

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11041 / March 16, 2022

In the Matter of

DF Growth REIT II, LLC,

Respondent.

**ORDER PURSUANT TO RULE 262(b)(2)
OF THE SECURITIES ACT OF 1933
DENYING A WAIVER OF THE RULE
262(a)(7) DISQUALIFICATION
PROVISION OF REGULATION A**

I.

DF Growth REIT, LLC (“REIT I”), DF Growth REIT II, LLC (“REIT II”), DiversyFund, Inc. (“DiversyFund”), DF Manager, LLC, Craig Cecilio, and Alan Lewis (collectively, the “DiversyFund Parties”) submitted a letter dated December 7, 2021 requesting that the Securities and Exchange Commission (the “Commission”) grant a waiver of disqualification pursuant to Rule 262(b)(2) of Regulation A under the Securities Act of 1933 (the “Securities Act”) as a result of disqualification under Rule 262(a)(7). Only REIT II is currently disqualified under Rule 262(a)(7), and, for the reasons set forth below, its request for a waiver of that disqualification is denied because the basis on which a waiver is sought has been mooted by the Commission’s March 16, 2022 order under Rule 258 temporarily suspending REIT II from relying on the Regulation A exemption (“REIT II Rule 258 Temporary Suspension Order”). Moreover, REIT II has not made the requisite showing of good cause as set forth in Rule 262(b)(2) of Regulation A.

II.

REIT II is a Delaware limited liability company headquartered in San Diego, California. REIT II was qualified on January 29, 2021 to sell up to \$50 million in securities pursuant to the Regulation A exemption.

REIT I is a separate Delaware limited liability company headquartered in San Diego, California. REIT I was qualified on November 13, 2018 to offer and sell up to \$50 million in securities pursuant to the Regulation A exemption. REIT I’s Regulation A offering concluded on November 13, 2021.

The other requesting entities and individuals are related to REIT II but are not currently issuers relying on the Regulation A exemption. DiversyFund, a Delaware corporation headquartered in San Diego, California, is a real estate developer. Craig Cecilio and Alan Lewis are the co-founders and co-owners of DiversyFund. DiversyFund is the 100% owner of DF Manager, LLC, the manager of REIT I and REIT II.

Based on information it received, the Division of Enforcement began investigating REIT II and the entities and individuals described above. The Commission issued, through delegated authority, a formal order of investigation on November 8, 2021. Three weeks later, the Division of Enforcement staff notified REIT II's counsel that it was investigating, among other things, whether to recommend that the Commission issue an order temporarily suspending the Regulation A exemption as to REIT II, pursuant to Rule 258. Pursuant to Rule 262(a)(7) of Regulation A, this aspect of the investigation created a disqualification because REIT II was "the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued."

On December 14, 2021, Division of Corporation Finance ("Corporation Finance") staff received a Regulation A waiver request letter dated December 7, 2021 submitted by the DiversyFund Parties. Later in December, Corporation Finance staff informed the DiversyFund Parties' counsel that, based on the information submitted, it would not support the grant of a waiver because good cause had not been established. Counsel for the DiversyFund Parties never responded to Corporation Finance staff or submitted any additional materials in support of the Regulation A waiver request.

On December 13, 2021, the DiversyFund Parties petitioned the Commission to review the formal order of investigation and the staff's communication about the investigation, which they construed as a delegated action.

On January 13 and 26, 2022, respectively, the Commission issued an amended formal order of investigation and an order denying DiversyFund Parties' petition for review. The amended formal order of investigation clarified that the investigation covered "whether a suspension order pursuant to Rule 258 . . . should be issued to suspend the ability of REIT II to rely" on Regulation A. The order denying review explained that neither the original formal order nor the communication were reviewable under the Commission's Rules of Practice, and that the petition for review had been mooted by the amended formal order.¹ At no point did the DiversyFund Parties submit any amended or additional materials regarding the Regulation A waiver request.

On March 16, 2022, the Commission issued the REIT II Rule 258 Temporary Suspension Order. In its order, the Commission stated that it had reason to believe that (1) REIT II failed to comply with the terms, conditions and requirements of Regulation A; and (2) REIT II's offering documents and the website it uses to solicit investors contain untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading. The Commission notified REIT II of the Rule 258 Temporary Suspension Order on March 16, 2022. Under Rule 262(a)(7) of Regulation A, REIT II remains disqualified during the

¹ On February 15, 2022, the DiversyFund Parties filed a petition for review in the Ninth Circuit and sought an emergency stay of the January 13 and 26 orders. The Ninth Circuit denied the emergency motion on February 28, 2022, and the petition for review remains pending.

pendency of any further proceedings under Rule 258 because it is now the subject of an “order suspending the Regulation A exemption.”

III.

Rule 262(b)(2) of Regulation A states that a Rule 262(a) disqualification shall not apply “[u]pon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied.” Regulation A provides an exemption from the registration requirements under the Securities Act for an issuer that meets certain eligibility requirements. In assessing whether good cause for a Regulation A waiver is shown, a focus of the Commission’s analysis is on how the identified conduct bears on an applicant’s fitness to participate in these exempt offerings in light of the need to ensure investor protection under the Regulation A framework.

The Commission denies the waiver request for two reasons. First, the Regulation A disqualification went into effect automatically as a result of the investigation in order to protect investors while that investigation is pending. A waiver of that disqualification currently would have no practical effect because, as a result of information learned in that investigation, REIT II is now temporarily suspended from relying on the Regulation A exemption pursuant to Rule 258(a). As a result, the basis for the disqualification for which a waiver is sought – the investigation into a potential Regulation A suspension – no longer applies, and therefore the waiver request is moot.

Second, even if the waiver request were not now moot, REIT II has failed to show good cause for a waiver. We issued a temporary suspension because we have reason to believe that: (1) REIT II did not comply with the terms, conditions, and requirements of Regulation A; and (2) the offering statement and sales materials contained untrue statements of material fact or omitted to state material facts necessary in order to make the statements made in light of the circumstances under which they are made, not misleading. Under those circumstances, there is no cause to lift a disqualification and allow offers and sales to investors, possibly putting them in harm’s way.

Moreover, the waiver request does not show good cause on its facts. Among other reasons, the waiver request does not identify any remedial measures or safeguards that would protect investors during the pendency of an investigation to justify allowing the Regulation A offering to move forward. Moreover, while the waiver request alludes to a possible harm to “tens of thousands of investors,” the supposed harm is speculative and appears to focus on investors in entities other than REIT II. If the claims of investor harm are accepted as true, then we have reason to believe that various representations in REIT II’s offering circular and on REIT II’s website are misleading. We balance the vague assertion of harm from a temporary inability to access capital using Regulation A against the potential harm from continued Regulation A sales by REIT II to investors.

IV.

Accordingly, **IT IS ORDERED**, pursuant to Rule 262(b)(2) of Regulation A under the Securities Act, that the request for a Regulation A waiver by REIT II is denied.

By the Commission.

Vanessa A. Countryman
Secretary