



STATE OF NEW YORK

DEPARTMENT OF LAW

REAL ESTATE FINANCE BUREAU

M E M O R A N D U M

**Re: Filing Requirements With the Department
of Law Pursuant to SEC Regulation A+,
Effective on June 19, 2015**

Date: July 6, 2015

The Securities and Exchange Commission (“SEC”) rules implementing Title IV of the Jumpstart Our Business Startups Act (“JOBS Act”), also known as Regulation A+, effective on June 19, 2015, creates two tiers of offerings under Section 3(b)(2) of the Securities Act of 1933. Tier 1 offerings – offerings of up to \$20 million in a 12-month period, with not more than \$6 million of offers permitted by selling security-holders that are affiliates of the issuer – are **not** preempted from state securities registration requirements. Tier 2 offerings – offerings of up to \$50 million in a 12-month period, with not more than \$15 million of offers permitted by selling security-holders that are affiliates of the issuer – are preempted from state securities registration requirements.

As of the effectiveness date of Regulation A+, issuers of Tier 1 offerings concerning real estate ventures will be required to register with the Department of Law (“DOL”) pursuant to 13 N.Y.C.R.R. § 16. For these Tier 1 issuers, the exemptions set forth in Policy Statement 102 (“PS102”) and Policy Statement 104 (“PS104”) will be available.

PS102 provides for an exemption under New York General Business Law (“GBL”) §§ 352-g(2) and 359-g(2) for real estate syndication offerings registered with the SEC (“SEC”) under the Securities Act of 1933. PS104 provides for an exemption from the filing requirements of GBL § 352-e for certain offerings that fall within the statutory subcategories of GBL § 359-f(2).

Tier 2 offerings will be exempt from the DOL’s registration requirements; thus, issuers will only have to file notification filings with the DOL. Please note that our current notification filing form, Form 99, covers notification filings for offerings made to “qualified purchasers” as defined by Section 18(b)(3) of the Securities Act of 1933. Section 18(b)(3) states that “qualified purchasers” may be defined “differently with respect to different categories of securities.” In Regulation A+, a “qualified purchaser” is

defined as any person(s) to whom securities are offered or sold in a Tier 2 offering. Thus, Form 99 should be filed by Tier 2 issuers.

PS102 application can be accessed via

http://www.ag.ny.gov/sites/default/files/pdfs/bureaus/real_estate_finance/PS102.pdf

PS104 application can be accessed via

http://www.ag.ny.gov/sites/default/files/pdfs/bureaus/real_estate_finance/PS%20104%20w%20cover.pdf

Form 99 can be accessed via

http://www.ag.ny.gov/sites/default/files/pdfs/bureaus/investor_protection/form99.pdf