

## ALBERTA SECURITIES COMMISSION

### Proposed ASC Rule 45-509 *Offering Memorandum for Real Estate Securities*

#### Public Comments Posted to Website

June 25, 2004

On April 16, 2004, the Alberta Securities Commission (ASC) published for a 60-day comment period the following documents:

- ASC Rule 45-509 *Offering Memorandum for Real Estate Securities* (Proposed Rule),
- Form 45-509 *Offering Memorandum for Real Estate Securities* and
- Companion Policy 45-509CP to ASC Rule 45-509 *Offering Memorandum for Real Estate Securities*).

The purpose of the Proposed Rule is to require issuers to use a form of offering memorandum tailored specifically to offerings of “real estate securities” if they sell these securities using the offering memorandum exemption set out in Multilateral Instrument 45-103 *Capital Raising Exemptions*. The Proposed Rule sets out a definition of “real estate security”.

#### Comments Received

The ASC received, and is currently considering four submissions, which we have posted to our website at [www.albertasecurities.com](http://www.albertasecurities.com) under Securities Law and Policy/Regulatory Instruments/ASC Rule 45-509. We thank the commenters for taking the time to make their submission.

#### Can I still make a submission?

If you would like to submit a comment on the proposed documents, or in response to one of the submissions, you may do so by **July 15, 2004**. If you are not sending your comments by e-mail, please send a diskette containing your comments (in DOS or Windows format, preferably Word). All submissions are posted to our website and are therefore not kept confidential.

Address your submission to:

Alberta Securities Commission  
4<sup>th</sup> Floor, 300 – 5<sup>th</sup> Avenue S.W.  
Calgary, Alberta T2P 3C4  
Attention: Jo-Anne Bund, Legal Counsel  
Shawn Taylor, Legal Counsel

Submissions may be sent by e-mail, fax or mail as follows:

By e-mail: [joanne.bund@seccom.ab.ca](mailto:joanne.bund@seccom.ab.ca) or [shawn.taylor@seccom.ab.ca](mailto:shawn.taylor@seccom.ab.ca)  
By Fax: (403) 297-6156  
By Mail: 4<sup>th</sup> Floor, 300 – 5<sup>th</sup> Avenue S.W.  
Calgary, Alberta T2P 3C4

**List of Commenters to  
April 16, 2004  
Proposed ASC Rule 45-509  
*Offering Memorandum for Real Estate Securities***

	<b>Commenter</b>	<b>Name</b>	<b>Date</b>
1.	Marion Berinzon	Marion Berinzon	June 5, 2004
2.	Melcor Developments Ltd.	Ralph B. Young President & CEO	June 14, 2004
3.	Bennett Jones LLP	Donald M. Boykiw	June 18, 2004
4.	Association of the Appraisal Institute of Canada	R. Craig Soderquist AACI, P. App and Brad F. Wagar B.Sc., AACI, P. App	June 18, 2004

Sent by e-mail:

In my opinion, issuers of real estate related securities should present prospective buyers with assessments reports produced by accredited real estate appraisers.

M. Berinzon  
Toronto, ON

[LETTERHEAD OF MELCOR DEVELOPMENTS LTD.]

June 14, 2004

Alberta Securities Commission  
4<sup>th</sup> Floor  
300 – 5<sup>th</sup> Avenue SW  
Calgary, Alberta  
T2P 3C4

**Attention: Jo-Anne Bund and Shawn Taylor,  
Legal Counsel**

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Dear Sirs:

**Re: Real Estate Securities**

I am writing in response to your request for comments on your "Proposed ASC Rule 45-509". My comments will be general in nature and relate primarily to land syndication investments.

***Background***

1. The extent of land syndication investment vehicles has grown dramatically in Alberta in the past 10 years.
2. The vast majority of these investments are unregulated by the ASC, by real estate industry regulatory bodies or by any other regulatory body.
3. A large percentage of investors are foreign investors and/or unsophisticated investors in real estate matters.
4. Much of the offering materials lack important and relevant material and in many instances lack fair representation or provide potential misrepresentation. Offering materials often lack any objective, independent or professional analysis of material information.
5. Many investment offerings cannot be supported by professional valuations and will lead to significant financial losses for investors.

***Comments***

1. Land syndication offerings to unsophisticated investors must be regulated to ensure fair and objective disclosure and representation to investors.
2. Independent appraisals must be required in offering material to prevent misrepresentation.
3. Historic ownership of property should be disclosed for a period of 5 years together with information on consideration paid on transfers or sales contracts.
4. The proponent must disclose their role and relationship in the transaction (i.e. their relationship to the property owner, their role in brokering, managing and financing the transaction).

***Conclusion***

The extent and nature of land syndication transactions in Alberta has the potential for very significant economic losses for investors in unregulated investments. The consequences of the losses and the significant disruptions and dislocations of real estate markets and values will be dramatic.

We are hopeful that we can avoid the financial losses and subsequent severe dislocation to real estate markets which have occurred in Alberta in past economic cycles by opportunistic promoters.

Yours truly,

**MELCOR DEVELOPMENTS LTD.**

**Ralph B. Young**

President & CEO

RBV/tc

**Don Boykiw**  
Direct Line: 403.298.3272  
e-mail: boykiwd@bennettjones.ca

June 18, 2004

**Via E-Mail**

**joanne.bund@asccom.ab.ca**  
**shawn.taylor@seccom.ab.ca**

Alberta Securities Commission  
4th Floor, 300 - 5th Avenue S.W.  
Calgary, Alberta  
T2P 3C4

**Attn: Jo-Anne Bund, Legal Counsel**  
**Shawn Taylor, Legal Counsel**

**Re: Notice and Request for Comments re Proposed ASC Rule 45-509**

We are writing in response to the request of the Alberta Securities Commission (the "ASC") for comments regarding proposed ASC Rule 45-509 – *Offering Memorandum for Real Estate Securities* (the "Rule") and the related forms and appendices.

We are generally encouraged by the approach that the ASC has taken towards this issue and we believe the ASC's efforts and attention to this area will serve to provide guidance to market participants and assist in adding some clarity to an unsettled area of law. While we are of the view that not all sales of undivided interests in land will constitute an "investment contract", where this is the case and to the extent an individual is unsure as to the nature of the interests being offered, the ability to sell such interests via an offering memorandum ("O.M.") provides some direction to market participants.

***Our Comments***

***Related Party Transactions***

We consider the disclosure of related party transaction information in the O.M. to be of value to potential investors. However, our principal concern in this matter is that such disclosure remain consistent with similar requirements in other ASC forms and policies. To this end, we would encourage the ASC to consider whether such disclosure may be appropriately dealt with in a manner which is more similar to that required in non-real estate offering memoranda (such as

requiring such disclosure under a discussion of the material agreements to which the issuer is currently a party and which are expected to materially effect the real estate security).

*Future Oriented Financial Information ("FOFI")*

In our view, where FOFI is included in the O.M. an issuer of "real estate securities" should be required to comply in all respects with National Policy 48, including the accompaniment in all cases of an auditor's report. While we are aware that this may make it more difficult for certain real estate project managers to market their projects and will generally discourage the inclusion in an O.M. of FOFI, we do not consider this to be a wholly undesirable result. Again we are concerned in large part with the consistency of the O.M. requirements to similar requirements in other ASC forms and policies. Additionally we believe the requirements contained in National Policy 48 provide valuable safeguards against the misleading marketing of securities based upon incorrect or overly optimistic FOFI and as such should be maintained in their entirety in the context of "real estate securities".

*Risk Factors – Material Litigation*

In addition to the other required risk factor information under Item 5.2 of the O.M. form, we would encourage the ASC to consider whether specific disclosure should be mandated for any outstanding material litigation against the issuer, any promoter of the real estate project or members of the issuer's management team, which relates to either the current or a past real estate project. We believe it is valuable to bring to investors attention any material litigation which may pose a risk to the capital required for a real estate project or highlight the dissatisfaction of other investors in either the issuer's, the promoters, or the management team's past performance.

*Resale Restrictions*

We have significant difficulty with the proposed form of O.M. as it relates to resale restrictions enumerated in both Item 12 and subsection (6) of Item 1.1 of the proposed O.M. form. While the statement required by Item 12 and subsection (6) of Item 1.1 may be true in some circumstances, where the real estate security is bare land and the investor actually appears on title to the property, this should not be the case. Any investor appearing on title may transfer the property to another party simply by registering the transfer of title at the Land Titles Office. To require some form of exemption from the prospectus and registration requirements under Alberta securities legislation prior to the transfer of title to real property at the Land Titles Offices would appear to be overreaching on the part of the ASC and a rather strange consequence of the O.M. in its current form. In the case of bare land, with the investor appearing on title, the requirement for an investor to resell pursuant to an exemption would be highly impractical for the individual land owner. Land interests may additionally be mortgaged with registration on title, which would also lead to issues for banks or other mortgage lenders if securities law resale restrictions arise in these circumstances. Consequently, it is our view that the resale restriction language contained in Item 12 and subsection (6) of Item 1.1 to the O.M. be limited, at the very least, to those real estate securities where the investor does not appear on title and we would strongly

encourage the ASC to reconsider those situations where such resale restrictions and requirements would be inappropriate.

***ASC Requested Comments***

1. *To what extent should independent appraisals of the real property or real estate project be required to support values that an issuer discloses in an offering memorandum?*

It is our view that the inclusion in the O.M. of independent valuation information will only be of benefit in those cases where a monetary value for the real property or real estate project is voluntarily disclosed by the issuer of the "real estate security". Unlike the disclosure of reserves in NI 51-101 which we believe should aid investors in making more informed investment decisions, we do not believe that the requirement to provide an appraisal on, for example, the value of a tract of raw land in the O.M. will aid investors in deciding to make an investment. This is due in part, to the fact that reserves in the oil and gas industry form the basis for a companies continued success and future earnings whereas investors in those "real estate projects" where actual development is being proposed (and there is an allocation of capital based on something other than raw land) are generally investing based on the future prospects of a project as reflected in the investors faith in the management team, location of the property and, if applicable, any forward looking financial projections. In addition, the appraisal of a large tract of land which a promoter may have spent a significant amount of time assembling may have little relevance for the valuation of an individual's undivided interest of a small portion of such land, as the economies of scale are significant.

Value, particularly with respect to undeveloped land, is primarily market driven and can fluctuate with external factors, such as supply and demand, which are beyond an issuer's control. An appraisal based on market value could therefore change rapidly and if the O.M is open for an extended period of time, the valuation provided may be unreliable even before the expiry of the offering.

By contrast, where an issuer of "real estate" securities has voluntarily included information in the O.M regarding the value of a real estate project, we believe that such a valuation should be supported by an independent appraisal or at the very least, disclosure of how such a valuation was achieved. This should prevent the marketing of a "real estate security" to the public via an inflated valuation which may be unsupportable or based on overly optimistic assumptions.

An additional concern we have with mandating valuations in an O.M. can best be understood by comparison to the disclosure requirements in the context of other securities offerings. In a prospectus, a document which rightly requires a greater detail of disclosure than an offering memorandum, an issuer is not required to provide a valuation of the securities being sold to the public. What is required is merely disclosure of those things material to the issuers business and the price at which the securities are being offered. An investor then makes his or her investment decision based upon a review of the disclosure contained in the prospectus itself and determines whether the offering price is a fair reflection of his or her assessment of the underlying value and prospects for the business. To require the inclusion of a valuation in an O.M. would seem to



create a special and more onerous disclosure requirement for the offering memorandum of a market participant in the real estate sector than is mandated at the prospectus level for market participants in other market sectors.

Regardless of whether the ASC determines that the disclosure of fair market value and independent appraisals are necessary for real estate projects, it is our view that the language utilized in Item 3.3 of the proposed O.M. form should be modified to make clear that independent appraisal and the disclosure of the market value of real property is not required with respect to sales of raw land. The current language utilized appears to be somewhat ambiguous in this regard despite the fact that subsection (1) of Item 3.3 begins by stating "If the real estate project is a proposal to develop or redevelop real property for use in a business or undertaking".

In providing the above comments we would also note that the British Columbia Securities Commission in BC Form 45-906F - *Offering Memorandum for Real Estate Securities*, does not require the inclusion of valuation information on either a raw land or build out basis. To the extent that the British Columbia Securities Commission has not mandated the inclusion of such information we are of the view that where possible it is beneficial to attempt to maintain some consistency between the British Columbia and Alberta Forms of offering memorandum. To require such information in Alberta where it is not required in British Columbia may make it more difficult for the manager of an Alberta "real estate project" to raise sufficient capital in their own jurisdiction than it would be for his British Columbia counterpart.

2. *Should issuers be required to disclose the historical ownership of the real property and, if so, for how long? Should this information be required in addition to, or perhaps instead of, disclosure of market values that are supported by independent appraisals?*

Similar to our position on valuations, we are of the view that mandating the inclusion in an O.M. of the historical cost of the underlying real property of a "real estate project" is of minimal value to prospective investors. It is our view that the amount the real estate project manager originally paid for the real property is not relevant to either the current value of the investment or an investors decision to invest. By way of example we would refer the ASC to the instance of Shoppers Drug Mart Corporation ("Shoppers"), which was acquired for what we understand to be approximately \$5 per share by a group of investors, led by Kohlberg Kravis Roberts & Co. ("KKR") in or around January, 2000. Shoppers went public on November 21, 2001 at \$18.00 per share, at more than triple the original acquisition price and less than two years later. Shares of Shoppers are currently valued at approximately \$32. The disclosure of KKR's original purchase price for Shoppers in the initial prospectus would in no way have assisted investors in determining whether the shares being offered were fairly valued at their initial public offering price. Similarly, determining what a real estate project manager originally paid for the real property which is to be developed would lend no such assistance and in some cases may actually prejudice an investor's assessment of a project's value or prospects.

Additionally, mandating the disclosure of a project manager's historical cost will not reflect any of the conditions under which the original acquisition was undertaken or the potential discount a project manager may achieve through purchasing greater quantities of real property than an

investor could purchase as an individual. Mandating the disclosure of the historical cost of the property will also not reflect any intervening causes which have resulted in an increase in the value of the property (such as rezoning, the demand for commercial or residential real estate, the track record of the developer etc.) and may be misleading to investors. Partly based on these concerns, we would further submit that if the ASC deems the historical cost of real property to be of value and mandates the inclusion of such information in an O.M., the value of such information is greatly reduced the farther one gets from the original purchase date. It is our view that such historical cost has no value whatsoever outside of two years and is of very little value beyond one year. Our view is reinforced by the fact that obtaining information with respect to the history of the property may be difficult in some cases, particularly those where the issuer has not held the property for the duration of the history for which the disclosure is required. If this in fact proves to be the case, mandating historical cost could significantly increase the cost of capital for real estate issuers.

Lastly, we would reiterate our concern that the ASC attempt to make the form of O.M. consistent with that required in British Columbia to the extent possible. We would again note that BC Form 45-906F does not require the disclosure of historical cost information.

We appreciate the opportunity to make these comments and would be pleased to make any further submissions or have subsequent discussions with you at your convenience.

Yours truly,

**BENNETT JONES LLP**

  
Donald M. Boykiw



Sent by e-mail:

Thank you for the opportunity in commenting on the proposed rule 45-509. I reading the document I have only a few comments as they relate to the Alberta association of the Appraisal institute of Canada and or provincial members. The first being that there are a number of changes occurring within North American and world wide valuation circles. Relative to the reporting of market value for financial reporting purposes I have attached a draft document for your review by John Dorchester, Jr., MAI, CRE who is the working group chairman of the Toronto Valuation Accord. I have also attached an article of interest by Brian A Glanville MAI and Alison I Gerlach on Valuation for financial reporting. These are American perspectives that are parallel to the Canadian experience, if you are interested in other parallel perspectives.

We have also noted within the current text the following;

Note: Point 3.3 (3) (a) "current" member should read "accredited" (AACI) member of the Appraisal institute.

I would also suggest that under 3.3 4e that a definition of "Market Value" be referred to as to clarify the value being reported.

Thank you for the opportunity and should you have any further question or require the current definition of market value utilized by the Appraisal institute please do not hesitate to contact us.

I have provided my contact details as well as our current National presidents contact data

Yours truly

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## In All Fairness

by Brian A. Glanville, MAI, and Alison L. Gerlach

**V**aluation for financial reporting (VFR), or “mark-to-market,” is an issue appraisers have been hearing about during the last few years. Although initially portrayed as a potential “silver bullet” for appraisers—perhaps as lucrative as FIRREA<sup>1</sup>—the reality is turning out to be a bit more modest, but no less noteworthy.

One factor driving mark-to-market is the concern for transparency and accuracy of financial statements in the wake of financial reporting scandals. Following the Enron and WorldCom debacles, the U.S. Congress passed the Sarbanes-Oxley Act of 2002 (the Act) “to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.”<sup>2</sup> Valuing property at actual market value, as opposed to at historic cost, is just one of the steps that could help make financial reports more relevant and reliable. The Act created the Public Company Accounting Oversight Board (PCAOB). The PCAOB is starting the process of setting new audit and attestation standards (standards previously set by the American Institute of Certified Public Accountants), and there is little doubt that fair value will play a role. Moreover, the Act itself prohibits accountants from providing valuation services for their audit clients in order to correct what seems an obvious conflict of interest. This prohibition already creates opportunities for valuation professionals and the development of standards incorporating fair value could open the door even wider. But these changes are only part of the picture, and the opportunity for appraiser involvement does not stop there.

Changes in accounting standards and generally accepted accounting principles (GAAP) are creating opportunities for appraisers to be involved in “fresh

start” accounting (as in the case for companies emerging from bankruptcy) and in other opportunities related to business combinations, purchase price allocations, lease analysis, and the like. This is only the beginning. GAAP applies to businesses from Fortune 500 companies to corner convenience stores. Any changes in GAAP can create opportunities for appraisers of all business types and firm sizes who are interested in nontraditional revenue streams or in being involved in the financial and accounting arenas. Although these opportunities will not appeal to everyone, they can be an important new source of business for those interested in pursuing them.

Even more important than the chance for revenue generation is the opportunity for influence in a time of great change. Accounting standards setters are committed to facilitating the flow of global capital by harmonizing standards and improving transparency in matters of financial reporting in the wake of the many corporate scandals. As the U.S. Financial Accounting Standards Board (FASB) and the International Accounting Standards Board (IASB) address these priorities, they are revisiting fundamental issues such as the appropriate basis for and application of valuation in financial reporting and in other accounting transactions.

If appraisers hope to continue to claim professional ownership of valuation principles, definitions, and methodologies, they must exercise their influence and knowledge in this arena as well as in the more traditional appraisal environments. Leslie Seidman, FASB Board member, explains that part of the process of drafting standards is to “...allow time for constituents to give us complete and accurate facts about the transactions we’re dealing with so that the standards reflect real-world terms. We all

1. The Financial Institutions Reform Recovery and Enforcement Act of 1989, Title XI. Real Estate Appraisal Reform Amendments, 12 U.S. Code 3331-3351.

2. Sarbanes-Oxley Act of 2002, Public Law 107-204, 116 U.S. Statutes at Large 745 (2002), 1

have to stay in step for this process to work effectively and for the end result to be an improvement in financial reporting.”<sup>3</sup> This is an invitation for appraisers to be involved. Other organizations such as the International Accounting Standards Board (IASB), The Appraisal Foundation, and the International Valuation Standards Committee encourage the same sort of participation in developing guidance notes, advisory opinions, standards, and related documents. By lending our expertise, we can help ensure that valuation principles and methodologies are consistent no matter where they are applied.

Again, one of the most important changes in accounting and audit standards is the increased focus on use of fair value for financial reporting and “fresh start” accounting. This move is fundamentally about property value—be it real property, personal property, machinery and equipment, or business value—and is a marked departure from the accounting industry’s previous reliance on historical cost and other nonmarket values. Who better to help guide the transition to this approach than the valuation profession?

There has been speculation that this concern with fair value is just a passing fad. It is not. Although there has been some resistance from the private sector, board members from both FASB and the IASB have expressed strong commitment and continued support of fair value, and their work backs up their claims. Their belief is that fair value provides the most relevant and transparent basis for financial reporting, and international and U.S. accounting standards are being harmonized to recognize this.

Although the IASB and FASB now focus primarily on the fair value of financial instruments, fair value for other tangible and intangible assets is not far behind. “The [Financial Accounting Standards Board] plans to expand the basic fair value framework to include additional guidance for measuring fair value so that the framework broadly applies to assets and liabilities covered under all existing (and proposed) accounting pronouncements.”<sup>4</sup> The push towards fair value gains much of its momentum from the IASB. “Currently, real estate is accounted for at historic cost,

but the International Accounting Standards Board is pushing to require companies to measure real-estate worth at fair value. If the IASB gets its way, companies will be obliged to generate better information about their real-estate assets.”<sup>5</sup> The process of developing accounting and valuation standards and guidance is evolutionary. With the standards-setting bodies (FASB, IASB, etc.) just starting to apply fair value more often to real and personal property, the appraisal profession can be ahead of the curve by becoming involved now.

But what exactly is “fair value”? *The Dictionary of Real Estate Appraisal* notes that the concept was developed almost 30 years ago and has since been superseded in the valuation profession by the concept of market value.<sup>6</sup> Basically, fair value has become an accounting term, but even there it seems to be inexorably tied to the valuation concept of market value. Despite previous attempts on the part of FASB and others to clarify the meaning of fair value, there is still no clear consensus on its definition or application.

With this in mind, FASB added the Fair Value Measurement Project to its agenda in June of 2003 to help ensure that fair value was understood and applied consistently under its various statements. Through this project, FASB will develop a statement to establish a framework for addressing this need. However, it first had to decide where to begin. “As a basis for developing a framework for measuring fair value, the Board decided to revise the definition of fair value in many accounting pronouncements to refer to ‘the amount at which an asset or liability could be exchanged in a current transaction between knowledgeable, unrelated, willing parties when neither is acting under compulsion.’”<sup>7</sup>

Although it is an enormous step in the right direction, creating a framework that measures only fair value may not go far enough. The impetus for change is to make sure financial statements (and other reports and accounting activities) help inform and protect investors by reflecting the most accurate, relevant value information. However, fair value itself does not offer the same basis for independent, transparent value

3. Financial Accounting Standards Board, “Leslie F. Seidman Talks to *The FASB Report*,” *The FASB Report*, November 26, 2003, [http://www.fasb.org/articles&reports/seidman\\_tfr\\_nov\\_2003.pdf](http://www.fasb.org/articles&reports/seidman_tfr_nov_2003.pdf) (accessed February 3, 2004).

4. Financial Accounting Standards Board, “Financial Accounting Series No. 264,” *The FASB Report*, July 31, 2003, 6.

5. Jennifer Caplan, “Meet Your New Property,” *CFO Magazine*, May 01, 2003, <http://www.cfo.com/article/1,5309,9413101C151,00.html> (accessed February 3, 2004).

6. Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 4th ed. (Chicago: Appraisal Institute, 2002), 108–109.

7. Financial Accounting Standards Board, “Project Updates: Fair Value Measurement,” December 22, 2003, [http://www.fasb.org/project/fv\\_measurement.shtml](http://www.fasb.org/project/fv_measurement.shtml) (accessed February 3, 2004).

as the valuation profession's market value concept. The definition of market value includes the critical elements of proper marketing time and efforts, and normal financing, among others. The most widely accepted components of market value are incorporated in the following definition:

The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming neither is under undue duress.<sup>8</sup>

The good news is that many accountants and standards setters seem to agree that fair value equates to market value in instances where an opinion of market value can be developed. The IVSC in its 2003 International Valuation Standards explains it this way: "Fair value (accounting term) is generally used for reporting market and non-market values in financial statements. Where market value of an asset can be determined, the value will equate to fair value."<sup>9</sup> The American Institute of Certified Public Accountants, in *Auditing Fair Value Measurements and Disclosures: A Toolkit for Auditors* notes that "while generally accepted accounting principles (GAAP) may not prescribe the method for measuring the fair value of an item, the FASB has expressed a clear preference for the use of observable market prices to make that determination."<sup>10</sup>

The IASB also is making a move to better articulate the relationship between market value and fair value in its treatment of owner-occupied properties under International Accounting Standard 16: Property, Plant, and Equipment. The IVSC, which has been working diligently to establish international valuation standards and to help inform the IASB, has watched closely the IASB's progress on just this issue. John Edge, IVSC chair, noted:

The application of fair value to owner occupied property now appears to be subtly changing again....The current move appears to be designed to allow a broader application of fair value. This could encompass, per-

haps, two valuation bases—a figure for a property which is surplus to requirements, in other words, an exit value which is market value; and secondly, an 'in use' value where the property is to be retained in the business. The fact that both are market-derived and are to be undertaken by qualified valuers is good news. However, this is a significant change and needs to be supported by robust valuation standards.<sup>11</sup>

The International Valuation Standards Committee provides an ideal vehicle for achieving just this sort of international consensus. Given that valuation for financial reporting is a global issue, it seems only right that valuation best practices be developed from and for a global perspective. The IVSC board is made up of representatives of many valuation organizations, including the Appraisal Institute and the American Society of Appraisers from the United States, and is becoming widely recognized by accounting firms and others as the international voice for valuation standards. In fact, the IASB already recognizes the IVSC's standards for valuation of real estate assets, which has created an important synergy between accounting and valuation standards in the international arena. Because the IVSC has no local enforcement authority, appraisers in the United States would do well to foster the same synergy between The Appraisal Foundation and FASB. It is important to make sure that the accounting and appraisal standards-setting bodies (and professions) work equally well together on a domestic basis.

This is a complex issue with many layers. It is, however, crucial that valuation professionals, accountants, and all those dealing in matters of financial reporting reach a consensus about the appropriate bases for, use, and definitions of value. If by fair value the regulators mean market value with a reliance on a more limited valuation basis only in unique of circumstances, then they should be encouraged to say so. The valuation community needs to be unified in its own definition and application of market value, whether it is market value for existing use, owner-occupied value, or other purposes.

Valuation for financial reporting is of utmost importance to appraisers because it touches on issues that are central to the purpose, influence, and future of the profession. These changes deal with the very essence of what value is, how it is determined, and

8. *The Dictionary of Real Estate Appraisal*, 177.

9. *International Valuation Standards 2003* (London: International Valuation Standards Committee), 43.

10. American Institute of Certified Public Accountants, *Auditing Fair Value Measurements and Disclosures: A Toolkit for Auditors* (American Institute of Certified Public Accountants, 2002), 28.

11. *IVSC Alert*, December 10, 2003.

the role it plays in the proper regulation of financial markets. If appraisers are not actively involved in this discussion, at the very least, they will find themselves subject to valuation standards, definitions, and practices they had no hand in creating. At worst, a business and influence opportunity will be lost, bypassing the valuation profession altogether and landing in the hands of other professionals who are more involved, responsive, and proactive. If this sounds dramatic, it is intended to be. Listen to what FASB says about its own Fair Value Project:

The goal of the Project is to take the 50 or so pieces of literature that currently refer to fair value, conform to the guidance, and put it in one place, including an appropriate amount of implementation guidance. That way, if we ever want to set a standard that says account for "such and such" at fair value, constituents will only have to look to one standard for the "how-to" guidance.<sup>12</sup>

In a very real sense, the gauntlet is down. Going forward, standards for valuation will be established in both the traditional mortgage and transaction-based arena and in the financial reporting arena. Now is the time for the valuation profession to truly act as a profession, and take an aggressive role in setting valuation standards in all the arenas where valuation is at issue.

What can you do?

- Network with local business valuers and accountants.
- Review the FASB ([www.fasb.org](http://www.fasb.org)), IASB ([www.iasb.org](http://www.iasb.org)), PCAOB ([www.pcaobus.org](http://www.pcaobus.org)) and IVSC ([www.ivsc.org](http://www.ivsc.org)) Web sites.
- Take advantage of the opportunity to comment on exposure drafts from standards organizations. Both FASB and the IVSC have exposure drafts currently out for review; these are available on their Web sites.
- Become familiar with the International Valuation Standards available on the IVSC Web site.
- Attend a basic accounting course.
- Encourage your chapter to host the "Emerging (Mark to) Market: Valuation for Financial Reporting Purposes" membership appreciation seminar.
- Look for opportunities in conjunction with the Appraisal Institute June 2004 education conference to learn more about these issues.

Can the appraisal profession—for that matter can the public—afford to have valuations standards created by accountants without the active involvement of appraisers? Appraisers have the opportunity and the responsibility to be involved in the development of relevant standards and definitions relating to fair value. If the valuation profession is to be the master of its own destiny, it must find ways to cultivate these emerging opportunities and be a stalwart voice for market bases of valuation in new and ever-expanding arenas.

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12. Financial Accounting Standards Board, "Leslie F. Seidman Talks to *The FASB Report*."