage skilled consultants to review all current and prospective leases in depth.

Abrams/Lacagnina/Getty Images

Only @ Are you ready for a lease audit? Review an online checklist to determine if you're leaving money on the table.
www.ciremagazine.com

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REVENUE MAXIMIZATION CHECKLIST-
OPERATING EXPENSE ESCALATIONS

To find out if you could benefit from a lease audit, please take the brief survey below.

Billings

		Yes	No
1.	Our accountants proactively keep us apprised of areas where they feel that we can improve in terms of our billing processes and procedures and maximizing our revenue stream.	☐	☐
2.	We bill based on current year estimated operating expenses when leases allow, rather than on prior year actuals.	☐	☐
3.	We include all allowable gross-ups such as cleaning credits, trash removal credits, electric and security in our escalation charges.	☐	☐
4.	Periodically, we have someone other than the assigned property accountant review Tenant escalation calculations to ensure they are accurate.	☐	☐
5.	Annual capital expenditures are reviewed by operations to determine if they qualify as depreciable pass-through operating expenses due to operating cost savings.	☐	☐
6.	We have reporting systems in place which allow us to perform retro billings (true-ups) within 75 days of the close of the escalation year-end.	☐	☐
7.	CPI adjustments are reviewed to ensure that the correct index and base amount are being utilized.	☐	☐
8.	Common area maintenance charges are continually assessed to determine if all allowable charges are being billed to Tenants.	☐	☐
9.	We engage an energy consultant to assess common area electric charges that we can pass-through to Tenants.	☐	☐

REVENUE MAXIMIZATION CHECKLIST-
OPERATING EXPENSE ESCALATIONS

Lease Abstracts

		Yes	No
1.	Prior to being entered into the billing database system, lease abstracts are reviewed for completeness and accuracy by someone other than the preparer.	☐	☐
2.	Lease modifications are entered into the database billing system in a timely matter.	☐	☐

Lease Audits

3.	For retail Tenants that are required to pay a percentage of sales, our leases require that Tenants report sales at least quarterly, if not more often.	☐	☐
4.	We have systems in place to monitor Tenant compliance regarding submission of financial statements, both audited and unaudited.	☐	☐
5.	From time to time, we exercise our right to perform audits of Tenants who are subject to paying us contingent rent such as percentage of sales, subletting profits, and other forms of participation rent.	☐	☐
6.	We strictly enforce lease provisions which require that certain Tenants produce audited financial statements.	☐	☐
7.	Lease audits performed by our Tenants have NOT resulted in our organization having to refund large sums to Tenants.	☐	☐
8.	Timely electric surveys are performed and Tenant billings are adjusted accordingly.	☐	☐

If you answered no to any question, you should contact Marks Paneth & Shron LLP to arrange a complimentary consultation to discuss how we can assist you in maximizing your revenue stream.

This checklist appeared online in Commercial Investment Real Estate – January/February 2010

THE 2013 accountingTODAY TOP 100 FIRMS

RANK 2013	Firm	Headquarters	Chief executive	Year end	REVENUE $ mn.	Off-ices	PERSONNEL Part-ners	Profes-sionals	Total emps.	FEE SPLIT (in percent) A&A	Tax	MAS	Other
1	Deloitte §	New York City	Joe Echevarria	May	13,067.00	102	2,949	43,294	56,827	31	19	45	5
2	PwC § †	New York City	Robert Moritz	June	9,551.52	73	2,350	NA	35,962	50	27	23	0
3	Ernst & Young §	New York City	Steve Howe	June	8,200.00	78	2,500	22,000	29,600	39	31	24	6
4	KPMG §1	New York City	John Veihmeyer	Sept	5,753.00	90	1,775	17,809	24,383	40	27	33	0
5	McGladrey[2]	Chicago	Joe Adams	April	1,283.44	75	619	4,587	6,526	43	36	20	1
6	Grant Thornton	Chicago	Stephen Chipman	Dec	1,245.36	54	509	4,461	6,214	44	29	27	0
7	CBIZ / Mayer Hoffman McCann[3]	Cleveland	D. Sibits / B. Hancock	Dec	645.84	133	415	1,735	4,010	24	29	47	0
8	BDO USA	Chicago	Wayne Berson	June	618.00	42	267	1,919	2,771	60	29	11	0
9	Crowe Horwath	Oak Brook Terrace, Ill.	Charles Allen	Dec	595.13	28	262	1,860	2,603	31	23	32	14
10	CliftonLarsonAllen[4]	Milwaukee	Krista McMasters	Dec	568.00	90	346	2,281	3,223	40	32	9	19
26	Cherry Bekaert[5]	Richmond, Va.	Howard Kies	April	123.60	15	54	536	760	45	49	6	0
27	Warren Averett*	Birmingham, Ala.	James Cunningham	Dec	114.97	15	120	505	813	40	44	3	13
28	Carr, Riggs & Ingram	Enterprise, Ala.	William Carr	Sept	111.33	18	100	477	714	50	40	10	0
29	Armanino[6]	San Ramon, Calif.	Andy Armanino	Dec	99.76	6	41	271	350	24	26	47	3
30	Berdon	New York City	M. Bosswick / S.Kotler	Dec	97.20	2	39	331	394	30	40	30	0
31	Anchin, Block & Anchin	New York City	Frank Schettino	Sept	93.00	1	52	205	337	44	43	13	0
32	Rehmann	Saginaw, Mich.	Steven Kelly	Dec	90.40	20	56	490	705	45	30	2	23
33	WithumSmith+Brown	Princeton, N.J.	William Hagaman	June	88.72	12	82	261	425	38	33	9	20
34	Marks Paneth & Shron	New York City	Mark Levenfus/ Harry Moehringer	Dec	87.00	3	64	322	475	65	26	3	6
35	Novogradac & Co.	San Francisco	Michael Novogradac	Dec	84.05	15	33	314	407	57	24	7	12
36	O'Connor Davies	New York City	Kevin Keane	Dec	83.70	7	76	286	429	63	26	11	0
37	MBAF CPAs	Miami	Antonio Argiz	June	80.00	9	22	316	399	36	44	13	7
38	Kearney & Co.	Alexandria, Va.	Ed Kearney	Dec	79.89	2	13	277	393	68	0	32	0
39	SS&G	Cleveland	Gary Shamis	Dec	79.00	11	33	385	460	32	36	11	21
40	Sikich	Naperville, Ill.	James Sikich	Dec	76.40	8	50	324	453	33	15	46	6

Notes: ** Firm estimate or projection. § Gross revenue. † Accounting Today estimate. 1 KPMG's office figure comprises business offices, versus every physical location. 2 Changed name from McGladrey & Pullen in May 2012. 3 2012 revenue figure is an AT estimate. 4 Created from the January 2012 merger of Clifton Gunderson and LarsonAllen; did not report combined figures for previous year. 5 Firm changed its name from Cherry, Bekaert & Holland in January 2013. 6 Firm changed its name from Armanino McKenna in January 2013.* NA *Not available/applicable.*

Leaders in A&A

Ranked by revenue

Firms under $100 mn	Rev. share	Fee
1. Marks Paneth & Shron	56.55	65
2. Kearney & Co.	54.33	68
3. O'Connor Davies	52.73	63
4. Novogradac & Co.	47.91	57
5. Friedman	43.40	62

TOP FIRMS: MID-ATLANTIC

Firm	Headquarters	Rev. $ mn.	% chg.	Offices	Partners	Total emps.
CohnReznick	New York City	488.00	3.17	25	280	2,314
Marcum	New York City	275.50	0.47	15	126	904
EisnerAmper	New York City	256.90	0.90	8	173	1,144
Rothstein Kass	Roseland, N.J.	185.00	1.15	8	77	1,014
ParenteBeard	Philadelphia	169.00	-0.59	20	132	978
WeiserMazars	New York City	132.20	6.18	6	105	634
Citrin Cooperman & Co.	New York City	125.00	8.70	5	106	464
Berdon	New York City	97.20	2.32	2	39	394
Anchin, Block & Anchin	New York City	93.00	1.64	1	52	337
WithumSmith+Brown	Princeton, N.J.	88.72	15.64	12	82	425
Marks Paneth & Shron	New York City	87.00	-0.43	3	64	475
O'Connor Davies	New York City	83.70	12.35	7	76	429
Friedman	New York City	70.00	1.16	6	53	316
Schneider Downs	Pittsburgh	55.31	5.84	2	35	336
The Bonadio Group*	Pittsford, N.Y.	54.91	15.53	8	50	336
Rosen Seymour Shapss Martin & Co.	New York City	49.00	-4.48	4	28	220

CRAIN'S NEW YORK BUSINESS

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New York Area's Largest Accounting Firms

Ranked by number of area professionals

Rank	Firm	Phone/website	Managing partner(s) in New York area office	2012 NY area professionals/ % change [1]	2012 NY area audit and accounting professionals [1]	2012 NY area tax professionals [1]	2012 NY area management advisory services professionals [1]	2012 firmwide professionals/ % change [1]	2011 firmwide revenue (in millions)/ % change [2]
1	**PwC** [3] 300 Madison Ave. New York, NY 10017	(646) 471-3000 www.pwc.com	*Brendan P. Dougher*	**7,069** [4] +13.2%	2,741	1,699	1,547	138,417 +5.2%	$29,223.0 +10.0%
2	**Deloitte** [5] 30 Rockefeller Center New York, NY 10112	(212) 492-4000 www.deloitte.com	*Henry Phillips*	**5,561** [6] +7.4%	2,005	943	1,638	n/d n/d	$28,800.0 +8.3%
3	**KPMG** [7] 345 Park Ave. New York, NY 10154	(212) 758-9700 www.kpmg.com/us	*Robert P. Garrett*	**4,969** [8] +5.2%	1,073	960	1,166	118,800 +5.1%	$22,700.0 [9] +10.0%
4	**Ernst & Young** [10] 5 Times Square New York, NY 10036	(212) 773-3000 www.ey.com	*Scott K. Halliday, Carmine DiSibio*	**4,881** +12.6%	1,384	1,211	2,234	127,027 +13.4%	$22,900.0 +7.7%
5	**EisnerAmper** [11] 750 Third Ave. New York, NY 10017	(212) 949-8700 www.eisneramper.com	*Charles Weinstein, Howard Cohen*	**975** -0.5%	700	225	50	1,035 -0.5%	$254.6 +1.9%
6	**Grant Thornton** [12] 666 Third Ave. New York, NY 10017	(212) 599-0100 www.grantthornton.com	*Jack Katz*	**708** -3.5%	398	153	157	5,322 +3.6%	$1,150.0 [13] +5.5%
7	**CohnReznick** [14] 1212 Sixth Ave. New York, NY 10036	(212) 297-0400 www.cohnreznick.com	*Steven Mayer*	**707** [15] +6.5%	353	199	103	1,722 +129.9%	$236.0 +1.6%
8	**Marcum** 750 Third Ave. New York, NY 10017	(212) 485-5500 www.marcumllp.com	*Jeffrey M. Weiner*	**675** +3.8%	351	232	92	1,100 +10.0%	n/d n/d
9	**McGladrey** [16] 1185 Sixth Ave. New York, NY 10036	(212) 372-1000 www.mcgladrey.com	*Donald A. Lipari*	**545** [17] -4.4%	281	170	78	5,206 +2.0%	$1,278.4 [18] -0.6%
10	**Rothstein Kass** 1350 Sixth Ave. New York, NY 10019	(212) 997-0500 www.rkco.com	*Steven Kass, Howard Altman*	**525** +16.4%	298	199	28	800 +18.2%	$181.5 +11.2%
11	**BDO** [18] 100 Park Ave. New York, NY 10017	(212) 885-8000 www.bdo.com	*Brian Eccleston, Randy Schwartzman*	**519** +9.0%	305	113	101	35,935 +3.2%	$5,280.8 [13] +5.6%
12	**WeiserMazars** [19] 135 W. 50th St. New York, NY 10020	(212) 812-7000 www.weisermazars.com	*Douglas A. Phillips*	**426** +6.0%	297	106	23	512 +4.3%	$150.0 +8.7%
13	**Berdon** 360 Madison Ave. New York, NY 10017	(212) 832-0400 www.berdonllp.com	*Mark G. Borowick, Stuart B. Kotler*	**370** +3.1%	148	121	101	370 +3.1%	$95.0 +2.2%
14	**Citrin Cooperman & Co.** 529 Fifth Ave. New York, NY 10017	(212) 697-1000 www.citrincooperman.com	*Joel A. Cooperman*	**357** +0.6%	272	85	0	388 +3.5%	$106.0 +17.8%
15	**O'Connor Davies** 665 Fifth Ave. New York, NY 10022	(212) 286-2600 www.odpkf.com	*Kevin J. Keane*	**345** [20] +6.2%	283	62	5	390 +10.8%	$72.0 +30.9%
16	**Marks Paneth & Shron** 622 Third Ave.* New York, NY 10017	(212) 503-8800 www.markspaneth.com	*Harry Moehringer, Mark Levenfus*	**340** [21] -5.8%	224	96	3	340 -8.4%	$88.2 +0.7%
17	**Anchin Block & Anchin** [7] 1375 Broadway New York, NY 10018	(212) 840-3456 www.anchin.com	*Frank A. Schettino*	**266** +1.5%	163	81	22	266 +1.5%	$105.0 0.0%
18	**Rosen Seymour Shapss Martin & Co.** 757 Third Ave. New York, NY 10017	(212) 303-1800 www.rsmncpa.com	*Michael Bernstein*	**222** -6.3%	165	50	7	222 -6.3%	$49.5 0.0%
19	**Friedman** 1700 Broadway New York, NY 10019	(212) 842-7000 www.friedmanllp.com	*Bruce A. Madnick*	**212** -5.4%	137	58	17	251 -5.3%	$89.2 +10.0%
20	**Margolin Winer & Evens** 370 Lexington Ave. New York, NY 10017	(212) 973-1000 www.mwellp.com	*Teddy Selinger*	**194** -1.0%	151	37	6	194 -1.0%	n/d n/d

New York area includes New York City and Nassau, Suffolk and Westchester counties in New York, and Bergen, Essex, Hudson and Union counties in New Jersey. *Crain's New York Business* uses staff research, extensive surveys and the most current references available to produce its lists, but there is no guarantee that the listings are complete. To qualify for this list, firms must have an office in the New York area. All information was supplied by the firms. n/d-Not disclosed. 1-Full-time and full-time-equivalent, as of June 30, 2012. 2-Firmwide gross revenue. Revenue figures for firms with fiscal years ending in May through December are for the year ended in 2011, and revenue figures for firms with fiscal years ending in January through April are for the year ended in 2012, unless otherwise noted. 3-Fiscal year ends June 30. All head count figures are for the fiscal year ended 2011. 4-Includes 1,082 internal firm service professionals. Excludes 1,834 professionals in Florham Park, N.J., Stamford, Conn., and San Juan, P.R., who are part of PwC's New York metro practice. 5-Fiscal year ends May 31. 6-Includes 975 professionals in client service support. Excludes 2,265 professionals in Parsippany, N.J., Stamford, Conn., and Wilton, Conn., who are part of Deloitte's New York metro practice. 7-Fiscal year ends Sept. 30. 8-Includes 1,770 professionals in client support services. 9-For year ended Sept. 30, 2011. 10-Fiscal year ends June 30. 11-Fiscal year ends Jan. 31. 12-Fiscal year ends July 31. 13-Net revenue. 14-Fiscal year ends Jan. 31. J.H. Cohn and Reznick Group will merge, creating CohnReznick as of Oct. 1, 2012. Head count figures and revenue reflect the merger. 15-Includes 52 professionals outside of audit/accounting, tax and management advisory. 16-Firm changed its name from McGladrey & Pullen on May 1, 2012. Fiscal year ends April 30. 17-Includes 16 client service professionals. 18-Fiscal year ends June 30. All figures for firmwide revenue and head count are for Sept. 30. 19-Fiscal year ends Aug. 31. 20-Includes 14 professionals in client service. 21-Includes 17 professionals in litigation support. Research: Suzanne Panara and Emily Laermer

FOR THE FULL LIST OF TOP 25 ACCOUNTING FIRMS OR ANY *CRAIN'S* LIST, GO TO WWW.CRAINSNEWYORK.COM/LISTS

*Early in 2013, the firm is moving its headquarters to 685 Third Avenue.