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**STATE OF NEW YORK**

**DEPARTMENT OF LAW**

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**REAL ESTATE FINANCE BUREAU**

**MEMORANDUM**

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**Re: Temporary Electronic Submission Policies and Procedures for  
Initial Submissions During COVID-19 State of Emergency**

**Date: May 1, 2020**

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The New York State Department of Law (“DOL”) publishes this memorandum as a guidance document pursuant to State Administrative Procedure Act § 102(14).

**I. INTRODUCTION**

Due to the COVID-19 state of emergency, most personnel in the DOL’s Real Estate Finance Bureau (“REF”) currently are telecommuting. Because REF continues to be committed to providing important services to New Yorkers, a limited number of REF’s administrative staff remain in the office on staggered schedules to process incoming physical submissions and other mail. However, REF’s capacity to process incoming physical submissions and mail is more limited than usual.

REF also is aware that many submitters to REF also currently are telecommuting in order to ensure the health and safety of staff during the COVID-19 pandemic. REF recognizes that this has disrupted the business operations of many submitters to REF and that standard REF policies and procedures, including the requirement to mail a paper and digital copy of submissions to REF, may create logistical challenges for such submitters.

Accordingly, to promote the health and safety of both REF staff and submitters and to expedite the processing and review of initial submissions, REF temporarily is waiving some of its existing submission policies and procedures and is instituting temporary paperless electronic submission (“e-submission”) policies and procedures for the initial submission of offering plans, amendments, amended and restated offering plans, amendments to amended and restated offering plans, no-action letter applications, and amended no-action letter applications.

Specifically, REF is waiving until further notice its requirement that both a paper copy and a digital copy (on a CD-ROM, DVD, USB flash drive, or external hard drive) of initial submissions of offering plans, amendments, amended and restated offering plans, and amendments to amended and restated offering plans be mailed to REF. Additionally, REF is waiving until further notice its requirement that a paper copy of initial submissions of no-action letter applications and amended no-action letter applications be mailed to REF. Simultaneously, REF temporarily is instituting a paperless e-submission policy that allows submitters of proposed (initial submission) offering plans, amendments, amended and restated offering plans, amendments to amended and restated offering plans, no-action letter applications, and amended no-action letter applications to upload a digital copy of all

required documents to the OAG Cloud in lieu of mailing a physical copy of the submission to REF.<sup>1</sup> These temporary paperless e-submission policies and procedures are detailed herein. **Submitters taking advantage of these e-submission and e-payment policies and procedures do NOT need to physically mail paper copies (or digital copies, where typically required) of their submissions to REF at any time, unless explicitly requested by REF staff.**

Please note that this guidance document only addresses temporary e-submission policies and procedures for the **initial** submission of offering plans, amendments, amended and restated offering plans, amendments to amended and restated offering plans, no-action letter applications, and amended no-action letter applications; it does not address the final submission of such filings to REF. For further information regarding REF's temporary policies and procedures regarding the final submission of filings, please refer to REF's guidance document entitled "Temporary Submission and Review Policies and Procedures Due to COVID-19 State of Emergency."<sup>2</sup>

## **II. EFFECTIVE DATE AND RELIEF PERIOD**

The temporary paperless e-submission policies and procedures detailed herein are effective as of the date of this guidance document and until further notice. The time period during which these temporary policies and procedures are effective shall be termed "the relief period." As of the date of this guidance document, REF intends for the relief period to remain in effect as long as New York Executive Order Number 202 Declaring a Disaster Emergency in the State of New York<sup>3</sup> remains in effect. As of the date of this guidance document, REF intends to revert to its prior submission procedures at the end of the relief period and intends to do so by updating or repealing this guidance document.

Notwithstanding the foregoing, REF reserves the right to extend or end the relief period at any time, in its sole discretion. REF also reserves the right to modify or rescind the temporary relief policies and procedures detailed herein at any time, in its sole discretion, by updating this guidance document. REF further reserves the right to extend the temporary paperless e-submission policies and procedures detailed herein beyond the conclusion of the relief period.

Please note that any guidelines detailed herein concerning New York Executive Order Number 202.18 ("EO 202.18")<sup>4</sup> are not necessarily in effect for the duration of the relief period. Rather, such guidelines are in effect only for the duration of EO 202.18, which currently is in effect only from April 16, 2020 through May 16, 2020. However, EO 202.18 may be extended by the governor. If EO 202.18 is extended, REF's guidelines with respect to the relevant provisions of EO 202.18 as described herein will remain unchanged for the duration of the extension of EO 202.18 unless REF updates this guidance document. Please note that REF reserves the right to modify or rescind its interpretation of the relevant provisions of EO 202.18 as detailed herein at any time, in its sole discretion, by updating this guidance document.

All requirements pursuant to Article 23-A of the General Business Law ("the Martin Act"), REF's regulations, REF's guidance documents, and other relevant laws and regulations remain in full force and effect during the

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<sup>1</sup> All other requirements outlined in the guidance document entitled "Digital Submission Requirements for Cooperative Interests in Realty" remain in full force and effect, unless already waived, suspended, or altered by the guidance document entitled "Temporary Submission and Review Policies and Procedures Due to COVID-19 State of Emergency." Submitters are encouraged to review both of those guidance documents in conjunction with this guidance document.

<sup>2</sup> This guidance document is available at the following web address:

[https://ag.ny.gov/sites/default/files/temporary\\_submission\\_and\\_review\\_policies\\_and\\_procedures\\_due\\_to\\_covid-19\\_state\\_of\\_emergency\\_5-1-2020.pdf](https://ag.ny.gov/sites/default/files/temporary_submission_and_review_policies_and_procedures_due_to_covid-19_state_of_emergency_5-1-2020.pdf)

<sup>3</sup> New York Executive Order Number 202 is available at the following web address:

[https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO\\_202.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.pdf)

<sup>4</sup> New York Executive Order Number 202.18 is available at the following web address:

[https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO\\_202.18.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.18.pdf)

relief period, unless expressly stated herein or in the guidance document entitled “Temporary Submission and Review Policies and Procedures Due to COVID-19 State of Emergency.”

### **III. TEMPORARY WAIVER OF REQUIREMENTS FOR PHYSICAL SUBMISSIONS TO REF AND INSTITUTION OF PAPERLESS E-SUBMISSION POLICY**

During the relief period, REF temporarily is waiving its requirement for both a paper copy and a digital copy (on a CD-ROM, DVD, USB flash drive, or external hard drive) of initial submissions of offering plans, amendments, amended and restated offering plans, amendments to amended and restated offering plans, and their respective supporting documents. Additionally, during the relief period, REF temporarily is waiving its requirement for a paper copy of initial submissions of no-action letter applications and amended no-action letter applications and their respective supporting documents.

Rather than requiring that physical submissions be mailed to its office during the relief period, REF has instituted a temporary paperless e-submission policy for initial submissions of offering plans, amendments, amended and restated offering plans, amendments to amended and restated offering plans, no-action letter applications, and amended no-action letter applications, and their respective supporting documents. To promote the health and safety of both REF staff and submitters and to expedite the processing and review of these submissions, REF strongly encourages submitters to utilize this paperless e-submission policy in lieu of mailing physical submissions to REF.<sup>5</sup> Any submitters following these paperless e-submission procedures should **not** mail any physical copies of these documents—as either paper copies or digital copies on a CD-ROM, DVD, USB flash drive, or external hard drive—to REF unless explicitly requested by REF staff. Sending physical submissions to REF during the relief period likely will delay a submission’s acceptance for submission substantially.

### **IV. TEMPORARY PAPERLESS E-SUBMISSION PROCEDURES FOR THE INITIAL SUBMISSION OF ALL OFFERING PLANS, AMENDMENTS, AMENDED AND RESTATED OFFERING PLANS, AMENDMENTS TO AMENDED AND RESTATED OFFERING PLANS, NO-ACTION LETTER APPLICATIONS, AND AMENDED NO-ACTION LETTER APPLICATIONS**

Submitters utilizing REF’s temporary paperless e-submission policy must follow all of the procedures delineated below, unless otherwise noted. An abbreviated outline of these procedures is annexed to this guidance document as **Exhibit A**.

- (a) **Payment of the Initial Filing Fee Through the New E-Payment Portal (Optional But Strongly Encouraged for Filings Requiring Only Filing Fee Payments Pursuant to G.B.L. § 352-e(7)(a); Required for Filings Requiring Filing Fee Payments Pursuant to G.B.L. § 359-e(5)(d))**

This step is required if sponsor chooses to use the temporary paperless e-submission policy for their initial submission **and** chooses to pay filing fees contemporaneously with their initial submission. However, as further discussed below, EO 202.18 allows submitters to delay payment of some, but not all, filing fees associated with the initial submissions of offering plans, amendments, amended and restated offering plans, amendments to amended and restated offering plans, no-action letter applications, and amended no-action letter applications. If payment of **any** of the filing fees associated with an initial submission are required at the time of submission, the submitter **must** pay such fees via the e-payment portal **before** proceeding with their e-submission. Nevertheless, during the pendency of EO 202.18, REF highly encourages submitters to e-pay **all** filing fees contemporaneously with their filings, regardless of whether they are required to do so, as reconciling and processing all of the delayed

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<sup>5</sup> Paper copies (and digital copies, as appropriate) of initial submissions still may be mailed to REF during the relief period. REF will continue to process such paper submissions during the relief period, but the processing of such submissions may be delayed.

filing fees ultimately will be extremely time-consuming for REF and, consequently, may delay the processing of all submissions.

Additionally, as further described below, submitters choosing to pay any filing fees via paper check may **not** use the temporary paperless e-submission policy. Instead, such submitters must mail their entire submission to REF. Due to REF's very limited in-office staffing during the COVID-19 state of emergency, paper-based submissions and payments may delay a submission's processing during the relief period.

**(1) Delayed Payment of Certain Filing Fees Permitted Pursuant to EO 202.18**

EO 202.18 exempts filing fee requirements under General Business Law ("G.B.L.") § 352-e(7)(a) until 90 days after the expiration of EO 202.18. Such filing fees include the filing fees for offering plans, amendments, amended and restated offering plans, amendments to amended and restated offering plans, no-action letter applications, and amended no-action letter applications. Accordingly, during the pendency of EO 202.18, submitters may choose to make initial submissions of these filings without paying any associated filing fees required by G.B.L. § 352-e(7)(a). In such cases, payment of the applicable filing fees would need to be made to REF within 90 days following the expiration of EO 202.18. Nevertheless, during the pendency of EO 202.18, REF highly encourages submitters to pay these filing fees via the e-payment portal contemporaneously with their filings despite not being required to do so.

Submitters are advised that not all REF filing fees are exempted under EO 202.18. Specifically, the filing fees for broker-dealer and salesperson registration statements (i.e., Forms M-2, M-3, M-4, and M-10)—which are required pursuant to G.B.L. § 359-e(5)(d)—are **not** exempted by EO 202.18 and, therefore, still must be included with such submissions to REF.<sup>6</sup> Because these filing fees are statutorily required, REF cannot waive them. However, during the relief period, REF has advised submitters to avoid submitting "stand-alone" Forms M-2, M-3, M-4, and M-10 to REF until further notice.<sup>7</sup> Thus, during the relief period, these broker-dealer and salesperson registration statements should be submitted **only** in conjunction with a related filing. Accordingly, if submitting an offering plan, amendment, amended and restated offering plan, amendment to an amended and restated offering plan, no-action letter application, or amended no-action letter application contemporaneously with a broker-dealer or salesperson registration statement (where required),<sup>8</sup> the submitter may delay payment of the offering plan, amendment, amended and restated offering plan, amendment to an amended and restated offering plan, no-action letter application, or amended no-action letter application filing fee, but must pay the broker-dealer or salesperson registration statement filing fee at the time of submission.

However, REF highly encourages submitters to pay all filing fees, whether exempt or not, via the e-payment portal while EO 202.18 is in effect in order to avoid confusion and processing delays. If (1) the submitter chooses to delay payment of the filing fee for the offering plan, amendment, amended and restated offering plan, amendment to an amended and restated offering plan, no-action letter application, or amended no-action letter application, but (2) payment of a related broker-dealer or salesperson registration statement filing fee is still required pursuant to G.B.L. § 359-e(5)(d), REF highly recommends that the submitter pay the broker-dealer or salesperson registration statement filing fee via e-payment, as doing so will enable the submitter to utilize the e-

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<sup>6</sup> Form 99 filing fees that are required pursuant to G.B.L. § 359-e(5)(b)-(c)—i.e., the broker-dealer registration statement filing fees—also are not exempt under EO 202.18. But these filing fees are not discussed further herein because Form 99 is never submitted in conjunction with an offering plan, amendment, amended and restated offering plan, amendment to an amended and restated offering plan, no-action letter application, or amended no-action letter application. For further information about Form 99 filing fees and how EO 202.18 affects them, please refer to the guidance document entitled "Guidelines for the Submission of Electronic Payments of Filing Fees During the COVID-19 State of Emergency."

<sup>7</sup> For further information, please refer to REF's guidance document entitled "Temporary Submission and Review Policies and Procedures Due to COVID-19 State of Emergency."

<sup>8</sup> As indicated in the guidance document entitled "Temporary Submission and Review Policies and Procedures Due to COVID-19 State of Emergency," a broker-dealer registration statement still is required with the submission of a new offering plan or no-action letter application to REF during the relief period, as appropriate. Additionally, a new or supplemental broker-dealer registration statement is required with an amendment submission if there is a change to the sponsor or any of its principals.

submission policy. If, in such instances, the broker-dealer or salesperson registration statement is paid via paper check instead of via e-payment, the entire initial submission of the offering plan, amendment, amended and restated offering plan, amendment to an amended and restated offering plan, no-action letter application, or amended no-action letter application cannot be submitted to REF using the temporary paperless e-submission policy. Instead, the submitter must mail a paper copy—and digital copy, where required—of the submission including the paper check to REF.

In sum, pursuant to EO 202.18, submitters may delay payment of filing fees required by G.B.L. § 352-e(7)(a) until 90 days following the expiration of EO 202.18. But if an initial submission of an offering plan, amendment, amended and restated offering plan, amendment to an amended and restated offering plan, no-action letter application, or amended no-action letter application also necessitates the submission of an associated broker-dealer or salesperson registration statement (as is often the case), the submitter must pay the associated broker-dealer or salesperson registration statement filing fee required by G.B.L. § 359-e(5)(d) **before** submitting the initial submission of the offering plan, amendment, amended and restated offering plan, amendment to amended and restated offering plan, no-action letter application, or amended no-action letter application, even if they choose to delay payment of the filing fee pursuant to G.B.L. § 352-e(7)(a) under EO 202.18. Furthermore, submitters of such offering plans, amendments, amended and restated offering plans, amendments to amended and restated offering plans, no-action letter applications, and amended no-action letter applications wishing to use the temporary paperless e-submission process described herein must pay the required filing fees pursuant to G.B.L. § 359-e(5)(d) **via the e-payment portal** before proceeding with their e-submission. REF will not accept e-submissions in which any filing fees—including filing fees for associated broker-dealer or salesperson registration statements required by G.B.L. § 359-e(5)(d)—were paid via paper check. Instead, such submitters must physically mail their entire offering plan, amendment, amended and restated offering plan, amendment to an amended and restated offering plan, no-action letter application, or amended no-action letter application initial submission (including a paper copy—and a digital copy, where required—of their submission and their paper check) to REF.

## **(2) Payment of Filing Fees Using the E-Payment Portal**

Submitters wishing to use the temporary paperless e-submission policy **and** desiring to pay all filing fees contemporaneously with their filing **must** pay the appropriate filing fees pursuant to G.B.L. § 352-e(7)(a)—as well as the filing fees pursuant to G.B.L. § 359-e(5)(d), if applicable—through the e-payment portal in lieu of submitting a paper check. That is, during the pendency of the relief period and EO 202.18, REF will **not** process e-submissions for which any appropriate filing fees were paid via paper check. Therefore, submitters paying any filing fees using a paper check **cannot** take advantage of the temporary paperless e-submission policy. Instead, they must mail a paper copy—and a digital copy, where required—of their submission including the paper check to REF.

Please note that submitters desiring to pay the filing fee pursuant to G.B.L. § 352-e(7)(a) contemporaneously with their filing must pay the appropriate filing fee through REF's e-payment portal **before** using the e-submission procedures detailed below. Additionally, submitters (1) desiring to pay the filing fee pursuant to G.B.L. § 352-e(7)(a) at a later date, under the filing fee requirement exemption of EO 202.18, and (2) **required** to pay the broker-dealer or salesperson registration statement filing fee pursuant to G.B.L. § 359-e(5)(d) must pay such filing fee **before** using the e-submission procedures detailed below. However, submitters (1) desiring to pay the filing fee pursuant to G.B.L. § 352-e(7)(a) at a later date, under the filing fee requirement exemption of EO 202.18, and (2) **not required** to pay the broker-dealer or salesperson registration statement filing fee pursuant to G.B.L. § 359-e(5)(d) may skip this step and proceed directly to the instructions in the next section of this guidance document, entitled "Submission of Email Requesting a Link to the OAG Cloud."

For more detailed information about REF's e-payment process, please refer to REF's guidance document entitled "Guidelines for the Submission of Electronic Payments of Filing Fees During the COVID-19 State of Emergency."

**(b) Submission of Email Requesting a Link to the OAG Cloud**

Submitters using the temporary paperless e-submission policy must email [REFSubmissions@ag.ny.gov](mailto:REFSubmissions@ag.ny.gov) requesting an OAG Cloud link. Submitters desiring to pay the offering plan, amendment, amended and restated offering plan, amendment to an amended and restated offering plan, no-action letter application, and amended no-action letter application filing fee pursuant to G.B.L. § 352-e(7)(a) contemporaneously with their filing must send this email **after** the appropriate filing fee(s) have been paid through the e-payment portal. Additionally, regardless of whether submitters are paying such filing fees contemporaneously with their filing, submitters including a broker-dealer or salesperson registration statement with their initial e-submission must send this email **after** the appropriate filing fees pursuant to G.B.L. § 359-e(5)(d) have been paid through the e-payment portal.

The subject line of the email should follow one of the formats outlined below, as appropriate:

- For Offering Plan Submissions:
  - Offering Plan Initial Submission: Offering Plan Name
    - For example: *Offering Plan Initial Submission: ABC Condominium*
- For Amendment Submissions:
  - Amendment Initial Submission: Offering Plan Number [space] Offering Plan Name [space] Amendment Number
    - For example: *Amendment Initial Submission: CD20-0001 ABC Condominium Amendment 1*
- For Amended and Restated Offering Plans:
  - Restated Offering Plan Initial Submission: Offering Plan Number [space] Offering Plan Name [space] Amended and Restated Offering Plan
    - For example: *Restated Offering Plan Initial Submission: CD20-0001 ABC Condominium Amended and Restated Offering Plan*
- For Amendments to Amended and Restated Offering Plans:
  - Amendment to Restated Offering Plan Initial Submission: Offering Plan Number [space] Offering Plan Name [space] Amended and Restated [space] Amendment Number
    - For example: *Amendment to Restated Offering Plan Initial Submission: CD20-0001 ABC Condominium Amended and Restated Amendment 1*
- For No-Action Letter Application Submissions:
  - NAL Application Initial Submission: Project Name
    - For example: *NAL Application Initial Submission: ABC Condominium*
- For Amended No-Action Letter Application Submissions:
  - Amended NAL Application Initial Submission: NAL File Number [space] Project Name [space] Amended NAL Application [Amendment Number]
    - For example: *Amended NAL Application Initial Submission: NA20-0001 ABC Condominium Amended NAL Application 1*

Within approximately three business days of receipt of this email, REF will provide the submitter with an OAG Cloud link where all documents required to be submitted with their submission can be uploaded. The submitter will receive two emails from REF: (1) an automated email from [sharing-noreply@oagcloud.ag.ny.gov](mailto:sharing-noreply@oagcloud.ag.ny.gov) containing the OAG Cloud folder name in the subject line and (2) a reply email from [REFSubmissions@ag.ny.gov](mailto:REFSubmissions@ag.ny.gov) confirming the automated email has been sent. To ensure submitters receive these emails, submitters are advised to add both [sharing-noreply@oagcloud.ag.ny.gov](mailto:sharing-noreply@oagcloud.ag.ny.gov) and [REFSubmissions@ag.ny.gov](mailto:REFSubmissions@ag.ny.gov) as approved senders.

**(c) E-Submission of Initial Submission Digital Copies Through the OAG Cloud**

**(1) Offering Plan, Amendment, Amended and Restated Offering Plan, and Amendment to Amended and Restated Offering Plan Submissions**

Upon receipt of the OAG Cloud link, submitters must upload all documents required for the offering plan, amendment, amended and restated offering plan, or amendment to the amended and restated offering plan initial submission to the link provided. All documents required by REF’s regulations and guidance documents must be submitted as **separate** (i.e., individual) .pdf files using this link.<sup>9</sup> Submitters who have paid the filing fee(s) through the e-payment portal should follow the saving and naming conventions for digital copies of proof of e-payment of filing fees detailed in the guidance document entitled “Guidelines for the Submission of Electronic Payments of Filing Fees During COVID-19 State of Emergency” when saving their e-payment receipts.

Additionally, all documents must be saved and named in accordance with the requirements set forth in the guidance document entitled “Digital Submission Requirements for Cooperative Interests in Realty.”<sup>10</sup> Accordingly, before uploading any documents, submitters must create the digital folders and subfolders required for their submission on their own computer drive and save the required documents within such folders.<sup>11</sup> Then, these folders should be saved in a folder entitled “Initial Submission” and this folder, along with its subfolders and the documents within them, may be dragged and dropped into the OAG Cloud window. Essentially, submitters should create the folders and subfolders exactly as if they were submitting a digital copy of the offering plan, amendment, amended and restated offering plan, or amendment to the amended and restated offering plan on a CD-ROM, DVD, USB flash drive, or external hard drive, but instead of copying these folders to the CD-ROM, DVD, USB flash drive, or external hard drive, they should place the folders into an “Initial Submission” folder before copying that folder to the OAG Cloud. Please be advised that the preferred internet browsers to be used when uploading folders and documents are Chrome, Edge, and Firefox; folders cannot be uploaded to the OAG Cloud using Internet Explorer. Alternatively, submitters may create the folders manually in the OAG Cloud window and then upload the appropriate documents to each folder or subfolder, as appropriate.<sup>12</sup>

Once the appropriate folders, subfolders, and all documents have been uploaded to the OAG Cloud, submitters must reply to the email they received from [REFSubmissions@ag.ny.gov](mailto:REFSubmissions@ag.ny.gov) and confirm that all required documents have been uploaded. In such email, the submitter must state whether the filing fee pursuant to G.B.L. § 352-e(7)(a)—and the filing fee pursuant to G.B.L. § 359-e(5)(d), if applicable to the submission—has been paid. Please be advised that the OAG Cloud does not have the capacity to inform REF once a submission is uploaded.

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<sup>9</sup> Please note that proof of the submitting attorney’s active registration status with the New York State Courts continues to be optional, but strongly encouraged. If this document is included with the e-submission, REF does not require a paper copy. Instead, it must be submitted only as a digital copy and saved in the “Backup Documents” folder.

<sup>10</sup> This guidance document is available at the following web address:

[https://ag.ny.gov/sites/default/files/digital\\_submission\\_requirements\\_for\\_cooperative\\_interests\\_in\\_realty\\_10-15-2019.pdf](https://ag.ny.gov/sites/default/files/digital_submission_requirements_for_cooperative_interests_in_realty_10-15-2019.pdf)

<sup>11</sup> Submitters are referred specifically to pp. 8, 12, and 16 of the guidance document entitled “Digital Submission Requirements for Cooperative Interests in Realty” for the folder structures applicable to offering plan, amendment, and amended and restated offering plan submissions.

<sup>12</sup> For example, when uploading documents for an offering plan, the submitter first should create one folder entitled “Initial Submission” using the + icon in the main OAG Cloud window and, within that folder, they should create four folders using the + icon entitled as follows:

- “Offering Plan”,
- “Certified Public Copy”,
- “Exhibits”, and
- “Backup Documents”.

Continuing the offering plan example above, the submitter then should create five subfolders using the + icon in the “Exhibits” folder and populate them as follows:

- “M-10 Document” containing Exhibits D-18 and D-2;
- “Exhibit A Documents” containing all applicable Exhibit A documents;
- “Exhibit B Documents” containing all applicable Exhibit B Documents;
- “Exhibit C Documents” containing all applicable Exhibit C documents; and
- “Exhibit D Documents” containing all applicable Exhibit D Documents.

Therefore, REF will not know that a submission has been uploaded to the OAG Cloud unless and until this email confirmation is received. As such, REF staff will only process and review uploaded documents upon receipt of this email confirmation; REF will not check the OAG Cloud for submissions before such time. Accordingly, the failure to send this email confirmation as required may delay the submission's processing and review.

## **(2) No-Action Letter Application and Amended No-Action Letter Application Submissions**

Upon receipt of the OAG Cloud link, submitters must upload all documents required for the no-action letter application or amended no-action letter application initial submission to the link provided. All documents required by REF's regulations and guidance documents must be submitted as .pdf files using this link; **separate** (i.e., individual) .pdf files must be submitted for each of the documents or groups of documents set forth below. Additionally, submitters who have paid the filing fee(s) through the e-payment portal should follow the saving and naming conventions for digital copies of proof of e-payment of filing fees detailed in the guidance document entitled "Guidelines for the Submission of Electronic Payments of Filing Fees During COVID-19 State of Emergency" when saving their e-payment receipts.

Unlike for offering plan, amendment, amended and restated offering plan, and amendment to amended and restated offering plan submissions, the required documents for no-action letter application and amended no-action letter application submissions may be saved directly into an "Initial Submission" folder; no subfolders are required. Then, this "Initial Submission" folder and the documents within it may be dragged and dropped directly into the OAG Cloud window. Please be reminded that the preferred internet browsers to be used when uploading folders and documents are Chrome, Edge, and Firefox; folders cannot be uploaded to the OAG Cloud using Internet Explorer. Alternatively, submitters may create the "Initial Submission" folder manually in the OAG Cloud window and then upload the appropriate documents to that folder.<sup>13</sup> These files should be saved and named in accordance with the following naming conventions:<sup>14</sup>

### **Saving and Naming Conventions for Initial Submissions of No-Action Letter Applications**

- Transmittal letter
  - Project Name [space] NAL Application Attorney Transmittal Letter Initial
    - For example: *ABC Condominium NAL Application Attorney Transmittal Letter Initial*
- Affidavit(s), including all exhibits thereto<sup>15</sup>
  - Project Name [space] Affidavit(s) in Support of NAL Application Initial
    - For example: *ABC Condominium Affidavit in Support of NAL Application Initial*
- Any and all other ancillary documents
  - Project Name [space] Ancillary Documents in Support of NAL Application Initial
    - For example: *ABC Condominium Ancillary Documents in Support of NAL Application Initial*

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<sup>13</sup> For example, when uploading documents for either a no-action letter application or an amended no-action letter application, the submitter first should create a folder entitled "Initial Submission" using the + icon in the main OAG Cloud window and then drag and drop all required documents into that folder.

<sup>14</sup> To the extent that following these filename conventions results in unwieldy or overly lengthy filenames, REF highly encourages submitters to use abbreviations to shorten portions of the filenames provided in this document, as long as the abbreviation is clear. For example, "Affidavit" may be changed to "Aff," "Application" may be changed to "App", "Amendment" may be changed to "A", "Ancillary Documents" may be changed to "Ancillary Docs," "Condominium" may be changed to "Condo", "Cooperative" may be changed to "Coop", and "Street" may be changed to "St".

<sup>15</sup> All affidavits, including any supplementary affidavits, and all exhibits thereto should be included in one .pdf file and named according to these naming conventions.

## Saving and Naming Conventions for Initial Submissions of Amended No-Action Letter Applications

- Transmittal letter
  - NAL File Number [space] Project Name [space] Amended NAL Application [Amendment Number] [space] Attorney Transmittal Letter Initial
    - For example: *NA20-0001 ABC Condominium Amended NAL Application 1 Attorney Transmittal Letter Initial*
- Affidavit(s), including all exhibits thereto<sup>16</sup>
  - NAL File Number [space] Project Name [space] Affidavit in Support of Amended NAL Application [Amendment Number] Initial
    - For example: *NA20-0001 ABC Condominium Affidavit in Support of Amended NAL Application 1 Initial*
- Any and all other ancillary documents
  - NAL File Number [space] Project Name [space] Ancillary Documents in Support of Amended NAL Application Initial
    - For example: *NA20-0001 ABC Condominium Ancillary Documents in Support of Amended NAL Application Initial*

Additionally, these .pdf files must be searchable by keyword and printable to the extent technologically possible.

Once all documents have been uploaded, submitters must reply to the email they received from [REFSubmissions@ag.ny.gov](mailto:REFSubmissions@ag.ny.gov) and confirm that all required documents have been uploaded. In such email, the submitter must state whether the filing fee pursuant to G.B.L. § 352-e(7)(a)—and the filing fee pursuant to G.B.L. § 359-e, if applicable to the submission—has been paid. Please be advised that the OAG Cloud does not have the capacity to inform REF once a submission is uploaded. Therefore, REF will not know that a submission has been uploaded to the OAG Cloud unless and until this email confirmation is received. As such, REF staff will only process and review uploaded documents upon receipt of this email confirmation; REF will not check the OAG Cloud for submissions before such time. Accordingly, the failure to send this email confirmation as required may delay the submission's processing and review.

### **(d) Record Room's Processing and Review of Submissions**

Within approximately five business days of receipt of the submitter's email confirming that all documents have been uploaded, REF's Records Management Section will (1) process and review all of the documents and (2) email the submitter to inform them whether the submission has been accepted for submission.

If the submission has been accepted for submission, REF's acceptance email will include the submission date. In instances where the submission contains no deficiencies, the submission date will be the date the submitter emailed [REFSubmissions@ag.ny.gov](mailto:REFSubmissions@ag.ny.gov) confirming that all required documents have been uploaded to the OAG Cloud.

If the submission has been deemed deficient, REF's deficiency email will (1) list the deficiencies that sponsor must cure before the submission will be accepted for submission and (2) provide instructions as to how to cure such deficiencies. Once all deficiencies are sufficiently cured, REF will send an acceptance email that includes the submission date. REF reserves the right to reject for submission any e-submission containing a broker-dealer or salesperson registration statement that does not also contain an e-payment receipt for the broker-dealer or

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<sup>16</sup> All affidavits, including any supplementary affidavits, and all exhibits thereto should be included in one .pdf file and named according to these naming conventions.

salesperson registration statement filing fee either in the “Backup Documents” folder or in the “Initial Submission” folder, as appropriate.

Please note that the submission date is not the date payment is made through REF’s e-payment portal, nor is the submission date always the date files are uploaded to the OAG Cloud. Instead, submitters should rely on the submission date included in the email sent by REF’s Records Management Section confirming that the filing has been accepted for submission.

**V. FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS GUIDANCE DOCUMENT**

REF reserves the right to reject e-submissions that do not comply with **all** requirements described herein. Sponsors are advised that REF’s rejection of a submission may delay the submission’s processing and acceptance for submission. Additionally, the Attorney General has the authority under the Martin Act to investigate and strictly enforce violations of the statutes and regulations governing disclosure requirements. Nothing contained in this guidance document shall be construed to be a waiver of, or a limitation on, the Attorney General’s authority to take enforcement action pursuant to the Martin Act and other applicable provisions of law, except as expressly stated herein.

# **EXHIBIT A**

**OUTLINE OF REF’S TEMPORARY PAPERLESS E-SUBMISSION POLICIES AND PROCEDURES  
FOR INITIAL SUBMISSIONS DURING COVID-19 STATE OF EMERGENCY**

- Submitter pays all appropriate filing fees using REF electronic payment (“e-payment”) portal.<sup>17</sup>
  - Submitters choosing to pay any filing fees via paper check may **not** use the temporary paperless e-submission policy.
  - Payment of filing fees pursuant to G.B.L. § 352-e(7)(a) are optional while New York Executive Order Number 202.18 (“EO 202.18”) is in effect, whereas payment of filing fees pursuant to G.B.L. § 359-e(5)(d) continue to be required.
  - Nevertheless, REF highly encourages submitters to pay all filing fees *pursuant to G.B.L. § 352-e(7)(a)* via the e-payment portal during the pendency of EO 202.18 despite not being required to do so.
  - However, submitters wishing to e-submit filings requiring a broker-dealer or salesperson registration statement (such as new offering plans and no-action letter applications) must, at a minimum, pay the applicable filing fees *pursuant to G.B.L. § 359-e(5)(d)* through the e-payment portal before proceeding further; submitters wishing to pay these filing fees via check must submit their entire initial submission via mail.
  - If paying filing fees contemporaneously with the submission, the submission date is not the date of e-payment. Instead, the submission date will be the date listed in the acceptance email from REF’s Records Management Section, as further detailed below. If delaying payment of filing fees pursuant to G.B.L. § 352-e(7)(a) while EO 202.18 is in effect, the submission date likewise will be the date listed in the acceptance email from REF’s Records Management Section.
  
- Submitter emails [REFSubmissions@ag.ny.gov](mailto:REFSubmissions@ag.ny.gov) requesting an OAG Cloud link. The subject line of such email should be the following, as appropriate:
  - Offering Plan Initial Submission: Offering Plan Name
    - For example: *Offering Plan Initial Submission: ABC Condominium*
  - Amendment Initial Submission: Offering Plan Number [space] Offering Plan Name [space] Amendment Number
    - For example: *Amendment Initial Submission: CD20-0001 ABC Condominium Amendment 1*
  - Restated Offering Plan Initial Submission: Offering Plan Number [space] Offering Plan Name [space] Amended and Restated Offering Plan
    - For example: *Restated Offering Plan Initial Submission: CD20-0001 ABC Condominium Amended and Restated Offering Plan*
  - Amendment to Restated Offering Plan Initial Submission: Offering Plan Number [space] Offering Plan Name [space] Amended and Restated [space] Amendment 1
    - For example: *Amendment to Restated Offering Plan Initial Submission: CD20-0001 ABC Condominium Amended and Restated Amendment 1*
  - NAL Application Initial Submission: Project Name
    - For example: *NAL Application Initial Submission: ABC Condominium*
  - Amended NAL Application Initial Submission: NAL File Number [space] Project Name [space] Amended NAL Application [Amendment Number]
    - For example: *Amended NAL Application Initial Submission: NA20-0001 ABC Condominium Amended NAL Application 1*

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<sup>17</sup> For further information regarding e-payment of REF filing fees, please refer to REF’s guidance document entitled “Guidelines for the Submission of Electronic Payments of Filing Fees During COVID-19 State of Emergency,” which is available at the following web address:

[https://ag.ny.gov/sites/default/files/guidelines\\_for\\_the\\_submission\\_of\\_electronic\\_payments\\_of\\_filing\\_fees\\_during\\_covid-19\\_state\\_of\\_emergency\\_5-1-2020.pdf](https://ag.ny.gov/sites/default/files/guidelines_for_the_submission_of_electronic_payments_of_filing_fees_during_covid-19_state_of_emergency_5-1-2020.pdf)

- Within approximately three business days of receipt of such email, the submitter will receive two emails from REF's Records Management Section:
  - An automated email from [sharing-noreply@oagcloud.ag.ny.gov](mailto:sharing-noreply@oagcloud.ag.ny.gov) containing the OAG Cloud folder name in the subject line, and
  - A reply email from [REFSubmissions@ag.ny.gov](mailto:REFSubmissions@ag.ny.gov) confirming the automated email has been sent.
- Submitter uploads all required documents to the OAG Cloud in accordance with the Martin Act, REF's regulations, and REF's guidance documents.
- After uploading all required documents to the OAG Cloud, submitter replies to the email they received from [REFSubmissions@ag.ny.gov](mailto:REFSubmissions@ag.ny.gov) confirming that all documents were uploaded to the OAG Cloud.
  - In such email, the submitter must state whether the filing fee pursuant to G.B.L. § 352-e(7)(a)—and the filing fee pursuant to G.B.L. § 359-e, if applicable to the submission—has been paid.
  - REF staff will only process and review uploaded documents upon receipt of the submitter's email confirmation; REF will not check the OAG Cloud for submissions before such time.
- Within approximately five business days of receipt of such email, REF's Records Management Section will email the submitter to inform them whether the submission has been accepted for submission.
  - If the submission has been accepted for submission, REF's acceptance email will include the submission date.
  - If the submission has been deemed deficient, REF's deficiency email will (1) list the deficiencies that sponsor must cure before the submission will be accepted for submission and (2) provide instructions as to how to cure such deficiencies. Once all deficiencies are sufficiently cured, REF will send an acceptance email that includes the submission date.
- Please note that the submission date is not the date payment is made through REF's e-payment portal, nor is the submission date always the date files are uploaded to the OAG Cloud. Instead, submitters should rely on the submission date included in the email sent by REF's Records Management Section confirming that the filing has been accepted for submission. If there are no deficiencies in the submission, the submission date will be the date the submitter emailed [REFSubmissions@ag.ny.gov](mailto:REFSubmissions@ag.ny.gov) to confirm that all documents have been uploaded to the OAG Cloud.