

*Note: [31 Dec 2007] – The following is a consolidation of ASC Rule 45-509. It incorporates amendments to this document that came into effect on September 28, 2005 and December 31, 2007. This consolidation is provided for your convenience and should not be relied on as authoritative.*

## ALBERTA SECURITIES COMMISSION RULES

### 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) “NI 45-106” means National Instrument 45-106 *Prospectus and Registration 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 6.4 of NI 45-106, an issuer of a real estate security relying on the offering memorandum exemptions set out in section 2.9 of NI 45-106 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) and 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, the offering memorandum must be updated in accordance with NI 45-106.
- (2) For the purposes of subsection (1) and the Form, “future-oriented financial information” has the same meaning as in Part 4B [*FOFI and Financial Outlooks*] of National Instrument 51-102 *Continuous Disclosure Obligations*.

**5. Effective Date**

This Rule comes into force on September 15, 2004.

*[as amended on September 28, 2005 and December 31, 2007]*