



## Real Estate Finance Bureau issues new guidance on the importance of broker-dealer registration status for all real estate filings

By Erica Buckley and Ari Glatt

This past week, the New York Attorney General (the NYAG) published a new guidance document advising that effective **January 1, 2018**, all amendment submissions for offering plans, excluding price change only amendments, must include a current M-10 Broker-Dealer Registration Statement (M-10), or evidence thereof. New York General Business Law (GBL) § 359-e requires broker-dealers of real estate securities to maintain a current M-10 while engaging in sales activity. This recent policy change shows that the NYAG takes the position that extending the terms of an offering plan by filing an amendment generally evidences a broker-dealer's intent to engage in sales activity and, accordingly, a broker-dealer must have a current M-10 to substantively amend an offering plan. Failure to do so may be construed by the NYAG as a violation of the GBL.

Generally, pursuant to GBL § 359-e(3)(c), broker-dealer registration statements must be filed every four (4) years plus an additional ninety (90) days following the end of the four-year period. The duty to file and track the status of the M-10 lies solely with the broker-dealer. Submitters should note that their broker-dealer registration status can be requested [here](#), and M-10 and M-3 forms can be accessed [here](#).

### What does this mean for developers and sponsors?

What is clear from the new NYAG guidance is that the office deems the information contained in the M-10 form important to investors and will not tolerate delinquent filers. To ensure that an amendment submission is not rejected by the NYAG, it is required that a current M-10 be submitted simultaneously with the amendment submission. A submitter should also (i) disclose in the attorney transmittal letter the submission of the new M-10 using a **bold-faced font**, and (ii) include a separate check for the M-10 filing fee (in addition to the amendment filing fee). If a submitter's M-10 is current at the time of amendment submission but neither the copy of the current M-10 nor the M-10 receipt is available, the amendment submission must include an affidavit attesting to the filing date of the submitter's current M-10.

The new guidance also makes clear that the broker-dealer registration requirements are not limited to this new amendment submission requirement. M-10 requirements in connection with other

types of submissions (e.g., offering plans and applicable cooperative policy statements), remain unchanged. Sponsors and developers should refer to NYAG regulations, relevant guidance documents and your Nixon Peabody LLP attorney for specific information regarding such submissions. Nixon Peabody LLP will also assist its developer clients in meeting these requirements as well as tracking compliance therewith.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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