STATE OF NEW YORK DEPARTMENT OF LAW

OFFICE OF ATTORNEY GENERAL ROBERT ABRAMS

MEMORANDUM

TO: REF ATTORNEYS, LAW STUDENTS & PARALEGALS

DATE: 8/30/89

FROM: MARY SABATINI DISTEPHAN MSD

RE: Limited Offers

When a sponsor makes a new offer to a limited number of persons the following policy should be reflected in any permitted disclosure:

1) If the amendment is a substantial amendment (13 NYCRR 18.5(a)(7); 13 NYCRR 23.5(a)(7)), i.e., materially beneficial to any tenant-purchasers, the amendment must grant to all tenants who had a right to purchase during the initial 90-day purchase period a new exclusive right to purchase on the terms offered in the amendment for a period of not less than thirty days from the date of presentation. (13 NYCRR 18.5(a)(6); 13 NYCRR 23.5(a)(6)).

In order to provide such 30-day exclusive period, the offer to buy on a first-come, first-serve basis would not be sufficient. Therefore, all tenants should be given the right to subscribe or purchase for a full 30 days after which time a lottery could be conducted if more tenants subscribed or purchased than the number of purchasers to which the offer was limited. Those who did not succeed in the lottery would be granted rescission.

If sponsor's attorney can suggest another method other than lottery which will still preserve the 30-day exclusive purchase period, please be open to such suggestion. Check with me if there is any question.

(2) There will be no fixed minimum number of persons to whom this offer must be made. The former requirement that the number must be at least two times the number needed for the plan to become effective should not be imposed.

Any questions concerning this policy should be directed to me.

MSD:kd