



STATE OF NEW YORK

DEPARTMENT OF LAW

REAL ESTATE FINANCE BUREAU

M E M O R A N D U M

**Re: Amendment Submissions and Broker-Dealer
Registration Requirements Pursuant to New
York General Business Law § 359-e**

Date: December 7, 2017

The New York State Department of Law (“DOL”) publishes this memorandum as a guidance document pursuant to New York State Administrative Procedure Act § 102(14).

Introduction

Effective January 1, 2018, the DOL will require all amendment submissions, excluding price change only amendments, to include an accurate, complete, and current broker-dealer registration statement (“current M-10”), or evidence thereof, submitted on behalf of the entity or person(s) submitting the amendment. New York General Business Law (“GBL”) § 359-e requires broker-dealers of real estate securities (“broker-dealers”) to maintain a current M-10 while engaging in sales activity. Because the DOL takes the position that extending the terms of an offering plan by filing an amendment generally evidences a broker-dealer’s intent to engage in sales activity,¹ a broker-dealer must have a current M-10 to amend an offering plan.

Broker-Dealer Registration Requirements Pursuant to New York General Business Law § 359-e

Pursuant to GBL § 359-e(3), “it shall be unlawful for any dealer, broker or salesman to sell or offer for sale to or purchase or offer to purchase from the public within or from [New York State], any securities to be offered, unless and until such dealer, broker or salesman shall have filed with the Department of Law a registration statement.” The GBL authorizes the DOL to prescribe forms relating to broker-dealer registration statements and require broker-dealers to provide other pertinent information that the DOL deems necessary. *See* GBL §§ 359-e(3), 359-e(3)(a), 359-e(4). Accordingly, the DOL requires broker-dealers of real estate securities to file an M-10 Broker-Dealer Registration Statement (“M-10”); in the case of a change in such information, the DOL requires broker-dealers to file a Supplemental Broker-

¹ Please note, however, that the DOL does not deem the submission of amendment abandoning an offering plan to be dispositive of a broker-dealer’s intent to offer real estate securities.

Dealer Registration Statement (“M-3”). *See* 13 N.Y.C.R.R. Part 10. The GBL requires the registration of broker-dealers to facilitate the DOL’s regulation and investigation of broker-dealers and allow investors to make informed decisions about “those they are trusting with their money.” *People v. Landes*, 84 N.Y.2d 655, 662 (1994).

Pursuant to GBL § 359-e(3)(c), the registration of brokers, dealers, and salesmen shall be for a period of four (4) years plus an additional ninety (90) days following the end of the four-year period. Thus, broker-dealer registration statements must be filed every four years. Broker-dealers must maintain a current M-10 while participating in any sales activity.

Broker-dealers can access M-10 and M-3 forms at the following web address:

<https://ag.ny.gov/real-estate-finance-bureau/forms>.

Updated Procedures for Amendment Submissions

Effective January 1, 2018, the DOL will require all amendment submissions, excluding price change only amendments, to include a current M-10, or evidence thereof, submitted on behalf of the entity or person(s) submitting the amendment.

If the submitter’s M-10 is current at the time of amendment submission, the amendment must include evidence of the valid M-10 in the form of either (i) a copy of the most recently filed and current M-10, and/or (ii) a receipt/certificate issued by the DOL indicating a current M-10.² Please be advised that submitting both the copy of the current M-10 and the M-10 receipt/certificate may assist in expediting the amendment’s review.

If the submitter’s M-10 is current at the time of amendment submission but neither the copy of the current M-10 nor the M-10 receipt/certificate is available, the amendment submission must include an affidavit attesting to the filing date of the submitter’s current M-10. The model “Affidavit of Current But Unavailable M-10” is annexed hereto as Exhibit A. Submitters should note that their broker-dealer registration status can be requested at the following web address:

<https://ag.ny.gov/request-broker-dealer-registration-status>.

The DOL reserves the right to reject for submission substantive amendments that do not include evidence of the submitter’s current M-10 in the aforementioned format. If the submitter’s M-10 is not current at the time of amendment submission, the DOL will not accept such amendment for submission unless it includes a new M-10 submitted on behalf of the entity or person(s) submitting the amendment. The DOL strongly recommends that a new M-10 be submitted simultaneously with the amendment submission in such instances. If the new M-10 is submitted simultaneously with an amendment, the submitter must (i) disclose in the attorney transmittal letter the submission of the new M-10 using a **bold-faced font**, and (ii) include a separate check for the M-10 filing fee (in addition to the amendment filing fee). If the DOL issues any deficiencies for such newly submitted M-10, the DOL will not accept the amendment for filing until the deficiencies are cured.³

² The copy of the current M-10 must be a copy of the M-10 that was most recently filed with the DOL. The DOL reserves the right to reject submissions that include a copy of M-10 that was not filed with the DOL or an M-10 that is not current.

³ Please note that the DOL’s record room may issue additional M-10 deficiencies after the amendment is accepted for filing. Notwithstanding the foregoing, such deficiencies will not affect the amendment’s date of acceptance. However, the DOL reserves the right to withhold its official amendment acceptance letter until such deficiencies are cured.

Please note that the DOL's broker-dealer registration requirements are not limited to the amendment submission requirements outlined in this guidance document. For specific information regarding broker-dealer registration requirements in connection with other types of submissions to the DOL (*e.g.*, offering plans, no-action applications, applications pursuant to cooperative policy statements), submitters should refer to DOL regulations, cooperative policy statements, and relevant guidance documents as applicable.

The DOL has the authority under Article 23-A of the GBL to investigate and strictly enforce violations of the statutes and regulations governing broker-dealer registration requirements. Nothing contained in this guidance document shall be construed to be a waiver of or a limitation on the DOL's authority to take enforcement action pursuant to Article 23-A of the GBL and other applicable provisions of law, except as expressly stated herein.

EXHIBIT A

**AFFIDAVIT OF PRINCIPAL OF SPONSOR REGARDING
CURRENT BUT UNAVAILABLE BROKER-DEALER REGISTRATION STATEMENT**

**Re: [Name of Property]
[Address of Property]
File Number: [File Number]**

STATE OF _____)
 : ss.:
COUNTY OF _____)

I, *[name of principal]*, a principal of *[name of Sponsor]*, being duly sworn, depose and say under penalty of perjury:

1. *[Name of sponsor]* (“Sponsor”) is the sponsor of the offering plan (the “Plan”) for the property captioned above.
2. The other principals of Sponsor are: *[name all principals]*.
3. Sponsor last filed its M-10 Broker-Dealer Registration Statement prior to engaging in the offer and sale of real estate securities with the New York Attorney General on *[insert month, date, and year the M-10 was filed]* *[and filed a Supplemental Statement on [insert month, date, and year the M-3 was filed]]*.
4. Sponsor’s Broker-Dealer Registration Statement will expire on *[insert month, date, and year]*.⁴
5. Sponsor conducted due diligence in order to obtain a copy of its current M-10 Broker-Dealer Registration Statement and/or a copy of the receipt/certificate indicating a current M-10. However, Sponsor failed to retrieve a copy of either document despite its best efforts.
6. The undersigned represents and warrants that *[she/he]* shall ensure that the broker-dealer registration is accurate, complete, and current while conducting any sales activities.

*[Name of Affiant]*⁵

Sworn to before me this
____ day of _____, 20_____
Notary Public
[Affix stamp]

⁴ This should be the actual date of M-10 expiration, not including the extra ninety-day period pursuant to GBL § 359-e(3)(c).

⁵ Note that the affidavit must be signed by the principal of Sponsor in her or his individual capacity.