

*Note: [15 Sep 2004] – The following is ASC Rule 45-509 as it was initially implemented. This version of ASC Rule 45-509 is no longer current.*

## **ALBERTA SECURITIES COMMISSION RULE 45-509**

### ***OFFERING MEMORANDUM FOR REAL ESTATE SECURITIES***

#### **1. Definitions**

In this Instrument,

- (a) the “Form” means Form 45-509F *Offering Memorandum for Real Estate Securities*;
- (b) “MI 45-103” means Multilateral Instrument 45-103 *Capital Raising Exemptions*;
- (c) “real estate project” means
  - (i) a business or undertaking that is proposed primarily to generate for purchasers of real estate securities income, gain or other return, or funds distributable on dissolution or sale, the amount of which is primarily dependent on the use or management of real property by persons other than those purchasers, or
  - (ii) real property that is proposed to be developed or redeveloped for use in a business or undertaking described in (i), or for resale, and
- (d) “real estate security” is an investment contract under which
  - (i) the purchaser’s economic entitlement is to a material extent attributable to a real estate project, and
  - (ii) the occupation or use by the purchaser of the real property that is the subject of the real estate project is prohibited or materially restricted.

#### **2. Required Form of Offering Memorandum**

Despite section 8.1 of MI 45-103, an issuer of a real estate security relying on the offering memorandum exemptions set out in subsections 4.1(3) or (4) of MI 45-103 must prepare an offering memorandum in accordance with the Form.

#### **3. Values to be Supported by Independent Appraisals**

- (1) If an offering memorandum referred to in section 2 discloses a value of a real estate project or of real property, whether required under subsection 3.3(1) of the Form or disclosed voluntarily, that value must have been determined in an appraisal made in accordance with the standards of the Appraisal Institute of Canada by an independent qualified appraiser.

- (2) The issuer must provide a purchaser of the real estate security, on request and without charge, a copy of the appraisal referred to in subsection (1).
- (3) For the purpose of subsection (1) and the Form:
  - (a) a “qualified appraiser” means an accredited member of the Appraisal Institute of Canada in good standing, and
  - (b) a qualified appraiser is “independent” if the qualified appraiser does not have, or expect to have, any agreement, arrangement, understanding, employment or other relationship with, or any interest in, any person or company, the real estate project, the real property or any adjacent property, that a reasonable person would consider to be an influence on the qualified appraiser’s judgement concerning the value.

#### **4. Future-Oriented Financial Information**

- (1) If an offering memorandum referred to in section 2 includes future-oriented financial information (FOFI):
  - (a) the FOFI must be audited,
  - (b) if, before the issuer accepts an agreement by a purchaser to purchase the offered real estate security, a change occurs in the events or assumptions used to prepare the FOFI that has a material effect on the FOFI, update the offering memorandum in accordance with MI 45-103, and
  - (c) the issuer must annually file and send to the purchaser a comparison of the FOFI to the actual results for the same period.
- (2) For the purpose of subsection (1) and the Form, “future-oriented financial information” means information, presented as either a forecast or projection, about prospective results of operations, financial position or changes in financial position based on assumptions about future economic conditions and courses of action.

#### **5. Effective Date**

This Rule comes into force on September 15, 2004.