
REAL ESTATE FINANCE BUREAU

M E M O R A N D U M

**Re: Requirements for Exemption Application For
Conversions of PHFL Article II Cooperatives
to PHFL Article XI Cooperatives**

**Date: REVISED
6/20/2013***

Introduction:

The Department of Law (DOL) has determined that the conversion of a Mitchell-Lama mutual housing company (ML Cooperative) to a cooperative Housing Development Fund Company (HDFC Cooperative) pursuant to the City of New York Department of Housing Preservation and Development (HPD) Article II to Article XI Conversion Program (Program) is governed by New York General Business Law ("GBL") § 352-e and 13 N.Y.C.R.R. Part 18 (Regulations Governing the Conversion of Occupied Residential Property to Cooperative Ownership). Notwithstanding, a ML Cooperative proposing to convert to an HDFC Cooperative may provide shareholders with a Proxy Statement in lieu of an offering plan, so long as the minimum disclosure requirements set forth herein are met.

Procedures for Submission and DOL Review:

The ML Cooperative must submit an exemption application to the DOL, together with the following documents:

- M-10 Form (Sponsors & Selling Agents Broker Dealer Statement)¹
- Transmittal letter in compliance with 13 N.Y.C.R.R. § 18.4(a)
- One copy of the proposed Proxy Statement²
- President's (Sponsor) Affidavit in compliance with 13 N.Y.C.R.R. § 18.4(b)

*Original date of issuance was 12/28/2012

¹ All fees for the proposed transaction, including the M-10 fee, are waived pursuant to the policy memo entitled "Reduced Filing Fees for Affordable Housing Plans" dated October 27, 2009.

² HPD has developed a model Proxy Statement for ML Cooperatives that are exploring conversion to an HDFC Cooperative. Such model Proxy Statement is not applicable to ML Cooperatives that are also exploring privatization pursuant to an offering plan. Requests for model documents should be addressed to Housing Supervision at (212) 863-6500 or mitchell-lama@hpd.nyc.gov. Attorneys should note that HPD model documents are being provided for guidance purposes only.

-Proposed Notice to Shareholders of Submission of Exemption Application to the DOL, which notice should include reference to the 90-day right afforded to shareholders to submit comments to the Department of Law.

Upon receipt of a complete exemption application, the DOL will assign the application to a review attorney. The DOL will issue comments within 90 days of receipt of a complete application. During the 90 day review period, shareholders shall be permitted to submit comments to the DOL regarding the proposed Proxy Statement, which right shall be disclosed in the Notice to Shareholders of Submission of Exemption Application to the DOL.

Exemption Application:

The exemption application must include the proposed Proxy Statement for presentation to the shareholders. The Proxy Statement must include a description of the Program and the consequences of participation.

The Proxy Statement must include the following disclosures:

1. Special Risks: Disclose all special risks associated with leaving the Mitchell-Lama program and converting to an HDFC Cooperative. This section should include a thorough discussion of the current benefits of the Mitchell-Lama program that the ML Cooperative will forfeit upon conversion. More specifically:
 - a. Disclose that the Board of the ML Cooperative has chosen to present to the shareholders this Proxy Statement instead of proposing conversion to a free-market private cooperative. In the event the Board chooses to explore converting to a free-market private cooperative, HPD's Rules governing privatization would apply. These Rules require a simple majority vote to conduct a feasibility study, followed by a vote requiring approval of 66 2/3% of the dwelling units to authorize preparation of an offering plan to the DOL, and another 66 2/3% vote of the dwelling units to approve the offering plan after it has been accepted for filing.
 - b. Disclose that HPD has determined that the procedure for a conversion from New York Private Housing Finance Law ("PHFL") Article II to Article XI requires 66 2/3% of the dwelling units to approve the Proxy Statement.
 - c. Disclose that the proposed conversion from a ML Cooperative to an HDFC Cooperative is subject to New York Business Corporation Law ("BCL") § 623, and therefore dissenting shareholders must be afforded the opportunity to receive compensation for their shares, in the event they wish to forgo participating in the proposed conversion. The Proxy Statement must clearly set forth the offer for dissenting shareholders, which must include the option of receiving a lease in exchange for shares in the ML Cooperative, as well as the return of the initial equity investment in the ML Cooperative.

d. Disclose that all shareholders of the ML Cooperative will be deemed eligible to own shares in the HDFC Cooperative and continue to occupy their units after the conversion. Disclose that future purchasers will be limited to low-income individuals and families whose household income does not exceed 130% of the Area Median Income (AMI), as determined by the United States Department of Housing and Urban Development (HUD). State the current maximum income requirements for the purchase of shares in the ML Cooperative and the projected maximum income requirements for the purchase of shares in the HDFC Cooperative.

e. Disclose that the HDFC Cooperative will be required to enter into a Regulatory Agreement with HPD for a period of 30 years from the date of conversion (co-terminus with financing potentially provided by the New York City Housing Development Corporation ["HDC"]). The Regulatory Agreement will require among other things: 1) approval by HPD of all contracts greater than \$100,000; 2) mandatory maintenance increases on a yearly basis based upon the consumer price index ("CPI") unless the HDFC Cooperative applies to HPD for a different yearly increase; 3) occupancy standards analogous to Mitchell-Lama occupancy standards; 4) mandatory reserve funding requirements; 5) mandatory flip taxes; and 6) maximum resale prices that are affordable to households with incomes no greater than 130% of AMI (because HUD adjusts AMI annually, the maximum resale price will be adjusted accordingly and will in all likelihood increase over time).

f. Disclose that upon the expiration of the Regulatory Agreement, the HDFC Cooperative may seek permission from the shareholders to dissolve and reconstitute as a private market-rate cooperative or condominium in accordance with the terms and conditions set forth in the HDFC Cooperative's Certificate of Incorporation. The Certificate of Incorporation permits such market-rate conversion so long as the following criteria has been met: 1) the HDFC Cooperative has complied with the terms of the Regulatory Agreement for the full thirty-year term thereof; and, 2) an offering plan has been accepted for filing by the DOL; and 3) such plan has received a 66 2/3 vote of all dwelling units in order for it to become effective. Include a copy of the proposed HPD Certificate of Consent to Dissolution as an Exhibit to the Proxy Statement.

g. Disclose that New York City real property transfer taxes are not triggered by the proposed conversion of a ML Cooperative to an HDFC Cooperative, as set forth in the New York City Department of Finance letter to Matthew Shafit, HPD General Counsel, dated January 20, 2012, which shall be available to shareholders upon request.

h. Disclose that the HDFC Cooperative will receive a partial tax exemption pursuant to Article XI of the PHFL equal to the tax exemption that the ML Cooperative receives. Disclose the continued benefit of receiving an extended partial tax exemption upon conversion to an HDFC Cooperative.

2. Definition Section: Define in Part II all pertinent terms set forth in the Proxy Statement and accompanying documents, such as the Regulatory Agreement.

3. Introduction: Explain that the primary goals of the Program are to: 1) extend affordable housing opportunities to low-income individuals and families up to 130% of AMI for 30 years; 2) permit shareholders to achieve greater equity appreciation while still maintaining affordability; and 3) provide the Board with greater discretion to develop policies on issues such as inheritance and succession rights, and imposition of capital assessments. Refer to the HPD fact sheet on the Program and include it as an Exhibit to the Proxy Statement. Also include as an Exhibit to the Proxy Statement a current list of AMI income levels as issued by HUD.
4. Description of Property and Findings of the Physical Needs Assessment: All ML Cooperatives wishing to participate in the Program must conduct a Physical Needs Assessment ("PNA"). The findings of the PNA must be disclosed together with a plan to address such needs, along with a detailed discussion of available financing options.
5. Include a Schedule A for the HDFC Cooperative, including share allocations, and projected maintenance charges and resale prices, in compliance with 13 N.Y.C.R.R. § 18.3(f).
6. Include a Schedule B and Footnotes for the first year of operation as an HDFC Cooperative, in compliance with 13 N.Y.C.R.R. § 18.3(g).
7. Disclose the proposed schedule of flip taxes on initial sales and resales.
8. Procedure for Voting on the Plan of Conversion: The Proxy Statement must disclose that shareholders will be given the opportunity to vote on the proposed conversion, and describe how the vote will be conducted, the percentage of votes needed to participate in the Program, and how votes will be calculated. Furthermore, the Proxy Statement must disclose how blank ballots will be counted. The Proxy Statement must also disclose that HPD must approve the form of direct mail ballot to be used for the vote and shall include the proposed direct mail ballot as an Exhibit. Moreover, the Proxy Statement shall disclose that HPD takes the position that a conversion from Article II to Article XI requires a 66 2/3% vote of the dwelling units of the ML Cooperative, and each such dwelling unit shall be entitled to only one vote per apartment, regardless of share allocations.
9. Consummation of Plan of Conversion: The Proxy Statement must discuss how the proposed plan of conversion will be implemented. The discussion should include a proposed timeframe for conversion including the vote, filing of the proposed amended and restated Certificate of Incorporation with the Department of State (DOS), and the issuance of new proprietary leases and stock certificates.
10. Terms of Mortgages: The proposed terms of any financing provided by HDC, HPD or another lender, if applicable, must be discussed. Include a copy of the mortgage term sheet as an Exhibit to the Proxy Statement.

11. Discussion of Partial Tax Exemption: The Proxy Statement should discuss the projected partial tax exemption the HDFC Cooperative will receive pursuant to Article XI. Disclose that the exemption must be approved by the City Council and that the conversion shall not take place until the exemption has been granted.
12. Summary of Amended and Restated Certificate of Incorporation: The Proxy Statement must disclose the primary differences between the ML Cooperative's current Certificate of Incorporation and the proposed Amended and Restated Certificate of Incorporation. Disclose the key provisions regarding the requirements for future dissolution and reconstitution set forth in paragraph 1(f) of this memo. Include a copy of the Amended and Restated Certificate of Incorporation as an Exhibit to the Proxy Statement.
13. Summary of the Stock Certificate and the Proprietary Lease: The Proxy Statement must disclose the primary differences between the proposed proprietary lease and the current occupancy agreement. A copy of the proposed Stock Certificate and the proposed Proprietary Lease must be included as Exhibits to the Proxy Statement.
14. Summary of By-Laws: The Proxy Statement must disclose the primary differences between the proposed by-laws and the current by-laws. A copy of the proposed By-Laws must be included as an Exhibit to the Proxy Statement.
15. Apartment Corporation: The Proxy Statement should disclose that the corporate purpose of the HDFC Cooperative is to provide housing to individuals and families at or below 130% of AMI, but that current shareholders will be deemed eligible to own shares in the HDFC Cooperative and continue to occupy their units after the conversion regardless of their income. Furthermore, the Proxy Statement should disclose the proposed board structure and the additional authority the Board of Directors will have. The Proxy Statement should also disclose which corporate actions will no longer require regulatory oversight and review.
16. Summary of Regulatory Agreement: The Proxy Statement must disclose the primary features of the Regulatory Agreement. A copy of the proposed Regulatory Agreement should be included as an Exhibit to the Proxy Statement.
17. Reserve Fund/Working Capital Fund: The Proxy Statement must discuss current reserve fund/working capital fund requirements, whether the ML Cooperative must forgo any current funds upon conversion, and what fund requirements are being imposed upon the proposed HDFC Cooperative as a condition of participating in the Program.
18. Discussion of Reasonable Relationship, if applicable: The Proxy Statement must include a discussion of whether the ML Cooperative is currently a qualified cooperative for purposes of IRC § 216. In the event the ML Cooperative makes representations that the tax status of the Cooperative will change, an Opinion of Reasonable Relationship and Attorney's Income Tax Opinion in compliance with 13 N.Y.C.R.R. §§ 18.3(i) & (k) must be included as Exhibits to the Proxy Statement.

19. Financial Forecast for ML Cooperative: The Proxy Statement should include a summary of the financial forecast for the ML Cooperative if shareholders choose to remain in the Mitchell-Lama program. The discussion should include how the ML Cooperative would fund the repairs set forth in the PNA.

List of Required Exhibits to Proxy Statement:

1. HPD Fact Sheet on the Program
2. Current List of AMI Income Levels as Issued by HUD
3. Proposed Direct Mail Ballot for Shareholder Vote
4. Mortgage Term Sheet (if applicable)
5. Proposed Amended and Restated Certificate of Incorporation
6. Proposed Stock Certificate
7. Proposed Proprietary Lease
8. Proposed By-Laws
9. Proposed Regulatory Agreement
10. Proposed HPD Certificate of Consent to Dissolution
11. Opinion of Reasonable Relationship (if applicable)
12. Attorney's Income Tax Opinion (if applicable)

Related Documents Available at the Request of Shareholder:

1. NYC Department of Finance (DOF) Tax Opinion Letter to Matthew Shafit, HPD General Counsel, dated January 20, 2012
2. Physical Needs Assessment (PNA)

Additional Disclosures for ML Cooperatives with Pending Offering Plans:

HPD-supervised ML Cooperatives that have submitted an offering plan for conversion to a free-market private cooperative must amend the proposed offering plan to incorporate the requirements of this memo. The black book must contain four parts as follows: 1) Part I that sets forth the proposal for participation in the Article II to Article XI Conversion Program; 2) Part II that sets forth the terms and conditions of privatizing Article II cooperative to a free-market cooperative; 3) Part III that sets forth an overview of remaining in the Mitchell-Lama program; and 4) Part IV that contains all Exhibits required pursuant to this memo and any additional Exhibits required by the DOL. The black book must include the following legend on the front cover of the plan:

THIS OFFERING PLAN INCLUDES THREE PROPOSALS FOR CONSIDERATION BY THE SHAREHOLDERS. SHAREHOLDERS ARE STRONGLY ADVISED TO READ THE ENTIRE OFFERING PLAN TO UNDERSTAND THE THREE PROPOSALS SET FORTH HEREIN. SHAREHOLDERS WILL BE ENTITLED TO VOTE ON WHETHER TO: 1) REMAIN A MITCHELL-LAMA COOPERATIVE; 2) CONVERT TO AN INCOME-RESTRICTED COOPERATIVE HOUSING

DEVELOPMENT FUND COMPANY; OR 3) CONVERT TO A FREE-MARKET PRIVATE COOPERATIVE.

The DOL review attorney will work closely with the ML Cooperative's attorney to ensure that the offering plan accurately and adequately sets forth all options available to the shareholders.