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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 Submission and Review  
Policies and Procedures Due to  
COVID-19 State of Emergency**

**Date: March 25, 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. A limited number of REF’s administrative personnel will remain in the office on staggered schedules to process incoming submissions and other mail in the immediate future. REF operations thus will continue during the state of emergency and REF remains committed to providing important services to New Yorkers. However, REF’s processing and review of submissions may be delayed due to its alternative work schedule.

REF recognizes that the COVID-19 state of emergency also has disrupted the business operations of many submitters to REF and that current REF policies and procedures may create logistical challenges for such submitters. To that end, REF has enacted a number of temporary submission and review policies and procedures that will provide limited relief to submitters while simultaneously ensuring the health of REF personnel and adequately protecting New York purchasers and tenants. These temporary policies and procedures are detailed herein and are effective as of the date of this guidance document and until further notice.

The time period during which REF’s 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>1</sup> remains in effect. Notwithstanding the foregoing, REF reserves the right to extend or end the relief period at any time, in its sole discretion, by updating this guidance document or issuing a new guidance document. 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.

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<sup>1</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)

All requirements pursuant to Article 23-A of the General Business Law (“the Martin Act”), REF’s regulations, REF guidance documents, and other relevant laws and regulations remain in full force and effect during the relief period, unless expressly stated herein. In addition, REF’s relief period policies and procedures do not apply to violations that occurred, or began prior to, the start of the relief period and have no impact on REF’s or the DOL’s ongoing enforcement activity. Furthermore, 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. Finally, the relief period policies and procedures detailed in this guidance document apply only to REF and do **not** apply to other bureaus or units within the DOL.<sup>2</sup>

## **II. TEMPORARY REF SUBMISSION AND REVIEW POLICIES AND PROCEDURES**

### **(a) Sales After Expiration of the Term of the Offering Plan**

The Martin Act requires that before a sponsor<sup>3</sup> of a cooperative interest in realty may offer or sell units, the sponsor must submit an offering plan to REF. *See* GBL § 352-e(2). An initial offering plan is valid for twelve months from the date REF accepts the offering plan for filing. The term of the initial offering plan may be extended when REF accepts for filing an amendment to the offering plan. *See, e.g.*, 13 NYCRR § 20.3(a)(5). All sponsor sales and/or marketing activity must cease upon expiration of the term of the offering plan unless the term is extended by amendment. *See, e.g.*, 13 NYCRR § 20.5(c). If sponsor continues to sell and/or market units after the term of the offering plan is expired, REF deems those sales to be “stale sales” and typically pursues enforcement actions against the sponsor and its principals for violation of the Martin Act.

During the relief period, REF does not intend to pursue enforcement actions against sponsors or principals based **solely** upon the marketing or sale of units/apartments/homes pursuant to an expired or “stale” offering plan. Specifically, REF does not intend to commence new investigations of sponsors and principals for “stale sales” activity that occurred after the start of the relief period. Additionally, during the relief period, REF will not consider a sponsor’s marketing or sale of units/apartments/homes pursuant to an expired or “stale” offering plan to be an act triggering a right of rescission for purchasers. Therefore, until further notice, sponsors do **not** need to submit amendments to REF that principally serve to extend the term of the offering plan (i.e., “financial update amendments”).

However, during the relief period, REF intends to continue to pursue enforcement action against sponsors and principals, as warranted, for “stale sales” activity that occurred prior to the start of the relief period and intends to continue any investigations regarding “stale sales” activity that commenced prior to the start of the relief period. REF also intends to pursue enforcement actions against sponsors and principals, as warranted, for any failure to disclose material and adverse changes to purchasers during the relief period. REF will consider the failure to disclose a material and adverse change to a purchaser to be an act triggering a right of rescission for a purchaser.

The following is a **non-exhaustive** list of changes that REF would deem material and adverse for the purposes of this guidance document (and thus would necessitate an amendment to the offering plan during the relief period).

1. The sponsor learns that the building’s actual cash operating expenses (excluding depreciation and extraordinary or non-recurring items, but including capital repairs, replacements, and improvements) for a fiscal year exceed its income by more than 15% percent.

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<sup>2</sup> Please note that the DOL’s Investor Protection Bureau has issued its own guidance regarding temporary relief period policies and procedures, which is available at the following web address:

<https://ag.ny.gov/sites/default/files/ipbfilingrelief.pdf>

<sup>3</sup> “Sponsor” means sponsor, successor sponsor, or holder of unsold shares wherever that term is used in this document.

2. Litigation is filed which may adversely affect the sponsor's capacity to perform all of its obligations.
3. The sponsor learns, or should know, that the condominium, cooperative, homeowners association, timeshare, or senior residential community is not meeting its current obligations.
4. The sponsor is not meeting its current obligations.
5. The sponsor is subjected to a judgment in any civil or criminal action or proceeding which adversely affects the offering plan or the sponsor's fitness as an offeror of real estate securities.
6. The sponsor learns, or should know, of facts or circumstances which may in reasonable likelihood result in material increases in maintenance charges or common charges because of extraordinary expenses to the condominium, cooperative, homeowners association, timeshare, or senior residential community, including, but not limited to, assessments or liabilities, outstanding uncured violations of record, dangerous and hazardous building conditions, or pending litigation.
7. There is an increase of 25% or more in the budget or projected budget of the property.
8. There is an increase of 25% or more in the property's projected or assessed property taxes.
9. The sponsor makes a change in the size or number of units and/or their respective percentages of common interest.
10. The sponsor materially decreases the size or quality of common elements.<sup>4</sup>
11. There is an architectural change to any common element or any unit/apartment/home being offered, other than a substitution of "equal or better quality" as defined in the offering plan.
12. There is a material decrease in the square footage of any unit/apartment/home being offered.<sup>5</sup>
13. There is a change to the identities of the sponsors or principals of the offering plan.<sup>6</sup> *See, e.g.*, 13 NYCRR Part 20.3(ab).

Please note that REF does intend to continue to pursue enforcement actions against sponsors and principals, as warranted, for failure to submit effectiveness and post-closing amendments during the relief period. Therefore, sponsors are advised to continue submitting such amendments to REF during the relief period, as appropriate.

Additionally, after the conclusion of the relief period, REF intends to pursue enforcement actions against sponsors and principals in connection with the marketing or sale of units/apartments/homes pursuant to an expired or "stale" offering plan where "stale sales" activity occurred after the conclusion of the relief period. Accordingly, sponsors are advised to amend their offering plans prior to engaging in any "stale sales" activity after the conclusion of the relief period.

**(b) Price Change Only Amendments**

REF's regulations require that the offering prices set forth in an offering plan's Schedule A must be changed by a duly filed amendment to the offering plan when the change in price is an across-the-board increase or decrease affecting one or more lines of units or unit models, or is to be advertised, or is a price increase for an individual purchaser. *See, e.g.*, 13 NYCRR Part 20.3(k). REF's regulations permit the submission of amendments solely limited to price changes; such amendments are "price change only amendments" and are deemed accepted for filing upon their submission to REF. *See, e.g.*, 13 NYCRR Part 20.5(d)(1).

During the relief period, REF does not intend to pursue enforcement actions against sponsors or principals based **solely** upon the failure to file price change only amendments with REF prior to offering or selling units/apartments/homes at prices different than the most recently disclosed and filed offering price. Additionally, during the relief period, REF will not consider a sponsor's failure to file a price change only amendment prior to offering or selling units/apartments/homes at prices different than the most recently disclosed and filed offering

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<sup>4</sup> It shall be within REF's sole discretion to determine what constitutes a material decrease in the quality of common elements.

<sup>5</sup> Please note that there is a rebuttable presumption that a decrease in square footage of 5% or less is not material.

<sup>6</sup> REF will not consider a change to sponsor's address to be a change necessitating an amendment to the offering plan during the relief period.

price to be an act triggering a right of rescission for purchasers.<sup>7</sup> Therefore, sponsors are advised **not** to submit price change only amendments to REF until further notice.

Please note, however, that the foregoing guidance applies **only** to price change only amendments. If sponsor is required to submit a substantive amendment<sup>8</sup> to REF during the relief period and such substantive amendment must include a price change pursuant to REF's regulations, sponsor must disclose the price change in the substantive amendment and include the appropriate filing fees in its submission to REF. *See, e.g.*, 13 NYCRR Part 20.5(d)(2). Any previous price changes that were not filed with REF during the relief period also must be disclosed in any substantive amendment submission to REF during the relief period, and the appropriate filing fees for such previous price changes must be included with the substantive amendment submission (in addition to filing fees for price changes disclosed in the current substantive amendment submission, if any).

After the conclusion of the relief period, REF intends to again pursue enforcement actions against sponsors and principals, as warranted, in connection with the failure to file price change only amendments prior to offering or selling units/apartments/homes at prices different than the most recently disclosed and filed price where the failure to file the price change amendment occurred after the conclusion of the relief period. After the conclusion of the relief period, REF also intends to require sponsors to (1) disclose any price changes that occurred during the relief period (and that were not disclosed in a substantive amendment during the relief period) in a subsequent amendment to the offering plan, and (2) pay the appropriate filing fees for any price changes that occurred during the relief period (and that were not disclosed in a substantive amendment during the relief period). REF will provide sponsors with guidance on how to do so at the conclusion of the relief period.

#### **(c) Broker-Dealer and Salesperson Registration Statements**<sup>9</sup>

Pursuant to GBL § 359-e(3), "it shall be unlawful for any dealer, broker or salesman to sell or offer for sale to or purchase or offer to purchase from the public within or from [New York State], any securities to be offered, unless and until such dealer, broker or salesman shall have filed with the Department of Law a registration statement." Pursuant to GBL § 359-e(3)(c), the registration of brokers, dealers, and salespersons shall be for a period of four years plus an additional ninety days following the end of the four-year period.

During the relief period, REF does not intend to pursue enforcement actions against broker-dealers or salespersons based **solely** upon the failure to timely file a broker-dealer or salesperson registration statement or supplemental broker-dealer or salesperson registration statement with REF. Therefore, registrants are advised **not** to submit such documents to REF until further notice. Please note, however, that 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.

After the conclusion of the relief period, REF intends to again pursue enforcement action, as warranted, in connection with the failure to timely file a broker-dealer or salesperson registration statement or supplemental broker-dealer or salesperson registration statement with REF where the failure to file the broker-dealer or salesperson registration statement or supplemental broker-dealer or salesperson registration statement occurred after the conclusion of the relief period. Thus, any broker-dealer or salesperson registration statements or

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<sup>7</sup> However, REF likely would pursue enforcement action, as warranted, against a sponsor increasing the purchase price of a unit/apartment/home for which a contract of sale already has been executed. REF also likely would consider such a price increase to be an event triggering a right of rescission for the purchaser.

<sup>8</sup> For the purposes of this guidance document, "substantive amendment" shall refer to all amendments submitted to REF that are not limited solely to price changes.

<sup>9</sup> The relief period procedures detailed in this section apply only to broker-dealer and salesperson registration statements submitted to the DOL's Real Estate Finance Bureau; they do **not** apply to broker-dealer and salesperson registration statements submitted to other bureaus or units within the DOL, such as the Investor Protection Bureau.

supplemental broker-dealer or salesperson registration statements that were not filed with REF during the relief period should be filed with REF after the conclusion of the relief period. REF will provide a ninety-day grace period after the conclusion of the relief period for such broker-dealers and salespersons to come into compliance with GBL § 359-e.

**(d) Receipts for Broker-Dealer and Salesperson Registration Statements**<sup>10</sup>

After receiving, processing, and reviewing a broker-dealer or salesperson registration statement or supplemental broker-dealer or salesperson registration statement, REF typically issues an “official” filing receipt to the submitting attorney in PDF format. During the relief period, REF will **not** be issuing such PDF filing receipts. Rather, REF will send an email to the submitting attorney confirming that the broker-dealer or salesperson registration statement or supplemental broker-dealer or salesperson registration statement has been filed with REF. This email will serve as the “official” filing receipt during the relief period. Registrants who received an email filing receipt during the relief period will not receive a PDF filing receipt for their registration at any point in the future, including after the conclusion of the relief period.

**(e) Amendment Submissions and Broker-Dealer Registration Requirements**

Pursuant to its guidance document entitled “Amendment Submissions and Broker-Dealer Registration Requirements Pursuant to New York General Business Law § 359-e,”<sup>11</sup> REF requires all amendment submissions, excluding price change only amendments, to include an accurate, complete, and current broker-dealer registration statement, or evidence thereof, submitted on behalf of the entity or person(s) submitting the amendment.

During the relief period, REF temporarily is suspending its requirement that an accurate, complete, and current broker-dealer registration statement, or evidence thereof, be included with newly submitted amendments. However, as previously discussed herein, 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.

Notwithstanding the foregoing, REF highly recommends that sponsors continue to include with amendment submissions evidence of an accurate, complete, and current broker-dealer registration statement if (1) the sponsor has already filed an accurate, complete, and current broker-dealer registration statement with REF, and (2) the sponsor already has evidence of the filing of such broker-dealer registration statement, such as a filing receipt from REF or a copy of the filed broker-dealer registration statement.<sup>12</sup>

**(f) Form 99 Submissions**<sup>13</sup>

Form 99 is a notification filing for issuers who are filing, or have filed, with the United States Securities and Exchange Commission either (1) pursuant to Rule 506 of Regulation D, or (2) pursuant to Regulation A, Tier 2, or (3) as a “qualified purchaser” defined by Section 18(b)(3) of the Securities Act of 1933. Such issuers must file a Form 99 with REF prior to any sale or offer for sale of real estate-related securities in or from New York State deemed within purview of GBL § 352-e or § 352-g.

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<sup>10</sup> The relief period procedures detailed in this section apply only to broker-dealer and salesperson registration statements submitted to the DOL’s Real Estate Finance Bureau; they do **not** apply to broker-dealer and salesperson registration statements submitted to other bureaus or units within the DOL, such as the Investor Protection Bureau.

<sup>11</sup> REF’s guidance document entitled “Amendment Submissions and Broker-Dealer Registration Requirements Pursuant to New York General Business Law § 359-e” is available at the following web address:

[https://ag.ny.gov/sites/default/files/amendment\\_submissions\\_and\\_broker-dealer\\_registration\\_requirements\\_pursuant\\_to\\_new\\_york\\_general\\_business\\_law\\_ss\\_359-e\\_12-7-2017.pdf](https://ag.ny.gov/sites/default/files/amendment_submissions_and_broker-dealer_registration_requirements_pursuant_to_new_york_general_business_law_ss_359-e_12-7-2017.pdf)

<sup>12</sup> REF requests that, to the extent possible, sponsors not contact REF to request proof of filing of a broker-dealer or salesperson registration statement, as REF will have limited capacity to process these requests during the relief period.

<sup>13</sup> The relief period procedures detailed in this section apply only to Forms 99 submitted to the DOL’s Real Estate Finance Bureau; they do **not** apply to Forms 99 submitted to other bureaus or units within the DOL, such as the Investor Protection Bureau.

During the relief period, REF does not intend to pursue enforcement actions based **solely** upon the failure to timely file a Form 99 with REF. Therefore, issuers are advised not to submit such documents to REF until further notice. However, please note that after the conclusion of the relief period, REF again intends to pursue enforcement action, as warranted, in connection with the failure to timely file a Form 99 with REF. Thus, any Forms 99 that were not filed during the relief period should be filed after the conclusion of the relief period; REF will provide a ninety-day grace period for issuers to do so.

**(g) Original Signatures and Notarized Documents**

In general, REF requires that any signed or notarized documents submitted to REF contain original “wet ink” signatures. That is, REF typically does not accept photocopies or scanned copies of such documents. During the relief period, REF will deem a photocopy or scanned copy of an original signature to be an original signature and thus will not require an original “wet ink” signature on any signed or notarized documents. However, REF reserves the right to request an original “wet ink” signature as it deems necessary.

Similarly, during the relief period, REF will not require notarization on any documents that it usually would require to be notarized. Instead, REF will accept documents executed either within or without the United States of America with the following language included above the signature line:

“I declare [*or certify, verify, or state*] under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct. Executed on [*date*]. [*Signature*].”

During the relief period, REF also will accept documents that are notarized in accordance with the parameters set forth in New York Executive Order Number 202.7.<sup>14</sup> REF reserves the right to request that any documents submitted to it be notarized in accordance with the parameters set forth in Executive Order 202.7 rather than using the procedures detailed above.

**(h) Digital Distribution of the Offering Plan and Amendments Thereto**

The Martin Act requires that sponsors furnish purchasers with true copies of the offering plan and all amendments. *See* GBL § 352-e(5). REF typically requires that sponsors provide purchasers with a paper copy of the offering plan and amendments. REF only permits sponsors to distribute digital copies of the offering plan and amendments to purchasers if the sponsor submits to REF a complete and accurate application pursuant to Cooperative Policy Statement #10 (“CPS-10”).<sup>15</sup>

During the relief period, REF (1) does not intend to pursue enforcement actions against sponsors or principals based **solely** upon furnishing purchasers with digital copies of the offering plan and/or amendments prior to submitting a CPS-10 application to REF, and (2) will not consider sponsor or principals furnishing purchasers with digital copies of the offering plan and/or amendments to be an act triggering a right of rescission for purchasers, provided the following conditions are met:

1. The digital copy of the offering plan and/or amendment(s) is identical to the final version of the offering plan or amendment(s) accepted for filing by REF;
2. The sponsor provides a paper copy of the offering plan and/or amendment(s) to any purchaser who requests it;

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<sup>14</sup> New York Executive Order Number 202.7 is available at the following web address:

<https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO%20202.7.pdf>

<sup>15</sup> CPS-10 is available at the following web address:

[https://ag.ny.gov/sites/default/files/cooperative\\_policy\\_statement\\_10.pdf](https://ag.ny.gov/sites/default/files/cooperative_policy_statement_10.pdf)

3. The sponsor provides all purchasers with paper copies of any and all documents previously distributed digitally within thirty business days after the conclusion of the relief period; and
4. The sponsor includes a cover letter with the digital copy of the offering plan and/or amendment(s) stating the following:

“Attached please find a Digital Copy of the [(*offering plan and/or amendments \_\_ through \_\_ thereto*) OR (*amendment number \_\_ to the offering plan*)] for the [*insert name of property*], located at [*insert complete address of property*], File Number [*insert REF file number*]. Due to the COVID-19 State of Emergency, the New York State Department of Law has advised that purchasers may receive digital copies of offering plans and amendments in lieu of paper copies. Once the State of Emergency has ended, purchasers will be sent a paper copy of the [*offering plan and/or amendment(s)*]. PLEASE REVIEW THE CONTENTS OF [THIS DOCUMENT/THESE DOCUMENTS] IMMEDIATELY SO THAT YOU MAY DETERMINE WHETHER YOU WISH TO EXERCISE ANY RIGHTS INCLUDED IN [IT/THEM].”

Please note that all other requirements detailed in REF’s regulations concerning service of the offering plan and/or amendments to purchasers remain in effect during the relief period. Please also note that, at the conclusion of the relief period, sponsors must return to distributing paper copies of the offering plan and/or amendments to purchasers unless sponsor submits a complete and accurate CPS-10 application to REF after the conclusion of the relief period.

Sponsors **cannot** take advantage of the guidance set forth in this section if (1) the offering plan was submitted to REF pursuant to 13 NYCRR Part 18 or 23, **and** (2) REF has not yet accepted for filing the post-closing amendment to such offering plan submitted pursuant to 13 NYCRR Part 18 or 23. In such instances, the submitting attorney should contact the REF reviewing attorney assigned to the offering plan or amendment for further information regarding digital distribution. Additionally, if a sponsor intends to submit to REF an offering plan pursuant to 13 NYCRR Parts 18 or 23 after the date of this guidance document, REF recommends that such sponsor contact REF prior to submission of the offering plan for further information regarding digital distribution.

**(i) Revisions to Submissions**

During the relief period, REF temporarily is suspending its right to require sponsors to submit a paper copy of revisions that are over twenty-five pages.<sup>16</sup> Accordingly, REF requests that submitters send all revisions via email in lieu of mailing a paper copy. REF also requests that submitters do not mail to REF a courtesy paper copy of any revisions during the relief period. REF further requests that submitters who may have mailed paper copies of revisions or other documents to REF in the two weeks preceding the start of the relief period contact the REF staff member to whom the revisions or documents were sent to determine if the REF staff member received such documents. If not, please transmit such documents to REF via email.

**(j) Acceptance for Filing of Amendments, Issuance of No-Action Letters and Letters of No Objection to Termination of Condominium Declaration, and Granting of CPS Treatment**

During the relief period, REF is suspending until further notice its requirement for both a paper copy and a digital copy (on a CD-ROM, DVD, USB flash drive, or external hard drive) of final amendments. Similarly, REF is suspending until further notice its requirement for a paper copy of final no-action letter applications, applications for letters of no objection to termination of condominium declaration, and CPS applications. Therefore, sponsors are advised **not** to send the final paper copies of such documents to REF during the relief period.

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<sup>16</sup> For further information regarding this requirement, please refer to REF’s guidance document entitled “Digital Submission Requirements for Cooperative Interests in Realty,” which 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)

Instead, REF can accept amendments, issue no-action letters and letters of no objection to termination of condominium declaration, or grant CPS treatment of the aforementioned submissions via email during the relief period. The reviewing attorney assigned to a pending submission will provide the submitting attorney with instructions regarding the procedure for digital submission of final documents to REF. Upon the reviewing attorney's receipt and review of the final documents, the reviewing attorney will email the submitting attorney indicating whether they have accepted the amendment for filing, issued the no-action letter or letter of no objection to termination of condominium declaration, or granted CPS treatment to the submission.

For effectiveness amendments and no-action letter applications, the reviewing attorney's email will not be REF's "official" effectiveness amendment acceptance letter or no-action letter. Rather, REF's Records Management Section still must issue the "official" acceptance letter. Please note that REF's issuance of these letters may be significantly delayed due to the emergency response to COVID-19. Notwithstanding the foregoing, the date of acceptance for filing or issuance will remain the same date indicated in the reviewing attorney's acceptance email.

For all non-effectiveness amendments, the reviewing attorney's email will serve as REF's "official" amendment acceptance letter during the relief period. REF's Records Management Section will not issue an "official" amendment acceptance letter for such amendments during the relief period.<sup>17</sup> For CPS applications and applications for letters of no objection to termination of condominium declaration, the reviewing attorney will issue the "official" acceptance letter and transmit it to the submitting attorney via email.

REF recognizes that sponsors sometimes require the expeditious issuance of an "official" amendment acceptance letter, particularly if the letter is required in order to file or amend the declaration of a condominium. The New York City Department of Finance has informed REF that it will accept REF's email acceptance letters in lieu of "official" acceptance letters during the relief period. Therefore, REF asks that sponsors please refrain from contacting REF for an "official" effectiveness amendment acceptance letter or no-action letter unless absolutely necessary. If an "official" acceptance letter is required for other purposes, please contact REF and REF will make its best effort to process the acceptance letter as quickly as possible.

**(k) Acceptance for Filing of Offering Plans**

During the relief period, REF is suspending until further notice its requirement for both a paper copy and a digital copy (on a CD-ROM, DVD, USB flash drive, or external hard drive) of final offering plans. Instead, REF can accept an offering plan for filing via email during the relief period. The reviewing attorney assigned to a pending submission will provide the submitting attorney with instructions regarding the procedure for digital submission of final documents to REF. Upon the reviewing attorney's receipt and review of the final documents, the reviewing attorney will email the submitting attorney indicating whether they have accepted the offering plan for filing.

After the reviewing attorney accepts the offering plan for filing via email, the submitting attorney must mail the following to REF as soon as is practicable:

1. An attorney transmittal letter indicating the offering plan's address, file number, and date of acceptance;
2. The filing fee check for the second half of the offering plan's filing fee, attached to the attorney transmittal letter;
3. A paper copy of the reviewing attorney's email indicating acceptance for filing, attached to the attorney transmittal letter; and
4. Any other documents requested by the reviewing attorney in the reviewing attorney's email indicating acceptance for filing.

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<sup>17</sup> REF's Records Management Section will issue "official" acceptance letters for amendments accepted for filing prior to the date of this guidance document, subject to delays.



The reviewing attorney's email acceptance will not be REF's "official" offering plan acceptance letter. Rather, REF's Records Management Section still must issue the "official" acceptance letter. Please note that REF's issuance of these letters may be significantly delayed due to the emergency response to COVID-19. Please also note that REF intends to withhold the issuance of its "official" acceptance letter until it receives all of the items on the foregoing list (including the check for the second half of the filing fee). Notwithstanding the foregoing, the date of acceptance for filing will remain the same date indicated in the reviewing attorney's acceptance email.

**(l) Cooperative Policy Statement Exemptions**

During the relief period, REF is suspending all of its CPS exemptions until further notice. Therefore, as of the date of this guidance document, REF will no longer accept for submission any applications pursuant to CPS-1, CPS-3, CPS-5, CPS-6, CPS-7, CPS-10, CPS-11, or CPS-12. However, all such CPS exemptions granted prior to the date of this guidance document remain in full force and effect. In addition, REF will continue to review all CPS applications that were submitted to REF prior to the date of this guidance document (and grant CPS treatment to such submissions, as warranted), subject to delays in review. REF intends to reinstate all such CPS exemptions at the conclusion of the relief period.

**(m) Policy Statement Exemptions**

During the relief period, REF is suspending all of its Policy Statements ("PS") exemptions until further notice. Therefore, as of the date of this guidance document, REF will no longer accept for submission any applications pursuant to PS-100, PS-101, PS-102, PS-103, PS-104, or PS-105. However, all PS exemptions granted prior to the date of this guidance document remain in full force and effect. In addition, REF will continue to review all PS exemption applications that were submitted to REF prior to the date of this guidance document (and will grant PS treatment to such submissions, as warranted), subject to delays in review. Moreover, during the relief period, REF does not intend to pursue enforcement actions against issuers or promoters based **solely** upon failure to timely file PS applications prior to offering, selling, or promoting real estate securities in or from New York State.

REF intends to reinstate all of its PS exemptions at the conclusion of the relief period. After the conclusion of the relief period, REF also intends to again pursue enforcement action against issuers or promoters, as warranted, in connection with the failure to timely file PS applications with REF. Accordingly, any PS applications that were not filed with REF during the relief period should be filed with REF after the conclusion of the relief period. REF will provide a ninety-day grace period after the conclusion of the relief period for such issuers or promoters to come into compliance with GBL § 359-e.

**III. NEW SUBMISSIONS TO REF**

As of the date of this guidance document, REF does not have the ability to accept new submissions to REF digitally. Therefore, paper copies (and digital copies, as appropriate) of all new submissions still must be mailed to REF during the relief period. REF will continue to process such paper submissions during the relief period, but the processing of submissions may be delayed. Please be assured that REF currently is exploring the possibility of increased digital submission procedures and intends to provide an update in the near future. If REF's submission policies prove impossible for a submitter due to current circumstances, please contact REF.

#### **IV. CORRESPONDENCE WITH REF**

REF requests that all correspondence to REF be transmitted via email to the extent possible, as REF will have limited capacity to process incoming mail during the relief period. Similarly, please do not mail REF courtesy paper copies of any documents previously transmitted to REF via email.

As previously discussed herein, revisions to submissions and final versions of submissions should be emailed to the reviewing attorney/architect/engineer/legal assistant during the relief period, as appropriate. As always, complaints can be submitted on REF's website at the following web address:

<https://formsnym.ag.ny.gov/OAGOnlineSubmissionForm/faces/OAGREFHome>

For inquiries regarding the appropriate person(s) to whom documents should be emailed during the relief period, please call REF at (212) 416-8122.

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

REF reserves the right to reject submissions that do not comply with the disclosure requirements described herein. 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.