



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
REAL ESTATE FINANCE BUREAU

VIA EMAIL

September 14, 2022

Erica F. Buckley, Esq.
Nixon Peabody LLP
55 West 46th Street
New York, NY 10036

Re: Cadman Towers- *3rd Deficiency Letter*
No Action Application No. NA 21-0191

Ms. Buckley:

The revised above-referenced No Action Application, including all related exhibits and supporting documentation, submitted by you on August 15, 2022, pursuant to 13 NYCRR §18, **is rejected for filing.**

If redlined changes are not submitted in conformity with the attached list of deficiencies, within thirty (30) days of the date of this letter, the Department of Law will not consider any further submissions on the proposed offering plan **unless a new filing fee is submitted.** An extension of time may be requested.

The issuance of this deficiency letter shall not be construed to be a waiver of or limitation on the Attorney General's authority to take enforcement action for violations of Article 23-A of the General Business Law and other applicable provisions of law.

Very truly yours,

Carol Dancy Stephens
Carol Dancy Stephens
Assistant Attorney General
(212) 416-4060
carol.stephens @ag.ny.gov

Encl.

DEFICIENCIES

Cadman Towers
101 Clark Street and 10 Clinton Street
Brooklyn, New York 11201
File No.: NA 21-0191
Reviewing Attorney: Carol Dancy Stephens
Review Date: September 14, 2022

Part I

With respect to any deficiency listed herein, **make conforming revisions in all of the applicable sections of the Proxy Statement (including the Exhibits, where applicable) whether or not expressly requested herein.**

Please submit computer-generated red/black lined changes. Next to each change, indicate the number of the deficiency to which the change corresponds. Additionally, please include with the red/black lined changes a copy of this letter with page numbers in the margins corresponding to the page of the relevant change.

I - SPECIAL RISKS ("SR")

1. SR 1: Highlight as a special risk that the proposed conversion of the Mitchell-Lama cooperative from an Article II to an Article XI HDFC is **the first of its kind.**
2. SR 6, Pages 3-4: Please see comment 4 of the July 14, 2022 Deficiency Letter ("2nd Deficiency Letter") regarding the AMI percentage threshold and revise accordingly. In some sections of the Proxy Statement, "80% of AMI" is stated; in other sections, "at or above 80%". The Cadman Towers Term Sheet states "does not exceed 85% of AMI." Make conforming changes throughout the Proxy Statement.
3. SR 6, Page 4: Clarify in this section and in other applicable sections of the Plan that the ability to "re-sell" the apartments will be affected by the availability of financing available to HDFC cooperatives, and that historically, there have not been many lenders that provide such financing.
4. SR 13, Page 6: The revised disclosure now states that the "Insider Waiting List" is part of the process for the sales to outsiders. This conflicts with the statement on the Cadman Towers Term Sheet – "*The HDFC Coop may have an **Insider Waiting List to accommodate upsizing and downsizing for existing Shareholders. Transfers between existing Shareholders of the Corporation ("Insider Transfers") are also permissible. Shareholders on the Insider Waiting List or Insider Transfers do not need to meet (or re-certify) the aforementioned income requirements.** Reconcile these inconsistencies and ensure that accurate and complete disclosure is included throughout the Proxy Statement.*"
5. SR 13, Page 6: Include complete and accurate disclosure regarding whether there will be a process for shareholders who seek to purchase an apartment other than the one in which such shareholder currently resides and how such process will work.
6. SR 13, Page: Provide further clarification regarding **how the marketing and sale of Apartments through NYC Housing Connect will work.**

7. SR 13, Page 6: Delete the following sentence: *"The HDFC shall not have a right to accept or reject an offer on an Apartment that is for sale or lease before it is placed on the Insider Waiting List or otherwise advertised on NYC Housing"* which does not conform to HPD's prior statement that the board will not have a right to accept or deny a Qualified Purchaser, as stated in comment 11 of the 2nd Deficiency Letter .
8. SR 13, Page 7: As previously requested in the first and the 2nd Deficiency Letter, **state whether the HDFC has a right of first refusal.**
9. Special Risks: Regarding the outdated 2020 PNA, highlight as a special risk that it is likely that there **will be additional capital needs** based on an updated PNA at such time as an updated PNA is obtained and/or the need for additional capital items becomes evident and the increase in the amount of the funds needed to address such items.

II - DEFINITIONS

10. Definitions: Page 10: In regard to the footer on page 10, the Sponsor's counsel should substantiate that the cited provisions of BCL§ 623 in the 2nd Deficiency Letter (comment copied below) are not applicable.

"A shareholder has commented that BCL § 623: (i) grants no dissenters' rights to shareholders who voted for the Reconstitution, which is contrary to the following statement in this section, "ML Shareholders may exercise Dissenters' Rights, whether they voted for or against the Reconstitution . . ."; (ii) affords dissenting shareholders "fair value", not just the return of equity; and (iii) BCL §623 (g) requires that the Sponsor must pay 80% of this amount to the dissenters "forthwith" upon consummation of the shareholder action. The remaining 20% is to be payable within 75 days of the consummation of the shareholder action.

III - GENERAL DESCRIPTION OF THE LARGE SCALE HOUSING CONVERSION PROGRAM

11. Page 14: With regard to the statement that the HDFC board will have greater discretion to develop policies on issues such as inheritance and succession rights, state to the effect that no representations or guarantees can be given as to what any such rights will be for the HDFC cooperative.
12. Page 15, 2nd paragraph: "Eligible Apartments" is defined in the Definition section. No need to define again.

IV - SUMMARY OF THE HDFC COOPRATIVE

13. Page 17: See the prior comments regarding the "Insider Waiting List."
14. Page 19: Correct the following sentence: *"The Regulatory Agreement will be a lien on the Property that is owned by the HDFC Cooperative and will be in full force and effect, **unless the HDFC Shareholders opt to extend it.**"*

X- DESCRIPTION OF PROPERTY AND IMPROVEMENTS

15. Reiterating Comment 19 of the 2nd Deficiency Letter, which has not been addressed: *"Page 21: If the ML cooperative has currently exhausted most of the available government financing which is available to fund capital needs, that same position will be applicable to the HDFC cooperative. If the*

Fifth Building Loan is available to the HDFC cooperative for the payment of some capital needs, as stated herein, it is also available to the ML cooperative. Therefore, revise the first sentence on page 21 and the applicable sentence below the schedule to clarify that with respect to available government funding and the use of the Fifth Building Loan, the ML cooperative and HDFC cooperative are in the same position. “

XIII - FOOTNOTES TO SCHEDULE A

16. Reserve Account: The new text, which states that the Reserve Fund for the HDFC is already present in the ML's reserve account, obviates the need for the sentence prior to the new text.

XVIII - PROCEDURE FOR APPROVING PLAN OF RECONSTITUTION

17. Page 26, 4th paragraph: Reiterating comment 26 of the 2nd Deficiency Letter – “Pages 26 -27: To clarify the requirements applicable to Non-Participating ML Shareholders (“NPS”), redraft the last paragraph on page 26 to state how many days after the Effective Notice Date, a NPS will be notified in writing regarding the execution of the Non-Participating Rental Lease [ample notice should be provided]; that the Lease must be signed within 30 days after the Effective Notice Date; and the time period after such execution by which Equity will be returned “ - The cited section on Page 26 does not address all of the concepts stated in the forgoing comment.
18. Page 27: Regarding comment 25 of the 2nd Deficiency Letter: “Page 26, penultimate paragraph: The proxy statement previously provided that **once 75%** of the ML shareholders attended the Pre-Closings the Reconstitution Date would be set. Substantiate the basis for this change”- The percentage changed to 66 2/3 % in the 2nd Deficiency Letter. I am conferring with HPD regarding the appropriateness of this change

XXIII - FINANCIAL FORECAST FOR ML COOPERATIVE WITH NO CHANGE IN STATUS

CADMAN TOWERS, INC.

19. Pages 30-31: As requested previously, disclose the amount of the funds remaining from the loan that are available for the capital repairs in the PNA. The fact that the capital repairs will be the same regardless of ownership structure doesn't affect the inclusion of the requested disclosure.

EXHIBITS

EXHIBIT 1 -REGULATORY AGREEMENT

20. Update the Term Sheet, if applicable.

EXHIBIT 9 - PROPOSED SCHEDULE A

21. Include the column to show the difference between Purchase Price and Equity for the sale during the First Year of Operations as an HDFC Cooperative, as stated on Page 7.

22. Address original comment 117, which provided: *“State that pursuant to the Proprietary Lease the Board shall have the right to impose a reasonable minimum contract price.”*

EXHIBIT 10 - SCHEDULE B

23. Real Estate Taxes: Correct the term and change the term to 35 years, as stated in Part I.
24. Reiterating comment 46 of the 2nd Deficiency Letter, which has not been addressed: *“Surcharge Income: Affirmatively state whether HPD’s current surcharge formula will in fact apply to the HDFC cooperative. Clarify any differences ”*- Clarify how the surcharge will be calculated. Clarify if surcharge income calculations will include financing on the apartments.
25. Reiterating comment 49 of the 2nd Deficiency Letter, which has not been addressed: *“Mortgage Payments, Correction: Revise as there isn’t a construction period.”*
26. Real Estate Taxes: Please advise of the budgeted amount that is based on *“...the current real estate tax requirement according to the New York City Shelter Rent Formula,”* which is not discussed in Part I of the Proxy Statement.

EXHIBIT 11- NON-PARTICIPATING ML SHAREHOLDER AFFIDAVIT

27. As previously requested, include the Surrender Agreement referenced in the affidavit.

HPD COMMENTS

28. Reiterating comment 53 b from the 2nd Deficiency Letter, which has not been addressed: *“HPD has approved ballot forms; however, HPD has not yet received notice of the independent election company or special meeting procedures.”* Revise the applicable sections of the Proxy Statement regarding the board’s current undertaking (before the Department of Law’s issuance of a No Action Letter) of the selection of an independent election company and the intended Special Meeting procedures that must be approved by HPD to clarify that HPD has not approved such as of date.
29. The Department of Law reserves the right to provide any further comments HPD may have.

OTHER COMMENTS

30. Reiterating comment 55 from the 2nd Deficiency Letter, which has not been addressed: *“The Private Housing Finance Law was recently amended. Make changes throughout the Proxy Statement to reflect the amended law.”*

AS SOME OF THE PRIOR COMMENTS HAVE NOT BEEN ADDRESSED, PLEASE ENSURE THAT ALL COMMENTS ARE ADDRESSED IN THE NEXT DRAFT.