

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11204 / June 9, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-20801

In the Matter of

DF Growth REIT II, LLC,

Respondent.

**ORDER MAKING FINDINGS AND
PERMANENTLY SUSPENDING
EXEMPTION PURSUANT TO SECTION
3(b) OF THE SECURITIES ACT OF 1933
AND RULE 258 OF REGULATION A
THEREUNDER**

I.

The public official files of the Securities and Exchange Commission (“Commission”) show that:

Respondent DF Growth REIT II, LLC (“REIT II” or “Respondent”), a Delaware limited liability company with its principal place of business in San Diego, California, filed a Regulation A offering statement on Form 1-A under the Securities Act of 1933 (“Securities Act”) with the Commission on December 23, 2020, and filed an amendment to the offering statement on Form 1-A/A under the Securities Act on January 21, 2021 (the “Offering Statement”). The Offering Statement was filed to obtain an exemption from the registration requirements of the Securities Act, as amended, pursuant to Section 3(b) of the Securities Act and Regulation A thereunder. The Offering Statement offered \$50 million of limited liability company interests, designated as Class A Investor Shares, on a purportedly continuous basis in a Tier 2 offering under Regulation A, and was qualified on January 29, 2021.

II.

In anticipation of the entry of this Order Making Findings and Permanently Suspending Exemption Pursuant to Section 3(b) of the Securities Act of 1933 and Rule 258 of Regulation A thereunder (“Order”), Respondent has submitted an Offer of Settlement (“Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction

over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order, as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

1. REIT II failed to comply with two of the terms, conditions, or requirements of Regulation A.

2. First, REIT II was required to commence its qualified continuous offering within two days after its January 29, 2021, qualification pursuant to Rule 251(d)(3)(i)(F) under Regulation A: "Continuous . . . offerings may be made under this Regulation A, so long as the offering statement pertains only to . . . [s]ecurities the offering of which will be commenced within two calendar days after the qualification date" However, in its September 29, 2021, semi-annual report, REIT II stated that, as of June 30, 2021, it had not yet commenced its operations or sold any LLC interests under Regulation A, but that it "plans to begin raising money . . . starting in the second half of the year."

3. Second, REIT II raised its maximum offering amount from \$50 million to \$75 million through the filing of an August 26, 2021, offering circular supplement rather than a new offering statement or post-qualification amendment as required by the note to Rule 253(b) under Regulation A: "An offering circular supplement may not be used to increase the volume of securities being offered. Additional securities may only be offered pursuant to a new offering statement or post-qualification amendment qualified by the Commission." Because REIT II failed to file an offering statement or post-qualification amendment as required, it failed to seek review, comment, and qualification for the increase by Division of Corporation Finance staff as required by Regulation A. *See* Rule 251(d)(2). After Division of Enforcement staff notified REIT II of this failure, it filed an offering circular supplement seeking to reduce its offering amount back to \$50 million.

4. DiversyFund, Inc. ("DiversyFund") is the 100% owner of DF Manager, LLC, the manager of REIT II.

5. REIT II made inaccurate representations about whether fund management fees would be charged. Specifically, REIT II's August 2021 offering circular supplement described an "Asset Management Fee" "equal to 2% of the capital raised," but the September 2021 version of DiversyFund's website still stated that there were "no management fees," which was true for REIT II's predecessor but not REIT II.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

6. REIT II provided inaccurate summaries regarding other fees. REIT II's August 2021 offering circular supplement stated that it revised the Offering Circular fee structure in its entirety, and discussed possible "Property Disposition Fee," "Construction Management Fee," "Guaranty Fee" and "Other Fees." However, in the November 2021 version of DiversyFund's website, none of these fees appear under the website headings "What Are Your Fees?," or "REIT 2: Fee Structure," both of which state that they describe the "new fee structure."

7. As a result of the conduct described above, REIT II failed to comply with terms, conditions or requirements of Regulation A.

8. Rule 258(a) of Regulation A promulgated under the Securities Act, 17 C.F.R. § 230.258, provides that the Commission may, at any time, enter an order temporarily suspending a Regulation A exemption if it has "reason to believe" that one of six enumerated factors are present. 17 C.F.R. § 230.258. Each factor provides an independent basis upon which to temporarily suspend an exemption from Regulation A. Two of these factors are:

- "any of the terms, conditions or requirements of Regulation A have not been complied with" (17 C.F.R. § 230.258(a)(1)); or
- "[t]he offering statement, [or] any sales or solicitation of interest material . . . contains any untrue statement of a material fact or omits 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" (17 C.F.R. § 230.258(a)(2)).

9. On March 16, 2022, pursuant to Rule 258(a) of Regulation A under the Securities Act, 17 C.F.R. § 230.258(a), the Commission entered an Order Temporarily Suspending Exemption Pursuant to Section 3(b) of the Securities Act of 1933 and Rule 258 of Regulation A thereunder, Statement of Reasons for Entry of Order, and Notice of Opportunity for Hearing ("Temporary Suspension Order").

10. As set forth in the Temporary Suspension Order, the Commission, on the basis of information reported to it by its staff, 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 used to solicit investors contained untrue statements of a material fact or omitted 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.

11. Rule 258(d) of Regulation A provides that the Commission may, at any time after notice of and opportunity for hearing, enter an order permanently suspending the exemption for any reason upon which it could have entered a temporary suspension under Rule 258(a), and that any such order shall remain in effect until vacated by the Commission.

12. DiversyFund took remedial actions prior to the entry of this Order, including the modification of its website, the clarification of REIT II's fee structure and co-investment strategy,

and the revision of disclosures regarding fees and REIT II's investment strategy.

13. REIT II initially requested a hearing on the matter. It subsequently withdrew that request and submitted an Offer consenting to the entry of an order permanently suspending the exemption of REIT II under Regulation A.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in REIT II's Offer.

Accordingly, it is hereby ORDERED that:

Pursuant to Section 3(b) of the Securities Act, 15 U.S.C. § 77c(b), and Rule 258 of Regulation A thereunder, 17 C.F.R. § 230.258, REIT II's exemption from registration under Regulation A be, and hereby is, permanently suspended. This suspension shall remain in effect until vacated by the Commission.

By the Commission.

Vanessa A. Countryman
Secretary