



NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL
REAL ESTATE FINANCE BUREAU

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Title 13 NYCRR Section 16.11

(Statutory authority: General Business Law, art. 23-A)

Guidelines for non-specified property real estate syndication offerings.

(a) These guidelines apply to non-specified property syndications (hereinafter called "programs") in the form of limited partnerships. To the extent appropriate, they will also be applied to non-specified property programs in forms other than limited partnerships. As used herein, the term non-specified property or blind pool program shall mean an investment program in which the offering statement or prospectus does not clearly set forth the specific property or properties to be purchased, leased, mortgaged or otherwise financed with at least 75 percent of the net proceeds of the offering; or a program in which the proceeds of any sale or refinancing of properties may be reinvested. Reserves shall be included in the non-specified 25 percent.

(b) This section is not intended to be exclusive. All of the regulations, requirements, standards and policies of the Department of Law otherwise applicable to real estate syndication offerings shall apply to non-specified property programs.

(c) These guidelines set forth some of the criteria that will be weighed in exercising the discretion contained in sections 352-e(1)-(2), 252-g and 359-f(2) of the General Business Law. The Department of Law retains full discretion to refuse to issue a filing letter or to deny an exemption to a non-specified property offering which meets all of the conditions of this section, whenever in its sole judgment such refusal or denial is warranted by the particular facts and circumstances and is necessary for the protection of investors.

(d) In determining whether to issue a filing letter or grant an application to exempt from filing a non-specified property offering, the Attorney General will apply the following guidelines:

(1) Statement of policy regarding real estate programs. All of the provisions of the "Statement of Policy Regarding Real Estate Programs" adopted by the North American Securities Administrators Association, Inc. and currently in effect, are incorporated herein by reference. Those provisions are an integral part of these guidelines and will be applied to non-specified property programs except to the extent that particular requirements of this subdivision are more stringent than, and therefore supersede, specific requirements thereof.

(2) Minimum capitalization. The minimum gross proceeds of the offering must be at least \$2,500,000.

(3) Maximum capitalization. Offerings of total dollar amounts which are excessively large in relationship to the prior experience and demonstrated capabilities of the principals or are otherwise inconsistent with responsible investment criteria, will be denied exemption or refused filing.

(4) Experience of sponsor. The sponsor(s) or at least one principal must establish that he has had the equivalent of not less than five years experience in the acquisition and management of the type of properties to be acquired; or otherwise must demonstrate to the satisfaction of the Attorney General that he has sufficient related knowledge and experience to acquire and manage the type of properties to be acquired.

(5) Net worth of general partner. The financial condition of the general partner(s) or other principals liable for the debts of the program, must be commensurate with any financial obligations assumed in the offering and in the operation of the program. As a minimum, the general partners shall have an aggregate financial net worth exclusive of homes, automobiles and home furnishings, of the greater of either \$250,000 or an amount at least equal to five percent of the gross amount of all offerings sold within the prior 12 months, plus five percent of the current offering, to an aggregate maximum net worth requirement of \$1,500,000. Evaluation will be made of contingent liabilities and the use of promissory notes to determine the appropriateness of their inclusion in computing net worth.

(6) Suitability standards. Suitability standards for investors must be imposed which are reasonable in light of the type of program, its specific tax orientation, the lack of liquidity, limited transferability and the inherent risk involved. Unless the Department of Law approves a lower suitability standard, each investor shall have a minimum annual gross income of \$35,000 and a net worth of \$35,000 or alternatively, a net worth of \$100,000. For high risk offerings, higher suitability standards may be required. Net worth shall be determined exclusive of home, home furnishings and automobiles.

(7) Suitability reports. The sponsor or general partner of the program shall file a pre-effective undertaking with the Attorney General that all New York residents purchasing interests in the program will be appropriate in light of the required suitability standards and a post closing affidavit (which may be based on written representations of the underwriters and purchasers) confirming that the suitability requirements have been met with respect to such purchasers.

(8) Minimum investment. A minimum initial cash purchase of \$2,500 per investor shall be required. However a minimum of \$1,000 shall apply to a purchase by an individual retirement account. Subsequent transfers of such interest shall be in units of not less than \$2,500, except for transfers by an individual retirement account, transfers by gift, inheritance, intra-family transfers, transfers subsequent to the preceding, and transfers to affiliates.

(9) Investment objectives.

(i) The prospectus must contain an accurate and detailed statement of the investment purposes of the program, the types of properties to be acquired and, to the extent practicable,

the investment criteria to be applied. The size and scope of projects shall be consistent with the objectives of the program and the experience of the sponsor.

(ii) The prospectus must restrict investments in unimproved and non-income producing property to not more than 15 percent of the proceeds available for investment.

(10) Reinvestment.

(i) The program must provide that if acquired property is sold or refinanced and the proceeds are reinvested, acquisition or other fees or commissions for reinvestment may be paid directly or indirectly to the sponsors or their affiliates only if the limitation on maximum compensation for investment in properties is not exceeded.

(ii) Offerings not registered with the SEC will generally be required to return to the partners all net proceeds upon the sale or refinancing of property.

(11) Escrow required.

(i) The prospectus must contain an undertaking that prior to the initial closing of the offering, all moneys received from subscribers will be held in trust for their benefit in a special escrow account; that all moneys received from subscribers after an initial closing will also be held in trust for their benefit in a special escrow account; and that a subscriber's funds will only be released to the issuer pursuant to a closing at which the subscriber becomes a partner or other participant.

(ii) The prospectus must contain an undertaking that proceeds of the offering will be received by the issuer at any closing to be used only for the purposes set forth in the prospectus and that any proceeds not invested or committed within two years from the date of effectiveness (except for necessary operating capital) shall be distributed pro rata to the partners as a return of capital.

(12) Non-specified status.

The cover page identification of material risks shall include an appropriate statement to the effect that prospective investors will not have the opportunity to evaluate any real properties to be acquired by the partnership because the partnership owns no real property, has not identified any specific property it intends to purchase and does not have an operating history. Include a cross-reference to further information in the prospectus.

(13) Cross-reference sheet. A cross-reference sheet must be submitted for each non-specified property program, setting forth:

(i) the specific location in the partnership agreement and/or prospectus of compliance with, or variance from, each of the provisions of these guidelines;

(ii) the specific variance from each provision, including the provisions of the NASAA "Statement of Policy Regarding Real Estate Programs" (paragraph [1] of this subdivision) or that specific provisions are inapplicable; and

(iii) the specific section of the partnership agreement incorporating each provision which NASAA "Statement of Policy Regarding Real Estate Programs" (paragraph [1] of this subdivision) requires to be included in the partnership agreement.

Historical Note

Sec. filed May 5, 1983 eff. May 5, 1983.