



STATE OF NEW YORK

DEPARTMENT OF LAW

REAL ESTATE FINANCE BUREAU

MEMORANDUM

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

**Originally Issued: March 25, 2020
Updated: September 18, 2020¹**

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 remain in the office on staggered schedules to process incoming physical submissions and other mail. 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 York² 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

¹ This guidance document supersedes and replaces all previously issued versions of this guidance document, dated March 25, 2020 and May 1, 2020.

² 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

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.³

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 relief period, unless expressly stated herein or in any pertinent New York Executive Order. 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.⁴

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 sponsor⁵ 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.

Until further notice, 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, until further notice, 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”). Notwithstanding the foregoing, REF strongly encourages sponsors submit such amendments as they would under normal circumstances. In the near future, REF intends to again pursue enforcement actions against sponsors or principals based upon the marketing or sale of units/apartments/homes pursuant to an expired or “stale” offering plan. **REF intends to notify sponsors of its intention to again pursue such enforcement actions by updating this guidance document.** At

³ Please note that any guidance detailed herein concerning New York Executive Order Number 202.18 (“EO 202.18”) is not necessarily in effect for the duration of the relief period. Rather, such guidance is in effect only for the duration of EO 202.18, which has been in effect since April 16, 2020 and currently is in effect until October 4, 2020 as of the effective date of this guidance document. However, EO 202.18 may be further extended by the governor. If EO 202.18 is further extended, REF’s guidance 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.

⁴ 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>

⁵ “Sponsor” means sponsor, successor sponsor, or holder of unsold shares wherever that term is used in this document.

such time, sponsors will need to submit financial update amendments prior to marketing or selling units/apartments/homes pursuant to an expired or “stale” offering plan.

However, REF will provide sponsors with a grace period of at least ninety days before pursuing such enforcement action. In effect, this means that (i) 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 until at least ninety days after it updates this guidance document to state that it intends to again 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, and (ii) sponsors who intend to market or sell units/apartments/homes pursuant to an expired or “stale” offering plan will have at least ninety days from the date REF updates this guidance document to file a financial update amendment with REF.

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.
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.⁶
11. There is an architectural, engineering, or other physical change to any common element or any unit/apartment/home being offered (or any of its components), 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.⁷

⁶ It shall be within REF’s sole discretion to determine what constitutes a material decrease in the quality of common elements.

⁷ Please note that there is a rebuttable presumption that a decrease in square footage of 5% or less is not material.

13. There is a change to the identities of the sponsors or principals of the offering plan.⁸ *See, e.g.*, 13 NYCRR Part 20.3(ab).

Any doubts regarding whether a change is material and adverse should be resolved in favor of submitting an amendment with the change.

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 grace period described above in this subsection, 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 such grace period. REF does not intend to pursue enforcement actions against sponsors and principals based **solely** upon the marketing or sale of units/apartments/homes pursuant to an expired or “stale” offering plan where “stale sales” activity occurred after the start of the relief period and before the end of the grace period described above in this subsection.

(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).

Until further notice, 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, until further notice, 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 price to be an act triggering a right of rescission for purchasers.⁹

Therefore, until further notice, sponsors do **not** need to submit price change only amendments to REF. **Notwithstanding the foregoing, REF highly recommends that sponsors submit such amendments as they would under normal circumstances.** In the near future, REF intends to again pursue enforcement actions against sponsors or principals based 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. REF intends to notify sponsors of its intention to again pursue such enforcement actions by updating this guidance document. At such time, sponsors will need to submit 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 pursuant to REF’s regulations. In the updated guidance document, REF also intends to provide instructions regarding how to (i) file any price changes that occurred during the relief period that were not already disclosed and filed, and (ii) pay filing fees for any price changes that occurred during the relief period that were not already disclosed and filed, as applicable.

⁸ 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.

⁹ 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.

However, REF will provide sponsors with a grace period of at least ninety days before pursuing any such enforcement actions. In effect, this means that (i) 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 until at least ninety days after it updates this guidance document to state that it intends to again 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, (ii) sponsors who intend to market or sell units/apartments/homes at prices different than the most recently disclosed and filed offering price will have at least ninety days from the date REF updates this guidance document to file a price change only amendment with REF (although, again, they are strongly encouraged to do so as soon as possible), and (iii) sponsors will have at least ninety days from the date REF updates this guidance document to disclose and file any price changes that occurred during the relief period that were not already disclosed and filed.

Please note, however, that the foregoing guidance applies **only** to price change only amendments. If sponsor is required to submit a substantive amendment¹⁰ 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 grace period described above in this subsection, 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 grace period described above in this subsection. REF does **not** intend to pursue enforcement actions against sponsors and principals based **solely** upon 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 sales activity occurred after the start of the relief period and before the end of the grace period described above in this subsection.

(c) Broker-Dealer and Salesperson Registration Statements¹¹

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.

Until further notice, 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**

¹⁰ 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.

¹¹ 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.

such documents to REF until further notice.¹² Please note, however, that a broker-dealer registration statement still is required with the submission of a new offering plan, no-action letter application, or Cooperative Policy Statement (“CPS”) application—and may be required with the submission of an amendment, amended and restated offering plan, amendment to an amended and restated offering plan, amended no-action letter application, or amendment or extension to a CPS 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.

REF currently is developing e-submission and e-payment policies and procedures for broker-dealer and salesperson registration statements and supplemental broker-dealer and salesperson registration statements; REF expects to enact these policies and procedures in the near future, and REF will update this guidance once such policies and procedures are in effect. At such time, broker-dealers and salespersons **will** be required to timely file broker-dealer or salesperson registration statements and supplemental broker-dealer or salesperson registration statements with REF pursuant to GBL § 359-e. However, REF will provide a grace period of at least ninety days after the conclusion of the relief period for such broker-dealers and salespersons to come into compliance with GBL § 359-e.

After the conclusion of the grace period described above in this subsection, 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 grace period described above in this subsection. Thus, any broker-dealer or salesperson registration statements or supplemental broker-dealer or salesperson registration statements that were not filed with REF during the relief period should be filed with REF after REF enacts its e-submission and e-payment policies and procedures for broker-dealer and salesperson registration statements. REF does **not** intend to pursue enforcement actions against broker-dealers or salespersons based **solely** upon the failure to timely file broker-dealer or salesperson registration statements or supplemental broker-dealer or salesperson registration statements with REF pursuant to GBL § 359-e where the failure to file occurred after the start of the relief period and before the end of the grace period described above in this subsection.

(d) Receipts for Broker-Dealer and Salesperson Registration Statements¹³

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. As of the effective date of this guidance document, 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 from REF. 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.

¹² Unlike with financial update and price change only amendments to offering plans, broker-dealers and salespersons are **not** yet encouraged to submit standalone broker-dealer and salesperson registration statements or supplemental broker-dealer and salesperson registration statements to REF as they would under normal circumstances due to the current unavailability of e-submission and e-payment policies and procedures for such submissions and REF’s limited ability to process paper-based submissions (due to limited in-office staffing).

¹³ 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.

(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,”¹⁴ 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.

Until further notice, 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.¹⁵

(f) Form 99 Submissions¹⁶

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.

Until further notice, 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.¹⁷ REF currently is developing e-submission and e-payment policies and procedures for Form 99 submissions; REF expects to enact these policies and procedures in the near future, and REF will update this guidance once such policies and procedures are in effect. At such time, issuers **will** be required to timely file broker-dealer or salesperson registration statements and supplemental broker-dealer or salesperson registration statements with REF. However, REF will provide a grace period of at least ninety days after the conclusion of the relief period for such issuers to come into compliance.

After the conclusion of the grace period described above in this subsection, REF again intends to pursue enforcement action, as warranted, in connection with the failure to timely file a Form 99 with REF where the failure to file a Form 99 occurred after the relief period described above in this subsection. Thus, any Forms 99 that were not filed during the relief period should be filed after the conclusion of the grace period described above in this subsection. REF does **not** intend to pursue enforcement actions against issuers based **solely** upon the

¹⁴ 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

¹⁵ 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.

¹⁶ 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.

¹⁷ Unlike with financial update and price change only amendments to offering plans, issuers are **not** yet encouraged to submit Form 99 filings to REF as they would under normal circumstances due to the current unavailability of e-submission and e-payment policies and procedures for such submissions and REF’s limited ability to process paper-based submissions (due to limited in-office staffing).

failure to timely file a Form 99 with REF where the failure to file occurred after the start of the relief period and before the end of the grace period described above in this subsection.

(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 202.7.¹⁸ 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”).¹⁹

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 (or offeree or tenant, as applicable) who requests it;
3. The sponsor provides all purchasers (and offerees and tenants, as applicable) with paper copies of any and all documents previously distributed digitally within thirty business days after the conclusion of the relief period; and

¹⁸ 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>

¹⁹ CPS-10 is available at the following web address:

https://ag.ny.gov/sites/default/files/cooperative_policy_statement_10.pdf

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*].”

Although a previously issued version of this guidance document stated that sponsors of certain offering plans submitted pursuant to 13 NYCRR Parts 18 and 23 could not take advantage of the procedures set forth in this subsection of this guidance document (i.e., subsection II(h)), such sponsors now may timely distribute digital copies of the offering plans and amendments to all offerees (as defined in 13 NYCRR §§ 18.1(d) and 23.1(d)), tenants, and purchasers during the relief period. In addition, during the relief period, sponsors may distribute digital copies of all notices and postings required by the Martin Act and 13 NYCRR Part 18 or 23 to all offerees, tenants, and purchasers. However, in order to digitally distribute such an offering plan, amendment, notice, or posting, sponsors must adhere to the following additional requirements:

1. The sponsor must comply with all digital distribution requirements previously stated in this subsection of this guidance document (i.e., subsection II(h)), as applicable;
2. The sponsor must send the digital copy of the offering plan, amendments, notice, and/or posting to all offerees, tenants, and purchasers (e.g., the sponsor cannot send documents only to purchasers but not tenants, and the sponsor cannot send documents only to certain tenants);
3. Promptly after distributing a digital copy of any notice or posting, the sponsor must email the digital copy of such notice or posting to the REF reviewing attorney who reviewed the offering plan or most recent amendment thereto; and
4. The sponsor must receive an affirmative response from each offeree, tenant, or purchaser in order to constitute receipt. REF will not consider merely sending an email to an offeree, tenant, or purchaser to constitute receipt by such offeree, tenant, or purchaser.

Furthermore, if a sponsor intends to submit to REF an offering plan pursuant to 13 NYCRR Part 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 of the red herring.

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.

(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.²⁰ 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, amended no-action letter applications, applications for letters of no objection to termination of condominium declaration, CPS applications, and amendments or extensions to CPS applications. Therefore, sponsors are advised **not** to send the final paper copies of such documents to REF during the relief period.

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.²¹ 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 **all** amendments (including, but not limited to, effectiveness amendments), no-action letter applications, amended no-action letter applications, applications for letters of no objection to termination of condominium declaration, CPS applications, and amendments or extensions to CPS applications, the reviewing attorney's email will serve as REF's "official" amendment acceptance letter, no-action letter, letter of no objection to termination of condominium declaration, or letter granting CPS treatment. For such submissions, REF's Records Management Section will **not** issue an "official" letter on REF letterhead in PDF format.²²

REF recognizes that sponsors sometimes require an "official" letter on REF letterhead in PDF format, 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 amendment acceptance letters and no-action letters in lieu of the typical "official" letters on REF letterhead in PDF format, including for effectiveness amendments and no-action letters. Therefore, REF asks that sponsors please refrain from contacting REF for an "official" letter on REF letterhead in PDF format unless absolutely necessary. If an "official" acceptance letter on

²⁰ 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

²¹ Notwithstanding the foregoing, REF reserves the right to request a paper and digital copy (on a CD-ROM, DVD, USB flash drive, or external hard drive) of the final offering plan.

²² Please note that previously issued versions of this guidance document stated that the reviewing attorney's email would not be REF's "official" effectiveness amendment acceptance letter or no-action letter, and, as such, REF's Records Management Section still would issue the "official" acceptance letter. However, as of the effective date of this guidance document, REF has changed such policy as detailed above.

REF letterhead in PDF format is required for other purposes, please contact REF and REF will make its best effort to process such 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.²³ 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. The reviewing attorney's email acceptance **will** be REF's "official" offering plan acceptance letter. REF's Records Management Section will **not** issue an "official" offering plan acceptance letter on REF letterhead in PDF format.²⁴

If the sponsor is delaying payment of the second half of the offering plan's filing fee pursuant to New York Executive Order Number 202.18, this fact must be disclosed conspicuously in the attorney transmittal letter. However, during the pendency of New York Executive Order Number 202.18, REF highly encourages submitters to pay these filing fees via e-payment (as described in more detail in Section III(c) below) despite not being required to do so, as reconciling and processing delayed filing fees ultimately will be extremely time-consuming for REF and, consequently, may delay the processing of all submissions to REF.

(l) Cooperative Policy Statement Exemptions

Prior versions of this guidance document stated that CPS exemptions were suspended for the duration of the relief period, and, as such, REF would not accept for submission any applications pursuant to CPS-1, CPS-3, CPS-5, CPS-6, CPS-7, CPS-10, CPS-11, or CPS-12 until further notice. As of the effective date of this guidance document, REF has reinstated all of its CPS exemptions and can now accept for submission any applications pursuant to CPS-1, CPS-3, CPS-5, CPS-6, CPS-7, CPS-10, CPS-11, or CPS-12 and/or amendments or extensions to such applications, as applicable.

However, as of the effective date of this guidance document, REF has superseded its requirement that all CPS applications and amendments or extensions to CPS applications be submitted to REF in paper; instead, REF requires that all CPS applications and amendments or extensions to CPS applications be submitted using REF's paperless electronic submission ("e-submission") policy.²⁵ Paper submissions of CPS applications and amendments or extensions to CPS applications will **not** be accepted for submission during the relief period and until further notice. 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. Additionally, all filing fees for CPS applications and amendments or extensions to CPS applications must be remitted using REF's electronic payment ("e-payment") portal²⁶ (unless the submitter is waiving filing fees pursuant to EO 202.18, as described in more detail in Section III(c) of this guidance document). Please refer to Section III of this guidance document for more specific information regarding REF's e-submission and e-payment policies and procedures.

²³ Notwithstanding the foregoing, REF reserves the right to request a paper and digital copy (on a CD-ROM, DVD, USB flash drive, or external hard drive) of the final offering plan.

²⁴ Please note that previously issued versions of this guidance document stated that the reviewing attorney's email would not be REF's "official" offering plan acceptance letter, and, as such, REF's Records Management Section still would issue the "official" acceptance letter. However, as of the effective date of this guidance document, REF has changed such policy as detailed above.

²⁵ REF's e-submission policies and procedures are described in more detail in Section III(a) of this guidance document.

²⁶ REF's e-payment portal is described in more detail in Section III(b) of this guidance document.

REF understands that, during the time CPS exemptions were suspended, some submitters may have developed a backlog of ready-for-submission CPS applications and amendments or extensions to CPS applications. REF strongly encourages submitters to exercise discretion and avoid immediately submitting all such backlogged CPS applications and amendments or extensions to CPS applications (to the extent possible), as REF's capacity to process and review such submissions has not increased materially since the beginning of the relief period.²⁷ Accordingly, the simultaneous submission of all backlogged CPS applications and amendments or extensions to CPS applications may delay REF's processing and review of all CPS submissions.

(m) Policy Statement Exemptions

Until further notice, REF has suspended all of its Policy Statements ("PS") exemptions. Therefore, as of the date of this guidance document, REF is not accepting 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, until further notice, 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 in the near future, and currently is developing e-submission and e-payment policies and procedures for such submissions, and REF will update this guidance once such policies and procedures are in effect. At such time, issuers and promoters **will** be required to timely file PS applications prior to offering, selling, or promoting real estate securities in or from New York State. However, REF will provide a grace period of at least ninety days after the conclusion of the relief period for such issuers and promoters to come into compliance.

After the conclusion of the grace period described above in this subsection, REF intends to again pursue enforcement actions against issuers or promoters, as warranted, in connection with the failure to timely file PS applications with REF. Thus, any PS applications that were not filed during the relief period should be filed after the conclusion of the grace period described above in this subsection. REF does **not** intend to pursue enforcement actions against issuers based **solely** upon the failure to timely file a PS application with REF where the failure to file occurred after the start of the relief period and before the end of the grace period described above in this subsection.

(n) "Official" Acceptance Letters for Backlogged Amendment, No-Action Letter, and Offering Plan Filings

Prior to beginning telecommuting, REF's typical practice for issuing most acceptance letters was as follows: (1) after reviewing a submission, the REF reviewing attorney assigned to such submission would send the submitting attorney a courtesy acceptance email indicating that such submission had been accepted for filing as of a certain date, and then (2) REF's Records Management Section would process the accepted submission and email the submitting attorney an "official" acceptance letter on REF letterhead in PDF format.

Prior to the beginning of the relief period, REF had a backlog of accepted submissions requiring issuance of "official" acceptance letters. That is, there were offering plans and amendments that had already been accepted for filing by the reviewing attorney (and the submitting attorney had already been informed of such fact by the reviewing attorney via email), but REF's Records Management Section had not yet sent the "official" offering

²⁷ Although REF has assigned more attorneys to review CPS submissions than it typically would under normal circumstances to account for an expected initial increase in CPS applications and amendments and extensions to CPS applications, REF has had no increase in review staffing since the beginning of the relief period.

plan or amendment acceptance letter to the submitting attorney. Additionally, during the relief period, REF has generated a backlog of “official” effectiveness amendment acceptance letters, no-action letters, and offering plan acceptance letters (as REF, at the beginning of the relief period, originally had intended to issue “official” acceptance letters on REF letterhead in PDF format for such filings).

As of the effective date of this guidance document, REF’s Records Management Section will **not** be emailing submitting attorneys “official” amendment acceptance letters on REF letterhead in PDF format for any such “backlogged” amendments (including, but not limited to, “backlogged” effectiveness amendments),²⁸ no-action letters, or offering plan acceptance letters. Rather, REF’s Records Management Section will send an email to the submitting attorney confirming that the amendment, no-action letter, or offering plan has been filed with REF as of a certain date.²⁹ This email will serve as the “official” amendment acceptance letter, no-action letter, or offering plan acceptance letter. Sponsors who receive an email “official” amendment acceptance letter, no-action letter, or offering plan acceptance letter will **not** receive a PDF amendment acceptance letter on REF letterhead at any point in the future, including after the conclusion of the relief period.

(o) REF Review Timeframes for Cooperative and Condominium Offering Plans and Amendments

New York Executive Order Number 202.11 temporarily suspended or modified GBL § 352-e(2) to the extent that it “requires response to co-op/condominium offering plans in thirty days, provided, however, the timeframe for such response may be extended up to 30 days[.]”³⁰ REF interprets this provision of New York Executive Order Number 202.11 as providing REF with an additional thirty days (i.e., sixty days in total) from the submission of a cooperative or condominium offering plan or amendment to review such offering plan or amendment. Please note, however, that REF does **not** interpret New York Executive Order Number 202.11 as applying to the initial four-to-six-month review period for offering plans submitted pursuant to 13 NYCRR Parts 18 and 23.

Nevertheless, as usual, REF remains committed to the expeditious review of cooperative and condominium offering plans and amendments and will make its best effort to review such offering plans and amendments within thirty days of submission. If REF is not able to review such an offering plan or amendment within thirty days of its submission to REF, REF will endeavor to notify the submitting attorney that it is extending the review period by an additional thirty days.

III. INITIAL SUBMISSIONS TO REF

As of May 1, 2020, REF accepts and very strongly encourages electronic submission (“e-submission”) of most initial submissions to REF. In addition, REF accepts and very strongly encourages electronic payment (“e-payment”) of filing fees for many submissions to REF.³¹ Please see below for additional information regarding these new e-submission and e-payment policies and procedures. **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.**

²⁸ Please note that previously issued versions of this guidance document stated that REF’s Records Management Section would continue to issue “official” amendment acceptance letters on REF letterhead in PDF format for any “backlogged” effectiveness amendments. However, as of the effective date of this guidance document, REF has changed such policy as detailed above.

²⁹ Please note that the amendment’s or offering plan’s date of acceptance will remain the same as indicated in the reviewing attorney’s courtesy acceptance email; similarly, the date the no-action letter application was granted will remain the same as indicated in the reviewing attorney’s courtesy acceptance email.

³⁰ New York Executive Order Number 202.11 can be accessed at the following web address:

<https://www.governor.ny.gov/news/no-20211-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

³¹ As previously discussed herein, REF requires e-submission and e-payment (unless delaying filing fees pursuant to EO 202.18) for CPS submissions as of the effective date of this guidance document.

Although REF still will accept most paper-based submissions and payments during the relief period,³² REF very strongly encourages sponsors to take advantage of REF's e-submission and e-payment policies and procedures to the greatest extent possible during the relief period. 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.

As of the date of this guidance document, REF intends for its e-submission policies to be temporary and thus intends to revert to its prior submission procedures at the end of the relief period. In contrast, REF intends for e-payment of its filing fees to be permanent. However, the e-payment guidelines described herein and in REF's guidance document entitled "Guidelines for the Submission of Electronic Payments of Filing Fees During COVID-19 State of Emergency" are specific to the relief period. REF will provide further information about any future e-payment requirements either by updating the foregoing guidance document or issuing a separate guidance document on the topic.

(a) Electronic Submission of Certain Initial Submissions

As of May 1, 2020, REF has temporarily waived some of its existing submission policies and procedures and is instituting temporary paperless 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.³³

As previously discussed herein, as of September 18, 2020, REF also has superseded its requirement that all CPS applications and amendments or extensions to CPS applications be submitted to REF in paper; instead, REF requires that all CPS applications and amendments or extensions to CPS applications be submitted using REF's paperless electronic submission policy. That is, REF requires that submitters of CPS applications and amendments or extensions to CPS applications upload a digital copy of all required documents to the OAG Cloud in lieu of mailing a physical copy of the submission to REF. Paper submissions of CPS applications and amendments or extensions will **not** be accepted for submission during the relief period and until further notice.

For additional details regarding REF's temporary paperless e-submission policies and procedures, please refer to REF's guidance document entitled "Temporary Electronic Submission Policies and Procedures for Initial Submissions During COVID-19 State of Emergency," which is available at the following web address:

https://ag.ny.gov/sites/default/files/temporary_electronic_submission_policies_and_procedures_for_initial_submissions_during_covid-19_state_of_emergency_9-18-2020.pdf

³² As detailed below, as of the effective date of this guidance document, REF requires that **all** initial CPS applications and amendments or extensions to CPS applications be submitted to REF via e-submission. REF will **not** accept any paper-based CPS applications or amendments or extensions to CPS applications until further notice. REF currently will accept paper-based submissions of all other submissions, except PS exemption applications (which are currently suspended).

³³ 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 this guidance document.

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, amended no-action letter applications, CPS applications, and amendments or extensions to CPS applications; it does not address the final submission of such filings to REF. Please refer to Section II of this guidance document for further information regarding the final submission of such documents to REF.

Please also note that submitters cannot take advantage of REF's e-submission policy if they are paying filing fees via paper check. Therefore, in order to utilize the temporary paperless e-submission policy, submitters either must pay filing fees using REF's e-payment portal (recommended) or delay payment of filing fees pursuant to New York Executive Order Number 202.18 (as described in more detail in Section III(c) below).

(b) E-Payment of Filing Fees

REF has developed a secure e-payment portal that allows submitters to pay nearly all REF filing fees electronically in lieu of using paper checks. REF's e-payment portal calculates the appropriate filing fees based on the type of submission (and information about the submission inputted by the submitter). Submitters using the e-payment portal must pay the appropriate filing fee(s) **before** submitting their proposed filing to REF and include with their e-submission package "proof of electronic payment of filing fees." In such instances, the submission date of the proposed filing will be the date REF receives the complete submission package including "proof of electronic payment of filing fees," rather than the date the submitter remitted the e-payment for the proposed filing.

REF's e-payment portal can be accessed via REF's web page or at the following web address:

<https://refpayment.ag.ny.gov/REFPAY/index.jsp>

For details regarding e-payment of 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_9-18-2020.pdf

Please note that submitters paying filing fees via the e-payment portal during the relief period also must use REF's temporary e-submission policy described above. Specifically, REF will not permit e-payments with any paper-based submissions to REF during the relief period. In effect, this means that submitters currently can make e-payments only for the following submissions to REF: (1) offering plans, (2) amendments, (3) amended and restated offering plans, (4) amendments to amended and restated offering plans, (5) no-action letter applications, (6) amended no-action letter applications, (7) CPS applications, (8) amendments or extensions to CPS applications, and (9) broker-dealer or salesperson registration statements submitted in tandem with one of the foregoing submissions (i.e., Forms M-2, M-3, M-4, and M-10). Thus, no filing fee payments to REF other than the foregoing payments can be made via e-payment at this time. However, until further notice, REF is not requiring the submission of "stand-alone" Forms M-2, M-3, M-4, and M-10 or Forms 99, nor is REF accepting for submission any Policy Statement exemption applications. Essentially, this means that the only filing fees that cannot be made via e-payment and instead should be paid via paper check are: (1) intrastate securities offerings pursuant to GBL § 359-ff and (2) full filings of syndications registrations.

It is the responsibility of each submitter using the e-payment portal to ensure that the correct filing fees are paid and all information submitted in connection with an e-payment is truthful and accurate. REF is not responsible

for any overpayment of filing fees, and refunds are not guaranteed.³⁴ Thus, REF encourages submitters to thoroughly familiarize themselves with the e-payment portal prior to submitting any e-payments. If a submitter encounters any issues with the e-payment portal, they should contact REF by emailing REFQuestions@ag.ny.gov. Please note that as of the effective date of this guidance document, REF still is working to improve the e-payment portal's user experience. REF thus reserves the right to make changes and enhancements to the e-payment portal in order to optimize functionality without updating this guidance document.

(c) Delayed Payment of Certain Filing Fees Pursuant to New York Executive Order Number 202.18

New York Executive Order Number 202.18 (“EO 202.18”) exempts filing fee requirements under GBL § 352-e(7)(a) until ninety days after the expiration of EO 202.18.³⁵ Such exempted 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, amended no-action letter applications, CPS applications, and amendments or extensions to CPS applications.³⁶ Therefore, submitters of such filings may choose not to pay filing fees until ninety 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 at the time of submission, as reconciling and processing all of the delayed filing fees ultimately will be extremely time-consuming for REF and, consequently, may delay the processing of all submissions to REF. REF also highly recommends that submitters paying filing fees while EO 202.18 is in effect pay such filing fees using REF’s e-payment portal.**

Please note 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 GBL § 359-e(5)(d)—are **not** exempted by EO 202.18. 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. Thus, until further notice, 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 amended and restated offering plan, no-action letter application, amended no-action letter application, CPS application, or amendment or extension to a CPS application contemporaneously with a broker-dealer or salesperson registration statement (where required),³⁷ 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, amended no-action letter application, CPS application, or amendment or extension to a CPS application filing fee, but must pay the broker-dealer or salesperson filing fee at the time of submission.

However, REF again 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, amended no-

³⁴ Furthermore, REF cannot provide credit toward future filings.

³⁵ EO 202.18 can be accessed at the following web address:

<https://www.governor.ny.gov/news/no-20218-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

³⁶ Although technically the filing fees for some CPS applications and amendments or extensions to CPS applications are not exempted under EO 202.18, to avoid confusion, REF is treating all CPS application and amendment or extension to CPS application filing fees as exempted under EO 202.18. Nevertheless, during the pendency of EO 202.18, REF highly encourages submitters to pay CPS application and amendment or extension to CPS application filing fees via the e-payment portal contemporaneously with their filings despite not being required to do so.

³⁷ As discussed in Section II(c) of this guidance document, a broker-dealer registration statement still is required with the submission of a new offering plan, no-action letter application, or CPS application—and may be required with the submission of an amendment, amended and restated offering plan, amendment to an amended and restated offering plan, amended no-action letter application, or amendment or extension to a CPS 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.

action letter application, but (2) payment of a related broker-dealer or salesperson registration statement is still required pursuant to GBL § 359-e(5)(d), REF highly recommends that the submitter pay the broker-dealer or salesperson filing fee via e-payment, as doing so will enable the submitter to utilize REF's temporary e-submission policy. If, in such instances, the broker-dealer or salesperson registration statement filing fee 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 a digital copy, where required—of the submission including the paper check to REF.

Conversely, if (1) the submitter chooses to delay payment of the filing fee for a CPS *application or amendment or extension to a CPS 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 **requires** 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-submission policy. If, in such instances, the submitter would prefer to pay the broker-dealer or salesperson registration statement via paper check instead of via e-payment, the *entire initial submission* of the CPS application or amendment or extension to the CPS application **cannot** be submitted to REF using the temporary paperless e-submission policy. Instead, the submitter *must wait until REF indicates that it will again accept paper submissions of CPS applications and amendments or extensions to CPS applications* to mail a paper copy of the submission including the paper check to REF. Hence, REF **strongly encourages** submitters to pay all such filing fees using REF's e-payment portal.

Additionally, please note that although the *securities registration* filing fee required for Form 99 filings pursuant to GBL § 352-e(7)(a) is exempt under EO 202.18, the *broker-dealer registration statement* filing fee required for Form 99 filings pursuant to GBL § 359-e(5)(b)–(c) is not exempted. However, as previously discussed in Section II(f) of this guidance document, REF does not intend to pursue enforcement actions based solely upon the failure to timely file a Form 99 with REF until further notice. Accordingly, REF very strongly advises against the submission of **any** Forms 99 while EO 202.18 is in effect.³⁸

For further details regarding the impact of EO 202.18 on e-payment of filing fees, please consult 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_9-18-2020.pdf

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.

³⁸ Because REF's e-payment portal automatically couples the payment of the securities registration filing fee with the broker-dealer registration statement filing fee, REF will not permit e-payment for Forms 99 during the pendency of EO 202.18 in order to avoid confusion.

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 and submission policies and procedures 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.