

POLICY STATEMENT 102

EXEMPTION APPLICATION UNDER SECTIONS 352-g(2) AND 359-f(2) OF THE NEW YORK GENERAL BUSINESS LAW FOR REAL ESTATE SYNDICATION OFFERINGS REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE FEDERAL SECURITIES ACT OF 1933

General Business Law ("GBL") §352-g(2) provides that the Attorney General, upon application, may exempt from the provisions of §352-e any offerings of securities fully registered with the Securities and Exchange Commission under the Securities Act of 1933. Policy Statement 102 ("PS 102") provides an exemption application procedure for offerings registered with the SEC.

PS 102 also provides for simultaneous exemption of the issuer under GBL §359-f(2) from the broker-dealer registration requirements of GBL §359-e, subdivisions 2,3,4,5 and 6, for a separate fee of \$200. Alternatively, the issuer may elect to register as a dealer, filing form M-11 (available from the Public Information Office of the Real Estate Finance Bureau) and paying the statutory fee. Dealer registration is valid for four years and therefore preferred for issuers expecting to make multiple offerings. The issuer is not required to be registered as a dealer or obtain an exemption from dealer registration for offerings sold on a guaranteed underwriting or firm commitment basis.

Certain issuers registering with the SEC may be entitled to exemption from the provisions of GBL §352-e under §359-f(2), using a short form exemption application. See Policy Statement 104.

An issuer applying for a §352-g(2) exemption must wait until it is granted before commencing the firm offering. A red herring copy of the offering prospectus may be circulated in New York provided that it contains, on the front cover, a statement that the prospectus does not constitute an offer to sell or a solicitation of an offer to buy securities, and that no such offer can be made until the offering becomes effective with the SEC and the State of New York. This legend does not require a reference to New York State specifically if the legend refers to state registration or qualification generically.

COVER SHEET

Every application should have attached to the top of it a cover sheet (or sheets, if necessary) headed "Policy Statement 102 Application." The headings below should be typed flush left and in the order and words used; the relevant information should be provided for each line and not by reference to the application, exhibits or other materials. (The advisory matter to the right of the colon for each heading below should not be typed on the cover sheet.) Applicants providing this cover sheet are not required to submit a separate form Transmittal Sheet.

NAME OF ISSUER:

TYPE OF SECURITY:

OFFERING AMOUNT:

SPECIFICATION OF PROPERTY: State whether the property is "specified", "unspecified" or "partially specified" (give % specified).

SEC REVIEW: State whether issuer expects comments from the SEC or no review.

NAME AND ADDRESS OF RESPONSIBLE PERSON: Person to whom exemption letter will be addressed. Indicate preferred form of address – Mr., Ms., Mrs., Miss or Esq.

NAME & TELEPHONE NUMBER OF PERSON TO CONTACT:

PRINCIPALS: The names only of the persons listed in paragraph 3 of the application.

EFFECTIVE DATE: Anticipated date of SEC effectiveness. If none

state "undetermined".

CONTENTS OF APPLICATION

The application must be in the form of an affidavit signed, or a petition verified, before a notary by an officer, general partner, trustee or other principal of the issuer who is a natural person and who has knowledge of the facts contained therein, stating in full the following information, representations and undertakings.

[Issuer and Principal Information]

1. The name, address, and legal nature (corporation, trust, limited partnership, etc.) of the issuer entity (the "applicant").

2. The name, residence address and affiliation of the individual affiant, his or her business or profession, and his or her business address.

3. The names and residence addresses of all principals of the applicant, together with a statement that there are no other principals and that attached to and made a part of the applications are forms RI-1 for each principal who is a natural person. List principals directly here rather than by reference to exhibits. A principal is defined for purposes of PS 102 as a general partner of a partnership, an officer or director of a corporation, a trustee of a trust, a person or entity holding 10% or more of the interests in an entity, a syndicator, sponsor or promoter of an offering of interests in an issuer, a person exercising substantial control over the management or operation of an entity, or a principal of an entity that is itself a principal. Where there are a large number of officers and directors of a corporate general partner, the applicant may provide RI-1's only from the principal owners (an owner of 25% or more of the corporation, or if none, the controlling shareholder), chair of the board of directors and five highest ranking executives, as well as any officers directly responsible for the offering sought to be exempted; however, information requested in paragraphs 4 and 5 below should be provided for all principals. Issuers may request waiver of the requirement to provide RI-1's for 10% holders of interests in parent entities and officers and directors of entities that are 10% holders of parent entities where the resulting interest at the issuer level is below 5% and such holders, officers and directors do not exercise any significant control over the issuer. Copies of executed forms RI-1 previously submitted may be used if they are less than six months old and bear a

notation indicating the file in which the original may be found; the application should state that there have been no material changes in the facts stated in the RI-1's.

4. A statement whether or not, to the best of affiant's knowledge after reasonable investigation, any principal of the applicant, at any time during the 10 years prior to the application date, was adjudged a bankrupt, made an assignment for benefit of creditors, or was a principal of any entity which filed a petition in bankruptcy, was reorganized in bankruptcy, was adjudged a bankrupt or which made an assignment for benefit of creditors. (If so, specify details.)

5. A statement whether or not, to the best of affiant's knowledge after reasonable investigation, any principal of the applicant ever was convicted of any crime (excluding minor traffic violations) or was the subject of any injunction, cease and desist order, suspension or restraining order, revocation of a license to practice a trade, occupation or profession, or denial of an application to obtain or renew same, stipulation or consent to desist from any act or practice, including any assurance of discontinuance accepted by the Attorney General, or any other disciplinary action by any court or administrative agency, and whether any such action or proceeding is presently pending. (If so, specify details.)

[Transaction Information]

6. The total maximum dollar amount of the offering, including any optional units and any shares underlying warrants, the number of units to be offered and the minimum dollar amount of the interest that will be offered to any one person.

7. The business of the issuer and the purpose of the offering (e.g., to purchase the fee or leasehold of described property at a stated address).

8. The use of proceeds of this offering, not including loans or contributions from other sources, set forth in tabular form, showing amounts in dollars and percentages of the total offering amount, and indicating which proceeds will or may be paid to principals or affiliates. Costs or expenses to be paid partly to principals or affiliates and partly to third parties should be listed as separate entries where the relative amounts are predictable. If the offering has a maximum and minimum total dollar amount, set forth the use of proceeds in both cases. Do not refer to accompanying offering material; however, a copy of a table

containing the requested information may be attached as an exhibit to the application.

9. A statement whether the offering is a specified, unspecified or partially specified property offering, indicating the approximate percentage of the offering amount to be used to purchase specified property. If this is an unspecified property offering, as defined in Regulation 16.11(a), state that a cross-reference sheet, as required by Regulation 16.11(d) (13), has been attached as an exhibit. Issuers may request an exemption from the requirements of 16.11 where the assets to be purchased consist of securities that are substantially fungible, such as GNMA and FNMA securities.

[Basis for Exemption]

10. A statement either that the securities offered have been registered with the SEC or that the securities will not be offered or sold in New York State until they have been registered with the SEC.

[Undertakings]

11. (a) An undertaking that the proceeds of the offering will be received and held in trust for the benefit of the investors in compliance with §352-h of the GBL and will be retained in trust after closing to be used only for the purposes set forth in paragraph 8 above. The undertaking may provide that funds will be placed in specified short-term, low-risk, interest-bearing investments after closing but prior to use as set forth in paragraph 8. State the name and location of the bank where the proceeds will be deposited in trust prior to the consummation of the offering. In a guaranteed or firm commitment underwriting, funds received by the issuer from the underwriter(s) will not be required to be held in trust.

(b) An undertaking that the prospectus used in connection with this offering will contain the trust fund undertaking above.

12. (a) An undertaking that beginning after the closing of the offering, all investors will be provided annually with financial statements of the issuing entity, and of operating entities in a multi-tiered arrangement, including a balance sheet and the related statements of income and retained earnings and changes in financial position, accompanied

by a report of an independent public accountant stating that an audit of such financial statements has been made in accordance with generally accepted accounting principles, stating the opinion of the accountant with respect to the financial statements and the accounting principles and practices reflected therein and with respect to the consistency of the application of the accounting principles, and identifying any matters to which the accountant takes exception and stating, to the extent practicable, the effect of each such exception on such financial statements. The undertaking may state that financials will be so

audited only if requested by investors holding, in the aggregate, 30% or more of the interests in the issuer held by investors other than principals and affiliated persons, if this is disclosed in the offering material or limited partnership agreement. In conformity with §448(a) of the Internal Revenue Code of 1986, the cash method of accounting may not be used for financial statements. An issuer whose accounting reports are required to conform to special accounting rules of another government agency may do so provided that the requirement to use such rules and the effect of such rules are described in the offering prospectus.

(b) An undertaking that the prospectus used in connection with this offering will set forth the above undertaking to provide annual financial statements.

13. An undertaking to comply with the requirements of 13 NYCRR 16.9 regarding Source of Distributions Statements, and an acknowledgment that the applicant is familiar with said regulation.

14. An undertaking that any prospectus used in connection with this offering will contain the following legend on its cover page:

THE ATTORNEY GENERAL OF THE STATE OF NEW YORK HAS NOT PASSED ON OR ENDORSED THE MERITS OF THIS OFFERING. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

15. A statement whether a Designation of the Secretary of State as agent for service of process (if out of state issuer or principal) and a Further State Notice have been or will be filed with the Secretary of State in Albany, New York (with copies attached to the application).

16. A statement that attached as an exhibit to the application and made a part thereof are two copies of the most recent version of the registration statement as submitted

to the SEC.

17. An undertaking by the issuer to submit to the Office of the Attorney General two copies of the registration statement as filed with the SEC, all amendments (one marked, one clean copy) to such registration statement, the final prospectus and all other offering, sales and advertising literature employed by the issuer.

18. An undertaking to submit a report by letter from a principal of the issuer or the issuer's attorney, within 30 days after the termination or conclusion of the offering, stating whether or not the offering was consummated; if so, the total amount sold and the amount sold in New York; if not, whether investors' deposits were returned in full.

This application should conclude, prior to subscription or verification, with the following clause: "WHEREFORE, it is respectfully requested that the offering for sale of the securities of the issuer be exempted under §352-g(2) from the filing provisions of §352-e of the General Business Law." If exemption of the issuer from the provisions of §359-e is sought pursuant to §359-f(2) add: "and under §359-f(2) from the provisions of §359-e, subdivisions 2, 3, 4, 5 and 6 of the General Business Law."

PRE-EFFECTIVE EXAMINATION

If all documents have been submitted, the Office of the Attorney General examiner has had an opportunity to examine the submission and the Department advises that all comments have been satisfactorily addressed, the exemption will be deemed granted as of the subsequent date of effectiveness with the SEC, unless there have been subsequent material changes in any of the documents or amendments. The issuer's counsel should send a letter noting the date of effectiveness to the attention of the examiner, and a letter granting the exemption or exemptions will be issued upon receipt of notice of effectiveness. During the examination period, upon request of the Office of the Attorney General examiner, applicants should submit a copy of all comment letters received from the SEC and NASD, as well as the applicant's written responses to such agencies.

BROKER-DEALER REQUIREMENTS

Unless the underwriting is on a firm commitment basis, the issuer must register as a dealer under GBL §359-e, which requires the filing with the Investment

Protection Bureau - Real Estate Financing Section of the Office of the Attorney General of a Broker-Dealer statement on Form M-11 and payment of the requisite fee by separate check as noted on the form, and the filing of a State Notice with the Department of State, Miscellaneous Records Bureau, One Commerce Plaza, 99 Washington Avenue, Albany, New York 12231. The M-11 is effective for four years for the subject securities and any other securities of the issuer.

In lieu of the filing of an M-11 and State Notice, the issuer may apply for an exemption pursuant to §359-f(2) (d) from the filing requirements of §359-e(2)-(6). Exemption under §359-f(2) (d) is granted in the case of issuers of SEC-registered offerings as being within the intent of the section, regardless of the number of investors.

FURTHER STATE NOTICE AND DESIGNATION

The exemption granted under PS 102 does not exempt issuers from the provisions of GBL § 359-e(8). Therefore, a Further State Notice form must be filed with the Department of State in Albany, New York. Out of state issuers and principals must file a Designation of the Secretary of State of New York as agent for service of process.

FEEES

The fee for the §352-g exemption is two-tenths of one percent of the amount of the offering of securities, with a minimum fee of \$750 and a maximum fee of \$30,000. This fee is based on the aggregate offering amount without apportionment for the amount to be offered in or from New York. If exemption is also sought pursuant to §359-f(2) from §359-e, a separate check for \$300 must be submitted. Checks should be made payable to the New York State Department of Law.

SUBMISSION

Applications with supporting documents and fees should be sent to:

New York State Department of Law, Real Estate Finance Bureau,
Syndication Section, 28 Liberty Street, New York, NY 10005.

AMENDMENTS, SUPPLEMENTS, ADVERTISEMENTS AND SALES LITERATURE

The applicant should submit all amendments or supplements to the prospectus and copies of any brochures, summaries, advertisements and sales literature to the Office of the Attorney General prior to its issuance and use. The cover letter should provide the file number if the applicant has received an exemption, and the name of the examiner, if known. No fee is required to amend an application for exemption previously granted, unless the total dollar amount of securities is increased and the maximum fee has not been paid. Amendments and supplements are presumed accepted for filing 10 days after submission, unless notice is provided to the issuer by the Office of the Attorney General that acceptance is being delayed pending review and discussion. Sales and advertising literature and prospectus summaries should contain the following legend:

"This is not an offering, which may be made only by prospectus. The Attorney General of the State of New York has not passed on or endorsed the merits of this offering. Any representation to the contrary is unlawful."

Radio or television messages of 60 seconds or less and advertising in newspapers or magazines of 250 words or less may use the first sentence of the legend only.

THE GRANT OF EXEMPTION AND THE FILING OF AMENDMENTS AND SUPPLEMENTS DOES NOT CONSTITUTE A WAIVER OF THE ATTORNEY GENERAL'S AUTHORITY TO TAKE ENFORCEMENT ACTION AGAINST THE ISSUER OR ITS PRINCIPALS ON THE GROUND OF MATERIAL MISSTATEMENTS OR OMISSIONS IN THE OFFERING MATERIAL OR OTHER FRAUDULENT PRACTICES UNDER THE MARTIN ACT.

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