

CHAPTER III THEATRICAL SYNDICATION FINANCING
PART 50
THEATRICAL FINANCING

(Statutory authority: Arts and Cultural Affairs Law, art. 23)

| | |
|--|--|
| Sec. | Sec. |
| 50.1 General | 50.5 Amended offering literature |
| 50.2 Contents of investment agreements | 50.6 Method of filing offering literature |
| 50.3 Contents of offering literature | 50.7 Exhibits and underlying documents to be |
| 50.4 Additional contents of offering literature filed in connection with an offering for a theatrical production company which will use the proceeds for more than one production or for one or more non-specified productions | submitted to the Office of the Attorney General with offering literature |
| | 50.8 Abandonment or withdrawal |

Section 50.1 General provisions. (a) Chapter 876 of the Laws of 1983 when referred to below and in all rules and regulations issued by the Attorney General relating thereto shall be referred to as the New York Theatrical Syndication Financing Act.

(b) The Bureau of Investor Protection and Securities of the Department of Law shall be responsible for the administration of the Theatrical Syndication Financing Act.

(c) Whenever in this Part there is reference to submission to or filing with the Office of the Attorney General, this shall mean the Bureau of Investor Protection and Securities at 120 Broadway, 23rd floor New York, N.Y. 10271.

(d) The terms "theatrical production" and "theatrical production company" as used in this Part shall be given the same meaning as in the definition thereof in subdivision 1 (a) and 1 (f), respectively, of section 23.03 of the Arts and Cultural Affairs Law.

(e) The term "production purpose" shall mean those expenditures incurred in connection with productions which are

co-produced, developed or invested in by the theatrical company subsequent to the completion of the minimum offering and the formation of the partnership or other organization, including reimbursements for expenditures previously incurred by the offeror or other issuer, if such expenditures are demonstrably related to the theatrical production.

(f) The term "pre-production purpose" shall mean those expenditures incurred in connection with productions which are produced, co-produced, developed or invested in by the theatrical production company prior to the completion of the minimum offering, provided however that such term shall not include in its meaning the payment of any fees or expenses for travel, lodging and meals of the issuer or other offeror, of any affiliate of the issuer or other offeror, or of a third party producer with whom the theatrical production company funds are invested.

(g) The term "business of the theatrical production company" may include all the activities which are

permitted to be conducted by a theatrical production company pursuant to subdivision 1 (f) of the Arts and Cultural Affairs Law and shall have the same meaning as set forth on behalf of the issuer or other offeror in section 50.4 (a) (1), below.

(h) The term "organizational and offering expenses" as used in this Part shall mean expenses incurred by the theatrical production company in connection with its registration and/or filing, and its offer and distribution of theatrical syndication interests (including filing fees, attorney fees, and disbursements), provided, however, that such costs are reasonable and in no event exceed 15% of the gross proceeds of the offering.

(i) The term "offering literature" shall mean a prospectus or offering circular or private placement memorandum.

(j) The term "principal" as used in this Part shall be given the same meaning as in the definition thereof in subdivision 1 (d) of section 23.03 of the Arts and Cultural Affairs Law.

(k) The term "affiliate" shall refer to any person directly or indirectly controlling, controlled by or under common control with another person; or any officer, director, partner, co-partner, or employee of such other person.

(l) The term "executive officer" means the president, secretary, treasurer, or any vice-president in charge of a principal business function (such as sales administration or finance) and any other person who performs similar policy making functions.

(m) Pursuant to the provisions of subdivision 3 of section 23.03 of the Arts and Cultural Affairs Law, the Attorney General shall permit the use of offering literature, for the purposes set forth in that section, if in the form of a prospectus filed with the Securities and Exchange Commission as part of a registration statement which has become and remains effective pursuant to the terms of the Securities Act of 1933 or, under authority of this Part, in the form of an offering circular filed with such commission as part of a notification which has become and remains effective pursuant to regulation A under the Securities Act of 1933; provided, however, that two true copies of such prospectus or offering circular, two true copies of the investment agreement, and proof by affidavit or otherwise be filed with the Office of the Attorney General of the effectiveness of such prospectus or offering circular prior to its use in New York. A proposed draft of a prospectus or offering circular and of the investment agreement may be submitted to the Office of the Attorney General at the time it is submitted to the Securities and Exchange Commission for the sole purpose of receiving comments thereon, prior to the commencement of the offering and the formal filing of the aforementioned documents pursuant to this Part and Article 23 of the Arts and Cultural Affairs Law.

(n) Unless otherwise provided by this Part or Article 23 of the Arts and Cultural Affairs Law:

(1) An offeror or other issuer of syndication interests in a theatrical production company shall file with the Office of the Attorney General and distribute to prospective investors offering literature prepared pursuant to the Securities Act of 1933 containing the applicable information required by section 50.3 and, if applicable, section 50.4 of this Part.

(2) Where not more than \$500,000 is the total amount of the theatrical offering, including the right to an involuntary overcall, the provisions of this Part and subdivision 3 of section 23.03 of the Arts and Cultural Affairs Law shall be deemed to be satisfied by the use of an investment agreement clearly setting forth in easily readable print all of the terms of the offering. A copy of such document may be filed with the Department of Law in lieu of a prospectus or offering circular in the manner set forth in

the aforesaid statute and this Part and shall be deemed to be offering literature. This provision shall not be applicable, however, to offerings subject to the requirements of Section 50.4 of this Part.

(o) The provisions of section 50.1 (n) above shall not apply to offerings made to fewer than 36 persons where an express waiver in writing to the filing and offering circular requirements of 3 of section 23.03 of the Arts and Cultural Affairs Law is filed with the Office of the Attorney General by or on behalf of each investor, which shall be in the following or substantially similar form:

I am purchasing \$ _____ in limited partnership (or other) interests from _____ for the theatrical production company of _____.

I am aware that no offering literature has been filed with or in any way examined by the Attorney General of the State of New York. I expressly waive my right to have a prospectus, offering circular or private placement memorandum filed with the Attorney General, and I further expressly waive my right to receive information in a prospectus, offering circular or private placement memorandum that would otherwise be required by certain provisions of Law.

Complete the following by checking the appropriate box.

- This investment is being made on my own behalf only.
- This investment is being made on behalf of the following

persons, each of whom has executed this waiver by separate copy attached hereto: (Furnish names, addresses and amounts).

This investment is being made on my own behalf in the amount of \$, and on behalf of the following persons, each of whom has executed this waiver by separate copy attached hereto: (Furnish names, addresses and amounts.)

/s/ _____
Print Name _____
Address _____

Dated:

If the investor executing the above waiver is a partnership or corporation, set forth the names and residence addresses of the general partner or partners, in the case of a partnership, or the executive officers, directors or majority shareholders, in the case of a corporation, who made the investment decision; the date of formation or incorporation and a representation by an attorney (or a principal of the investor) that the partnership or corporation was not formed for the sole purpose of investing in the theatrical production company. If the company was formed for such purpose, provide a list of partners or shareholders, each of whom shall be counted as a person for the purpose of this sub- section. Such information may be submitted in a letter to the Office of the Attorney General.

(p) Interest, if any, earned on investors' contributions shall be subject to the following conditions:

(1) Investors who authorize the use of their contributions prior to the completion of the offering, in accordance with Section 50.2 (a) (4), will be deemed to have also authorized the expenditure of interest earned on their contributions. In the event the offering is not completed, any unexpended balances must be returned to such investors pro-rata.

(2) Investors who do not authorize the use of their contributions prior to the completion of the offering will be deemed not to have authorized the expenditure of the interest earned on their contributions. In the event the offering is not completed, the contributions of such investors and all interest earned thereon must be returned in full.

(3) Investors who do not authorize the use of their contributions prior to the completion of the offering may nevertheless authorize the use of any interest earned thereon in accordance with section 50.2(a) (4). In the event the offering is not completed, the contributions of such investors shall be returned in full together with their pro rata share of any interest earned thereon which has not been expended to meet the expenses of the theatrical production company.

(4) Upon completion of the offering the interest earned on contributions of investors in categories (1), (2) and (3) above shall be considered as income to the theatrical production company.

(q) Notwithstanding any other provision in this Part, in the event an offering of interests in a theatrical production company is initially made to fewer than five persons for the sole purpose of obtaining "front money", as hereinafter defined, the provisions of section 50.1 (m) of this Part shall not apply to such initial offering, regardless of the ultimate number of persons to whom the offering is eventually made or the amount of the offering. In the event additional interests are offered in the theatrical production company, all provisions of this Part shall then become applicable to the offering to additional participants. The term front money as used herein shall mean funds which may be used only for the following preproduction purposes of the proposed theatrical production company: fees; advances; deposits or bonds made for the purpose of purchasing options on a book, play or other underlying materials; engaging creative personnel; securing a theater; retaining legal, accounting and other professional advisors; preparing offering documents; the costs of a workshop to be presented by the issuer or other purposes reasonably related to the business of the theatrical production company for which the front money was raised; provided, however, that such funds shall not be used to invest in another theatrical production company; and provided, further however, that it shall not include in its meaning the payment of any fees or expenses for travel, lodging and meals of the issuer or other offeror of a theatrical production company or

of any affiliate of such issuer or other offeror or of a third party producer with whom the theatrical production company funds are invested, unless permission for such use is expressly granted by the front money investor in the front money agreement.

50.2 Contents of investment agreements. (a) All investment agreements must contain the following:

(1) A statement that: "All monies raised from this offering and sale of syndication interests shall be held in a special bank account in trust until actually employed for preproduction or production purposes of this particular theatrical production company or until returned to the investor or investors."

(2) A statement that financial statements will be furnished to all investors and the Office of the Attorney General pursuant to the provisions of Article 23 and the regulations issued by the Attorney General thereunder.

(3) If the offering is for one or more specified productions a representation that the issuer or other offeror has acquired the right to develop, produce or invest in the theatrical production or productions which are the subject of the offering, the date or dates on which such right or rights were acquired and the expiration date of such right or rights. If the offering is for or includes one or more non-specified theatrical productions, a representation that the issuer or other offeror will acquire the rights to the first production to be presented, or the right to invest in a production, or will enter an agreement to develop a production before expending any of the proceeds of the offering may be used for the limited purpose of acquiring such production rights, costs reasonably related to such acquisition, and organizational and offering expenses.

(4) A statement, where permitted by this Part, that where authorized by investors, contributions may be used for preproduction or production purposes prior to the completion of the offering. If the issuer or other offeror intends to use the interest earned on investors' contributions, when permitted to do so by the individual investors, this option must be fully explained. State whether and under what circumstances the issuer or other offeror agrees to refund such contributions and any interest earned thereon. No authorization for such use shall be effective unless and until the signature of the investor has been obtained on a separate signature page in the investment agreement. Investors shall not, however, be required to authorize use of their contributions or any interest earned thereon prior to the completion of the offering as a condition of their investment. Such authorization shall be set forth in capital letters in boldface roman type or if

typed, in capital letters with underlining, as follows:

**LIMITED PARTNERS AUTHORIZING IMMEDIATE
USE OF FUNDS NOT WAIVING REFUND**

THE FOLLOWING SIGN THE FOREGOING AGREEMENT AS LIMITED PARTNERS AND AGREE THAT THEIR CONTRIBUTIONS MAY BE USED FORTHWITH BY THE GENERAL PARTNERS FOR PRODUCTION OR PREPRODUCTION PURPOSES. THE UNDERSIGNED DO NOT WAIVE THEIR RIGHT OF REFUND OF ANY PORTION OF SUCH CONTRIBUTION EXPENDED FOR SUCH PURPOSES AND RELY ON THE GENERAL PARTNERS TO REFUND THEIR CONTRIBUTION IN THE EVENT THE OFFERING IS ABANDONED PRIOR TO FULL CAPITALIZATION OF THE PARTNERSHIP. SUCH REFUND

IS THEREFORE CONTINGENT UPON THE GENERAL PARTNERS' FINANCIAL ABILITY TO MEET THIS OBLIGATION. THE UNDERSIGNED OBTAIN NO ADVANTAGE BY ENTERING INTO THIS ARRANGEMENT UNLESS SUCH ADVANTAGE HAS BEEN NEGOTIATED WITH THE GENERAL PARTNER OR PARTNERS.

**LIMITED PARTNERS AUTHORIZING IMMEDIATE
USE OF FUNDS AND WAIVING RIGHT OF REFUND**

THE FOLLOWING SIGN THE FOREGOING AGREEMENT AS LIMITED PARTNERS AND AGREE THAT THEIR CONTRIBUTIONS MAY BE USED FORTHWITH BY THE GENERAL PARTNERS FOR PRODUCTION OR PREPRODUCTION PURPOSES. THE UNDERSIGNED WAIVE THEIR RIGHT OF REFUND OF ANY PORTION OF SUCH CONTRIBUTION EXPENDED FOR SUCH PURPOSES IN THE EVENT THE OFFERING IS ABANDONED PRIOR TO FULL CAPITALIZATION OF THE PARTNERSHIP. THE UNDERSIGNED OBTAIN NO ADVANTAGE BY ENTERING INTO THIS ARRANGEMENT UNLESS SUCH ADVANTAGE HAS BEEN NEGOTIATED WITH THE GENERAL PARTNER OR PARTNERS.

**LIMITED PARTNERS AUTHORIZING IMMEDIATE
USE OF INTEREST EARNED ON THEIR CONTRIBUTION
AND WAIVING THEIR RIGHT TO A REFUND THERETO**

THE FOLLOWING SIGN THE FOREGOING AGREEMENT AS LIMITED PARTNERS AND AGREE, ONLY, THAT THE INTEREST EARNED ON THEIR CONTRIBUTIONS MAY BE USED FORTHWITH BY THE GENERAL PARTNERS FOR PRODUCTION OR PREPRODUCTION PURPOSES . THE UNDERSIGNED WAIVE THEIR RIGHT OF REFUND TO ANY PORTION OF THE INTEREST EARNED ON THEIR CONTRIBUTIONS WHICH HAS BEEN EXPENDED FOR SUCH PURPOSES IN THE EVENT THE OFFERING IS ABANDONED PRIOR TO FULL CAPITALIZATION OF THE PARTNERSHIP. THE UNDERSIGNED OBTAIN NO ADVANTAGE

BY ENTERING INTO THIS ARRANGEMENT UNLESS SUCH ADVANTAGE HAS BEEN NEGOTIATED WITH THE GENERAL PARTNER OR PARTNERS.

If the theatrical production company will use the proceeds for more than one production or for one or more non-specified productions and offering literature is filed pursuant to Section 50.4 of this Part, the authorization of investors to use their contributions for the limited purpose of acquiring production rights, costs reasonably related to such acquisition, and organizational and offering expenses may be set forth by amending the first sentence in the above legends to read as follows:

THE FOLLOWING SIGN THE FOREGOING AGREEMENT AS LIMITED PARTNERS AND AGREE THAT THEIR CONTRIBUTIONS MAY BE USED FORTHWITH FOR THE LIMITED PURPOSE OF ACQUIRING PRODUCTION RIGHTS, COSTS REASONABLY RELATED TO SUCH ACQUISITION, AND ORGANIZATIONAL AND OFFERING EXPENSES.

If the form of the theatrical production company is other than a limited partnership, the above stated legend language shall be appropriately altered.

(b) An investment agreement filed pursuant to Section 50.1 (n) (2) must also contain the following:

(1) A statement on the front cover page in capital letters printed in boldface roman type at least as large as 10-point modern type and at least two points leaded (or if typed, with underlining):

THIS AGREEMENT IS BEING USED IN LIEU OF A PROSPECTUS OR OFFERING CIRCULAR PURSUANT TO AN EXEMPTION UNDER NEW YORK LAW. THE ATTORNEY GENERAL OF THE STATE OF NEW YORK HAS NOT REVIEWED THIS DOCUMENT OR ANY OTHER DOCUMENT SUBMITTED TO INVESTORS IN CONNECTION WITH THIS OFFER FOR THE ADEQUACY OF ITS DISCLOSURE AND DOES NOT PASS ON THE MERITS OF THIS OFFERING.

(2) The total amount of expenses that have been advanced at the date of filing such agreement with the Office of the Attorney General and are to be reimbursed out of the capitalization, an itemized breakdown of same and the time and conditions of repayment of such advances.

(3) Information regarding the producers required by Section 50.3 (d) (7), but not a description of their background and theatrical business experience.

(c) An investment agreement filed pursuant to Section 50.1 (o) must also contain the following:

(1) Information regarding the producers required by (b) (3)

above. Alternatively, such information may be submitted in a letter to the Office of the Attorney General.

(2) A statement on the front cover in capital letters printed in 10-point modern type and at least two points leaded (or if typed, with underlining):

PURSUANT TO THEIR WRITTEN WAIVER, SUBSCRIBERS TO THIS AGREEMENT ARE NOT RECEIVING A PROSPECTUS OR OFFERING CIRCULAR FILED WITH THE ATTORNEY GENERAL WHICH WOULD OTHERWISE BE REQUIRED UNDER NEW YORK LAW. THE INFORMATION IN THIS DOCUMENT OR ANY OTHER DOCUMENT SUBMITTED TO INVESTORS IN CONNECTION WITH THIS OFFER HAS NOT BEEN REVIEWED BY THE ATTORNEY GENERAL FOR THE ADEQUACY OF DISCLOSURE AND THE ATTORNEY GENERAL DOES NOT PASS ON THE MERITS OF THIS OFFERING.

50.3 Contents of offering literature for a particular specified production filed pursuant to section 50.1 (n) (1) in connection with an offer to fund a particular specified production. (a) There shall be set forth on the outside front cover page the following:

(1) a statement in capital letters printed in boldface roman type at least as large as 10-point modern type and at least two points leaded (or if typed, with underlining):

THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
DOES NOT PASS ON THE MERITS OF THIS OFFERING

There shall be no other reference to filing with the Attorney General or the Office of the Attorney General anywhere in the offering literature.

(2) the name or proposed name of the theatrical production company and its proposed purpose;

(3) the name of the issuer or other offeror;

(4) the maximum and minimum amount of the offering;

(5) the amount of overcall, if any:

(6) the proposed site of the production, such as Broadway, off-Broadway, bus and truck, regional theater; and the seating capacity of the theater for which the production is geared;

(7) if a portion of the funds is to be used to pay for the costs of a "workshop" or other developmental production, this fact must be disclosed immediately after the proposed site of the production, in a box which shall contain the following or substantially similar language:

\$ of the total amount to be raised pursuant to this offering will be used to pay for the costs of a "workshop" production (if other form of developmental production, so

state). Depending upon the outcome of that venture there is a possibility that a subsequent full-scale production may never take place. Investors who authorize the use of their contributions prior to the completion of the offering, in

particular, should note that their contributions may have been expended for the workshop production and may not be returned to them even if the production which is the subject of this offer is never presented.

If the "workshop" or other developmental production has already been produced, the second sentence of the legend, above, may be deleted and the body of the offering literature shall include the information required by Section 50.3 (d) (25).

(8) the date of the offering literature (leave blank until notified acceptance for filing by Office of the Attorney General) followed by a statement that the offering literature may not be used for a period of more than nine months thereafter. Such statement shall not eliminate the need to amend the offering literature during said nine-month period as provided herein.

(b) Table of Contents. Immediately following the cover page there shall be included a table of contents showing the location in the offering literature of the information required to be included pursuant to this section.

(c) Risk Factors. There shall be set forth in the forepart of the offering literature, under an appropriate caption, a carefully organized series of short, concise paragraphs summarizing the principal factors that make the offering speculative or one of high risk. Included shall be a paragraph containing the following or substantially similar language: The issuer (or other offeror) may abandon this venture at any time for any reason whatsoever. If such abandonment occurs after all the interests offered hereunder have been purchased and before the opening of any production financed by the company, the investors must be prepared for the loss of all or substantially all of the amount of their investment.

(d) Body. Where applicable, the following facts should be set forth with respect to the proposed or contemplated production:

(1) The nature of the production, i.e., drama, comedy, musical, revue. A brief description of the plot is not required but may be set forth if desired.

(2) The form of business organization of the theatrical production company.

(3) The principal address of the theatrical production company.

(4) The date or proposed date of the formation of the theatrical production company (if the form of business organization is a limited partnership, whether it will be formed before it is fully subscribed or upon completion of the offering); the date or proposed date of the production.

(5) The type of investment unit being offered, i.e., limited partnership, corporate stock, promissory note; the minimum amount

of each investment unit; the maximum amount of capital being raised and the minimum amount of capital that must be raised to complete the offering which may be no less than 75% of the maximum amount of capital that may be raised, including any overcall.

(6) The time when subscriptions are due and payable and the amount and terms of the overcall, if any. In the event additional funds are required for the business of the theatrical production company above the amount being offered, including any overcall, set forth the responsibility, if any, on the part of the producers to make such funds available.

(7) The names and residence addresses of the producers and a short, concise, factual description of their relevant background and theatrical business experience for the past five years. Such description should be used to aid the investor in

evaluating the relevance of the producer's experience to the present undertaking. For example, if a Broadway production is contemplated, Broadway experience or the lack of it should be cited. The use of adjectives and undefined terms should be avoided. If prior productions are cited, provide data regarding the return to investors in said productions. If any of the producers are partnerships or corporations, the names and residence addresses of all principals and a short, concise, factual description of their relevant background and theatrical business experience for the past five years. If the producing corporation is owned or controlled by another corporation, the above stated information is required for such corporation or any other corporation ultimately in control of the producer. Additionally, where the producer is a corporation owned or controlled by another corporation, state who will control the management and affairs of the theatrical production company. Identify any executive producer or individual with a similar title and state what his functions will be.

(8) A brief description of all contracts or agreements entered into by the theatrical production company, or which it is intended will be assigned to or acquired by the theatrical production company. This description should include the name of the party or entity with which the contract has been made, the nature of the transaction or services involved and the

terms thereof. Creative personnel who have committed themselves to the production may be described briefly and factually with respect to their background as it is relevant to the function they will perform. With respect to any agreement respecting the right to produce develop or invest in the theatrical production, include also the expiration date, provisions for the extension of such date, a description of the subsidiary rights and disclose any disputes or claims regarding the production rights. In the event that a theater owner, an electrical or scenery contractor or other such contractor has committed himself to an investment in the theatrical production

company, the possible lack of competition resulting therefrom, with regard to such services, should be disclosed. In the event a series of contracts has been entered into of a similar nature with such parties as players who will not be in a starring role, musicians, etc., such contracts may be summarized in one category.

(9) Use of proceeds of the offering including an itemization in reasonable detail of proposed preproduction expenses. The budget should reflect that there will be sufficient funds available to produce the play if the minimum capitalization is raised. Sufficient funds should be provided for the certification of financial reports by an independent public accountant. If any of the proceeds of the offering are to be

used to pay for travel, lodging, meals or any other expenses of the producer or any other individual, the amount, the nature and the reasons for such proposed expenditures must be fully set forth. If the production is expected to open "out of town", the budget may include a total allocation for the per diem expenditures of production personnel. Itemize and state the total amount of all expenses that have currently been advanced, indicating the payors of such advance, the time and conditions of repayment thereof, and how such funds were used. Fully set forth the reasons for any expenditure of funds, including expenditures for travel, lodging and meals and identify the individuals who incurred such expenses. Such expenditures must be for the particular production which is the subject of the offering.

(10) The date on which all funds must be returned to investors in the event the offering is not completed, which date may not be more than 18 months from the commencement of the offering. State that all monies raised by the offering shall be held in a special bank account in trust until actually employed for preproduction or production purposes of the particular theatrical production company or returned to the investors herein. The name and address of the bank in which the account is located must be specified.

(11) If investors may authorize the use of their contribution for preproduction or production purposes prior to the completion of the offering or prior to the time when refunds to investors may be required, set forth a description of the risks to the investor resulting from such authorization and use, including:

(i) that if insufficient funds are raised to complete the offering, or if the offering is not completed for any other reason, the investors may lose part or all of their contribution without a production having been presented;

(ii) that such investors who do not waive their right to refund, must rely solely on the ability of the producer to reimburse them for the contributions so expended which might

exceed the producer's assets, in which case such investors might never be reimbursed;

State that an investor obtains no advantage, unless such advantage has been negotiated with the general partner, but incurs a distinct risk by authorizing the use of his contribution prior to the completion of the offering. No authorization for the use of contributions prior to the completion of the offering shall be effective unless and until the signature of the investor has been

obtained on the separate signature page of the investment agreement as set forth in section 50.2 (a) (4) of this Part. If any contributions may be so used, set forth whether or not the producer is personally obligated to return funds which have been expended in the event the offering is abandoned. The conditions under which the offering will be deemed abandoned shall be indicated.

(12) If advance interests for the contribution of front money have been or are to be offered upon different terms than investment units, such advance interests should be described. The description should include the total dollar amount of all such advance interests which have been or are to be offered; whether such interests are to be repaid out of the proceeds of the offering; whether such interests may be converted into investment units and the terms and conditions of such convertibility; the extent, if any, by which purchasers of advance interests will receive a portion of the producer's share of net profits; whether the proceeds of such interests may be expended for preproduction purposes prior to the completion of the offering; the personal obligation, if any, on the part of the producers to return any proceeds which have been so expended in the event the offering is abandoned; and all other material terms of the advance interests being offered. With respect to advance interests previously sold,

state the total amount of funds obtained through such sales and how such funds were used.

(13) Set forth the plan of distribution of the syndication units being offered, including the names and addresses of underwriters or sales distributors, if any; selling or underwriting commissions, if any; and the source of payment of all such commissions.

(14) State the conditions upon which original investments are to be returned to investors.

(15) (i) State the conditions upon which net profits of the venture are to be distributed and at what intervals such distributions are to be made. Specifically state the share of such profits to be distributed to investors and the share to the producer or producers. State the method by which the computation of the amount of net profits available for distribution is to be determined. If, at the date of filing the offering literature with the Office of the Attorney General, there is an agreement to make payments based on a percentage of net profits, refer to the percentage of net profits which will remain for distribution to the investors after the deduction of such payments as "adjusted net profits" and explain what percentage of net profits this represents. For example, if an actor in a starring role is to receive payments equaling 10% of the net profits, explain that the investors will share in a percentage of the "adjusted net profits" and that such

company, the possible lack of competition resulting therefrom, with regard to such services, should be disclosed. In the event a series of contracts has been entered into of a similar nature with such parties as players who will not be in a starring role, musicians, etc., such contracts may be summarized in one category.

(9) Use of proceeds of the offering including an itemization in reasonable detail of proposed preproduction expenses. The budget should reflect that there will be sufficient funds available to produce the play if the minimum capitalization is raised. Sufficient funds should be provided for the certification of financial reports by an independent public accountant. If any of the proceeds of the offering are to be

used to pay for travel, lodging, meals or any other expenses of the producer or any other individual, the amount, the nature and the reasons for such proposed expenditures must be fully set forth. If the production is expected to open "out of town", the budget may include a total allocation for the per diem expenditures of production personnel. Itemize and state the total amount of all expenses that have currently been advanced, indicating the payors of such advance, the time and conditions of repayment thereof, and how such funds were used. Fully set forth the reasons for any expenditure of funds, including expenditures for travel, lodging and meals and identify the individuals who incurred such expenses. Such expenditures must be for the particular production which is the subject of the offering.

(10) The date on which all funds must be returned to investors in the event the offering is not completed, which date may not be more than 18 months from the commencement of the offering. State that all monies raised by the offering shall be held in a special bank account in trust until actually employed for preproduction or production purposes of the particular theatrical production company or returned to the investors herein. The name and address of the bank in which the account is located must be specified.

(11) If investors may authorize the use of their contribution for preproduction or production purposes prior to the completion of the offering or prior to the time when refunds to investors may be required, set forth a description of the risks to the investor resulting from such authorization and use, including:

(i) that if insufficient funds are raised to complete the offering, or if the offering is not completed for any other reason, the investors may lose part or all of their contribution without a production having been presented;

(ii) that such investors who do not waive their right to refund, must rely solely on the ability of the producer to reimburse them for the contributions so expended which might

in excess of their capital contributions. If the venture is to be a limited partnership and if investors' funds are to be used for preproduction or production purposes prior to the time when the legal requirement for the formation of a limited partnership has been met, a specific statement should be made as to whether investors whose funds are so used may be personally liable for all debts of the venture occurring prior to the formation of the limited partnership.

(19) State the time at which the assets of the theatrical production company are to be liquidated and set forth the method of distribution of all proceeds of such liquidation.

(20) In the event the investors' rights to receive either return of contributions or share of net profits resulting from any interest which the theatrical production company retains in the play (including all subsidiary rights) are to be terminated at any time, this must be clearly stated.

(21) (i) State whether the issuer or other offeror shall have sole control over the management and affairs of the theatrical production company. Set forth whether the issuer or other offeror, his affiliates, relatives or entities in which he

has any interest, will engage in transactions with the theatrical production company or any production or supply goods and services to it. Such disclosure should include, but not necessarily be limited to, such transactions as agreements to pay or payments of management or producers' fees; the furnishing of office facilities, commonly referred to as "cash office charge"; the supplying of theater facilities, electrical equipment, drapes and props; transactions in regard to the publication or sale of souvenir programs or show albums, as well as the furnishing of personal services such as those of stage director, press agent, etc.; and the purchasing or leasing from the production company of subsidiary rights in the play or road and second company rights.

(ii) The furnishing of office facilities by the issuer or other offeror or any other person may be charged to the theatrical production company as a weekly lump sum under the heading "cash office charge" for the period commencing two weeks prior to rehearsals and ending two weeks after the close of the theatrical production provided, however, that only one lump sum fee for maintaining an office may be charged. Additional office payments may be charged to the production only if set forth in the proposed budget in a specific line in the budget which identifies the particular purpose for which the funds will be used.

(iii) In the event that the producer, his affiliates, relatives or entities in which he has an interest have an intent to enter into any transactions referred to in 50.3 (d) (21) (i), such intention should be specifically stated and the terms upon which the transaction is to be made should be set forth. Where no

intention has been formed as to whether the producer will engage in such transactions, there should be a statement as to the producer's right to enter into such transactions with the theatrical production company and a statement that no intention has yet been formed as to whether or not such transactions shall actually take place and a further statement of whether or not the terms of such transaction shall be reasonable and reflect prevailing industry norms. There need not be a statement as to the producer's right to acquire subsidiary, road or second company rights in the play if all investors are to be offered an opportunity to participate in such acquisition on terms at least as favorable and in the same proportionate interest as they have in the theatrical production company.

(22) The conditions upon which the venture is to be terminated should be set forth. If the venture is to terminate upon conditions such as the death, insanity or retirement of any of the producers, there should be a statement regarding the rights and obligations of the parties remaining.

(23) (i) State that the theatrical production company will comply with the financial reporting requirements set forth in subdivision 2 of Section 23.03 of Article 23 of the Arts and Cultural Affairs Law, and accounting regulations issued by the Attorney General.

(ii) If the producer may apply for an accounting exemption pursuant to Section 51.6 of Part 51, theatrical accounting regulations, it should be stated that annual financial statements may not be certified by independent public accountants. The fact that the financial statements of the theatrical production company may not be certified should also be stated in the Risk Factor section of the offering literature.

(24) State whether any person, corporation, partnership or other entity listed in Section 50.3 (d) (7) has been convicted of any crime under any State or Federal law, signed any consent decrees or had adverse final judgments involving the sale of securities or the subject matter of Article 23 or its predecessor, Article 26-A of the General Business Law, or the regulations thereunder. Explain fully.

(25) If a portion of the funds raised by the offering is to be used to pay the costs of a "workshop" or other developmental production which has already taken place, describe the prior production (including where and when it took place) and explain why and to whom such sums must be paid. Also, include a statement of income and expenditures of the prior production.

(26) Other information material to the offering.

50.4 Additional contents of offering literature filed pursuant to section 50.1 (n) (1) in connection with an offering for a theatrical production company which will use the proceeds for more than one production or for one or more non-specified productions.

(a) In addition to all applicable requirements of section 50.3 (a), set forth on the outside front cover page the following:

(1) the name of the theatrical production company and a brief statement of its purpose (i.e. production, development of properties, investment) and whether or not specific properties for the venture have been identified. If the company intends to engage in more than one type of activity, the approximate amount and percentages which will be allocated for each activity. Such statement will thereafter, for the purpose of the offering literature, be referred to as the "business of the theatrical production company".

(2) a statement in capital letters printed in boldface roman type at least as large as 10-point modern type and at least two

led (or if typed, with underlining);

SPECIAL RISKS:

THE PROCEEDS OF THIS OFFERING WILL BE USED FOR MORE THAN ONE VENTURE. THEREFORE, WHILE THE LOSSES FROM AN UNSUCCESSFUL PRODUCTION MAY BE OFFSET IN WHOLE OR IN PART BY THE PROFITS OF A SUCCESSFUL PRODUCTION, INVESTORS SHOULD NOTE THAT PROFITS FROM A SUCCESSFUL PRODUCTION MIGHT BE DIVERTED TO AN UNSUCCESSFUL ONE.

if at least 75% of the proceeds of the offering are not allocated to specific named productions to which the issuer or other offeror hold the production right or rights to invest at the time of the offering, the above statement should continue, in the same type as follows:

BECAUSE LESS THAN 75% OF THE PROCEEDS OF THIS OFFERING ARE NOW ALLOCATED TO SPECIFIED PRODUCTIONS TO WHICH THE ISSUER OR OTHER OFFEROR HOLDS THE PRODUCTION RIGHT OR RIGHTS TO INVEST, THIS OFFERING IS DEEMED TO BE A "BLIND POOL". A "BLIND POOL" IS A THEATRICAL OFFERING WHICH DOES NOT SET FORTH EACH SPECIFIC PROPERTY WHICH WILL BE PRESENTED AND WHICH WILL ULTIMATELY BE A SOURCE OF THE THEATRICAL PRODUCTION COMPANY'S PROFITS, IF ANY.

(3) the minimum amount necessary to initiate the business of the theatrical production company and a statement that the proceeds of the offering will not be expended if such minimum is not obtained, but will be returned to the investors therein except, that if any of the investors have so authorized such proceeds may be used for the limited purpose of acquiring production rights, costs reasonably related to such acquisition and organizational and offering expenses. (The minimum must be demonstrably sufficient to bring the theatrical production company to the point where it is possible to attain profits, e.g., the presentation of a production to a paying audience, the sale of a property developed by the theatrical production company or an investment in a theatrical production which will be fully capitalized upon the receipt of such investment.)

(b) Body. In addition to all applicable requirements of section 50.3 (d), the following should be set forth:

(1) The investment objectives and policies of the theatrical production company and a statement as to whether such objectives and policies may be changed and under what circumstances. Address the issue of whether and to what extent profits of a successful venture may be diverted to an unsuccessful one.

(2) The plan of operation of the theatrical production company including but not limited to, to the extent known:

(i) if its plans include production, the names and/or authors of plays to be produced (a brief description of the plots may be included, but are not required); the nature of plays to be produced (i.e. musical, drama); the site or sites where such productions will be presented; the seating capacity of the theater or theaters for which productions are geared; the date or proposed date of the initial production; any established criteria for choosing productions.

(ii) if its plan includes the development of theatrical properties, the nature of the activities which will be undertaken for such purpose (e.g. workshops, participating with regional theaters, other). Explain. The criteria which will be used for choosing properties to develop. The intended terms and conditions of development agreements. The proposed production date or dates of the full-scale production or productions which are being developed.

(iii) if its plan includes investing all or part of the proceeds in theatrical productions not produced by the theatrical production company, the information required in (i) above, to the extent known, and the criteria which will be used in choosing

productions for investment purposes. The intended terms and conditions of investment agreements, including the fees or other remuneration, direct or indirect, to be paid in connection with such other production to any other issuer or other offeror, producer or affiliate.

(3) A statement regarding the extent to which the plan of operation set forth in section 50.4 (b) (2) above has been effectuated (i.e. have options been acquired, have development or investment agreements been entered into) and a timetable for effectuating such plan as of the commencement of business of the theatrical production company.

(4) Referring to the plan of operation set forth in section 50.4 (b) (2), state what has to occur for profits to be generated to the theatrical production company and the time required for such occurrence. Notwithstanding the aforesaid, projections may be included only if there is set forth a reasonable basis for such projections; the person or persons who prepared the information on

which such projections are based, and their qualifications; the limitations on the trustworthiness of the information used; the assumptions used; and other material factors concerning the process by which such information was compiled.

(5) The specific terms and conditions upon which profits may be reinvested or used to offset losses from any theatrical production which is not profitable.

(6) The period of time for which the venture will operate. If the issuer has the right to extend the period of the venture beyond the initial term, the conditions which have to be met for its continuation, and the terms and conditions upon which it will be terminated.

(7) A statement that none of the proceeds of the offering will be invested in a theatrical production company which is not exclusively formed for the purpose of developing or producing, or both, theatrical productions.

(8) A statement that none of the proceeds of the offering will be used prior to the time the stated maximum capitalization is raised unless, pursuant to section 50.4 (b) (18), a lesser or minimum amount of capitalization is established and such minimum is demonstrably sufficient to bring the theatrical production company to the point where it is possible to attain profits (e.g. the presentation of a production to a paying audience, the sale of a property developed by the theatrical company or an investment in a theatrical production which will be fully capitalized upon receipt of such investment), provided, however, that such minimum shall in no event be less than 10% of the maximum capitalization, in which case, if a specific use of proceeds section is included, such investor funds may be used, with prior investor authorization, for the pre-production or production purposes of the first of any specified theatrical production.

(9) If any of the proceeds will be invested in another theatrical production company, information regarding the principals of such companies required by Section 50.3 (d) (7), above; whether the issuer or other offeror is affiliated with the issuer or promoter or principals of such other company; the exact nature of the affiliation; and the potential conflict of interest connected therewith. Include, to the extent known, the material terms of any such agreement.

(10) A complete chronological history of the principals occupations and business affiliations of the issuer or other offeror, including their principal occupations and employment during the past five years, and a brief explanation of the nature of the responsibilities associated with such employment where that is not evident from the name of the position. If the issuer or other offeror has previously controlled or managed a syndication of whatever kind, a complete statement of the results of such syndications and the returns, if any, to investors; and if the

investors did not realize returns equal to or greater than their investment, state also the fees and remuneration direct and indirect, received by the issuer or other offeror in connection therewith. If the issuer or other offeror has an intention to originate or otherwise promote other theatrical production companies, a complete statement of the conflict of interest which would or might ensue and the principles which will be applied in resolving any such conflicts. If the theatrical production company will, to any extent, invest in other theatrical production companies, information regarding the results of prior theatrical investments and/or a statement that the issuer or other offeror has no experience managing a theatrical production company which has invested in other theatrical productions.

(11) The fees or other remuneration, direct or indirect, which will be received by the issuer or other offeror or to which they may become entitled from the theatrical production company or any affiliated company or entity.

(12) The persons who will be responsible for carrying out the objectives and plan of operation of the theatrical production company as set forth in sections 50.4 (b) (1) and (2), if other than the issuer or other offeror, including a detailed description of the duties of such persons stating the fee and/or fees which will be paid in connection therewith, all other remuneration direct and indirect, which such persons will receive or to which they may become entitled, and their occupational background as it is relevant to the functions they will perform.

(13) A description of any underwriting or selling agreement between the issuer or other offeror and any underwriter, broker, dealer, finder, advisor, or any other financing organization, including the services to be rendered by such person; their compensation; their specific responsibilities; whether the arrangement is "exclusive" or "non-exclusive"; whether there are provisions for indemnification with respect to claims based upon violations of applicable securities laws; and whether the issuer or other offeror has or had any other dealings or affiliation with such persons. Any such compensation is subject to the definition of organizational and offering expenses, set forth in section 50.1 (h) of this Part.

(14) All other persons who will be or may be retained on a permanent basis by the theatrical production company, the capacity in which they will be retained and the anticipated manner of compensation (e.g. royalties, salary, etc.). Such information may be grouped by categories of employees, if necessary. If such individuals are known at the time of the offering, include their occupational background and employment history during the past five years.

(15) If the issuer or other offeror will furnish office facilities to the theatrical production company, describe the

facilities and the amount of the charge therefore; the period or periods during which such office will be maintained and the reasons for maintaining an office during such periods; the functions which will be performed in such facility; the number of staff and their duties. If office facilities will be furnished by a person other than the issuer or other offeror, provide the above required information for such other person and describe their relationship to the issuer or other offeror.

(16) A representation that the issuer or other offeror will provide all the financial reports required pursuant to the Arts and Cultural Affairs Law of New York and of 13 NYCRR Part 51 herein; and where the funds of the theatrical production company are invested in or otherwise applied to a production or other venture not under the direct control of the issuer or other offeror, that they will require, through contract, that such reports be provided.

(17) If the theatrical production company intends to commence business at less than the stated maximum capitalization, a statement describing how the business of the theatrical production company and the plan of operation set forth in sections 50.4 (a) (1) and (b) (2), above, will change; how the reduced capitalization is sufficient to go forward with the curtailed business operations; and how such change will affect the other elements of the proposed plan which are disclosed in this section. With respect to determining a minimum, reference should be made to section 50.4 (b) (9).

50.5 Amended offering literature. (a) Offering literature and investment agreements filed pursuant to section 50.1 (n) of this Part may be used for a period of not more than nine months from the date of the original submission for filing with the Office of the Attorney General. After nine months, the offering may be continued by the submission for filing of amended offering literature setting forth all material information relating to the offering at such time. Offering literature filed with the Securities and Exchange Commission as an amendment shall be submitted for filing to the Office of the Attorney General prior to its use in New York State.

(b) In the event of any material change in the information contained in the offering literature, as originally submitted or amended, which occurs prior to the completion of the offering, the offeror or other issuer of syndication interests in a theatrical production company shall file with the Office of the Attorney General and distribute to prospective purchasers amended offering literature disclosing such material changes. In the event of any material change in the terms of the offer or the information contained in the offering literature which requires the filing of amended offering literature, an offer by letter shall be made to each investor to rescind his investment in the theatrical production company, provided, however, that an offer of rescission shall not be required when the issuer or other offeror has, prior to the completion of the offering, acquired an interest in a theatrical

production or any elements thereof for the benefit of the theatrical production company where such acquisition is consistent with the business plan of the theatrical production company as set forth in the offering literature pursuant to section 50.4 of this Part.

50.6 Method of filing offering literature other than that filed with the Securities and Exchange Commission, as referred to in section 50.1 (m). (a) Offering literature, other than that filed with the Securities and Exchange Commission, which is required to be filed with the Office of the Attorney General pursuant to section 50.1 (n) and (o) of this Part and Article 23 of the Arts and Cultural Affairs Law shall be filed with the Office of the Attorney General at its office in the City of New York, as follows:

(1) A filing pursuant to section 50.1 (n) (1) of this Part may only be made by filing two copies of the offering circular or prospectus or private placement memorandum, two copies of the investment agreement and other documents required by section 50.7 prior to the offering of the syndication interests.

(2) A filing made pursuant to section 50.1 (n) (2) of this Part may only be made by filing two copies of the investment agreement and other documents required by section 50.7 prior to the offering of the syndication interests.

(3) A filing made pursuant to Section 50.1 (o) of this Part may only be made as follows:

(i) The Office of the Attorney General must be notified on form ATS-4 by the issuer or other offeror of his intent to proceed by means of waivers within 30 days after the initial receipt of monies other than front money from an investor, unless the waivers have been filed prior to such time.

(ii) All original waivers, two copies of the investment agreement and one copy of the certificate of limited partnership (if this form is used) shall be filed with the Office of the Attorney General, not later than the first public performance of the theatrical production or, in the case of an offering made pursuant to section 50.4 of this Part, within 7 days of the completion of the minimum offering together with one copy of all contracts and options with authors or a statement by the issuer or other offeror or the attorney for the theatrical production company that with respect to each theatrical production to be produced, developed or invested in by such company, the issuer or other offeror has secured or will secure the rights to the production or an option therefor from the authors. At the time of the filing, the producers shall represent that they have no knowledge or belief that the offering was made to more than 35 offerees, and that the producers do not know of any investors represented by nominees other than those listed on the waivers as submitted.

(b) (1) All funds derived from the sale of such theatrical syndication interests, with the exception of funds raised pursuant to Section 50.1 (o) of this Part, shall be held in trust in a special bank account until the Attorney General has issued to the issuer or other offeror a letter stating that the offering has

been permitted to be filed; and the Attorney General, not later than 15 days after such submission, shall issue such a letter or, in the alternative, a notification in writing indicating deficiencies therein. If the Attorney General has issued such a notification in writing indicating deficiencies, the issuer or other offeror shall immediately return to the investors all funds derived from such sale or, in the alternative, shall retain such funds in trust for a period not to exceed 30 days from receipt of such notification. Within said 30 day period, the issuer or other offeror shall submit to the Office of the Attorney General revised offering literature. If, within said 30 day period, the Attorney General issues a letter stating that the offering has been permitted to be filed, the issuer or other offeror shall distribute to each investor the revised offering literature together with a written offer to rescind the original investment, which shall be substantially in the form of ATS-7. If, at the expiration of said 30 day period, the Attorney General has not issued a letter stating that the offering has been permitted to be filed, then all funds held in trust shall be returned immediately to the investors.

(2) A proposed draft of a contemplated offering may be submitted to the Office of the Attorney General solely for the purpose of receiving comments thereon, prior to the formal submission of the offering literature pursuant to this Part and Article 23 of the Arts and Cultural Affairs Law.

(c) An amendment to an offering pursuant to Section 50.5 of this Part shall be made by filing one redlined copy of each amended document in accordance with the provisions of section 50.5 of this Part. In the event of any material change in the terms of the offer or the information contained in the offering literature, as originally submitted or amended, which occurs prior to the completion of the offering, the amended offering literature shall state that an offer to rescind the original investment in the particular production will be made to each person who invested prior to the amendment. A copy of a proposed letter pursuant to which the offer of rescission will be made and the names and addresses of all persons who invested prior to the amendment shall be submitted to the Office of the Attorney General at the time of the submission of the amended offering literature. If no contributions were received prior to the amendment, the issuer or other offeror may represent that fact in a letter to the Department of Law, which shall be submitted to the Office of the Attorney General at the time of the submission of the amended offering literature.

50.7 Exhibits and documents to be submitted to the Department of Law. Upon submission to the Office of the Attorney General pursuant to subdivision (n) of section 50.1 of this Part, the issuer or other offeror should submit all relevant documents relating to the offering, including the following where applicable:

(a) Partnership agreements, certificates of limited partnership and all amendments thereto, certificates of

incorporation and bylaws or any other pertinent documents relating to the form of business organization;

(b) A specimen of the investment unit being offered, unless

such investment unit is a copy of the business agreement under which the venture is to operate;

(c) Agreements with all purchasers of advance interests, commonly known as front money;

(d) All documents relating to the underwriting, distribution or sale of syndication interests;

(e) Agreements entered into by the theatrical production company or which it is intended will be assigned to or acquired by the theatrical production company, including but not limited to, investment agreements; contracts with co-producers, developers, regional theaters; production contracts with authors and extensions or modifications thereof; contracts with actors having starring roles, directors, choreographers, press agents, company managers, advertising agencies, costume and scenic designers, suppliers, theaters, etc.;

(f) Agreements relating to the disposition of any subsidiary rights;

(g) Not later than 30 days after the total capitalization has been raised, a list of all shareholders, general partners, limited partners and joint venturers. Such list shall include the name and address, the amount invested and the date the investment was made for each person so listed. If the theatrical production company is a limited partnership, a copy of the certificate of limited partnership may be submitted in lieu of this list.

(h) In connection with an offer pursuant to Section 50.4, a notification to the Office of the Attorney General setting forth the name of each production produced, developed or invested in by the theatrical production company where such production was not specifically named in the original filing with the Department of Law. Such notification shall be submitted not later than 30 days after the initial expenditure of funds for the named production.

50.8 Abandonment or withdrawal. The producer must file with the Office of the Attorney General, within four weeks of the abandonment or the withdrawal of any offering, Form ATS-2 setting forth the information required.