



New York State Department of Law  
Investor Protection Bureau  
120 Broadway - 23<sup>rd</sup> Floor  
New York, NY 10271  
1-800-771-7755 TTD (for hearing impaired) 1-800-788-9898

### **§359-f(2) EXEMPTION INSTRUCTION SHEET**

The following procedure should be followed in applying for an exemption pursuant to General Business Law, Article 23-A §359-f, Subd. 2 from the provisions of §359-e, Subds. 2, 3, 4, 5 and 6 of the General Business Law:

Submit an application (affidavit or petition) verified by an officer, general partner, trustee or other principal having knowledge of the facts contained therein, setting forth in full the following information and documentation:

1. The name, address and legal nature (corporation, trust, partnership, etc.) of the issuer entity (the "applicant"); the business of the issuer; its place and date of organization; and whether it is a successor to another entity within the last two years.
2. The name, title and affiliation of the individual affiant, his business or profession, and his business address.
3. The names and business address of all officers, directors, general partners, trustees, principals and selling shareholders, and a statement that there are no other principals or controlling persons.
4. Whether or not any officer, director, trustee, general partner, principal or selling shareholder, was ever adjudged a bankrupt, made an assignment for benefit of creditors, or was an officer, director or principal of any entity which was reorganized in bankruptcy, adjudged a bankrupt, or which made an assignment for the benefit of creditors. (If so, specify details.)
5. Whether or not any officer, director, trustee, general partner, principal or selling shareholder, was ever convicted of any crime, or was the subject of any injunction, cease and desist order, suspension or restraining order, revocation of a license to practice a trade, occupation or profession, or denial of an application to renew same, stipulation or consent to desist from any act or practice, or any other disciplinary action by any court or administrative agency, or whether any such action proceeding is presently pending. (If so, specify details).
6. The purpose of the offering, the total dollar amount of the offering and the number of units and classes of securities to be offered, including optional units, shares underlying warrants and conversion privileges. Do not refer to the accompanying exhibits.

Fee for Executed Application for Exemption... \$300.00

Payment by Attorney's check, company check, certified check, bank check or money order. Personal checks not accepted.

Make check payable to the **NYS Department of Law.**

**Send remittance to: Investment Protection Bureau  
Attn. Securities Registration  
Section**

**NYS Department of Law  
120 Broadway, 23<sup>rd</sup> Floor  
New York, New York 10271**

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7. A copy of any offering literature including any employees' stock purchase, savings, pension, profit-sharing, or similar benefit plan to be used; an undertaking to file with the Department of Law, all amendments thereto and any other offering literature to be used in connection with the offering; and a copy of the latest annual report issued by the applicant.

8. The particular paragraph [(a) through (e)] of subdivision 2 of section 359-f under which the exemption is sought. Also set forth the facts upon which exemption is sought. Do not refer to attached documents.

9. Submit the following information for paragraph (d) of §359-f only:

- a. A statement that the offering will not be made to more than 40 persons (including offerees who reside outside of the State of New York).
- b. A statement that no offering has yet been made to any resident of the State of New York and that no potential offerees have been obtained as a result of any advertisement.
- c. A statement that the offering is, in fact, to be made by personal contact to only \_\_\_\_\_ (number of persons) of the personal friends, relatives and business associates of the affiant and other principals of the issuer (according to the facts) except as otherwise noted and set forth at length therein; and a list of the name, address, relationship to the promoters and length thereof, of each person to whom the offering will be made.
- d. A representation that all purchasers of the offered securities will be required to warrant that they are purchasing the securities for their own account and not for the interest of any other person or not for resale to any other persons.
- e. A statement that attached to the application and made a part thereof are Forms RI-1 for each officer, director, general partner, trustee, principal or selling shareholder.
- f. An undertaking that on the completion of the offering the affiant will furnish a supplemental affidavit containing the following information:
  - (1) A list of the names and addresses of the purchasers of the offered securities (both within and without New York State) and the dollar amount of their purchases;
  - (2) An additional list of persons to whom the offering was made, but who did not participate.

10. The application should conclude (prior to the subscription and verification) with the following clause: "WHEREFORE, it is respectfully requested that the offering for sale of the securities of \_\_\_\_\_ (the issuer) be exempted under §359-f, Subd. 2 from the provisions contained in §359-e, Subds. 2, 3, 4, 5 and 6 of the General Business Law".

**Notes:**

1. The §359-f, Subd. 2 exemption does not cover §359-e, Subd. 8, and therefore a Further State Notice form must still be filed with the Department of State, Miscellaneous Records Bureau (fee \$75) unless §359-f, Subd. 1 makes §359-e, Subd. 8 inapplicable to the transaction.
2. When exempted from filing a State Notice, and filing a Further State Notice pursuant to 359(f)2, you must write or type in the State Notice form "The issuer has applied to the Attorney General for a State Notice exemption."

3. Non-resident issuers should file a U-2 with Department of State, Divisions of Corporations (fee \$35) pursuant to §352-a and §352-b of the General Business Law. These forms and fees should be filed with the Department of State ([www.dos.state.ny.us](http://www.dos.state.ny.us)).