

**A.S.C. POLICY 4.3**  
**MORTGAGE AND REAL ESTATE INVESTMENT TRUSTS**  
**AND PARTNERSHIPS**

**1. APPLICATION**

- 1.1 This policy is directed to unincorporated issuers who propose acting as a closed end mortgage finance vehicle engaged in investing money raised from the public in loans upon the security of particular real estate. Where the trust or partnership form (hereinafter referred to in this policy as the "trust") is used, the Director of the Alberta Securities Commission (the "Director") will apply this policy in reviewing issuers raising money for the purpose of acquiring and managing income producing real estate. This policy is not intended to apply to issuers proposing to raise funds for the purpose of developing and managing a specific real estate project (see A.S.C. Policy 4.5).
- 1.2 If a corporate issuer is being used in order to avoid the registration requirements of the Trust Companies Act (Alberta) or the Loan Company Act (Canada), or any substantially similar legislation in any other province or territory, the Director may apply any portion of this policy that he deems appropriate. This policy does not apply to mortgage lending corporations directly subject to the above Acts.
- 1.3 The proposed issuer must be clearly identified so as not to be confused with a Trust Company. Attention is directed to section 210 of the Trust Companies Act (Alberta) and item 12 of A.S.C. Policy 4.10.

**2. REQUIRED CONDITIONS**

- 2.1 The following conditions should be present in the declaration of trust or other originating (constating) documents before a receipt for a prospectus is issued pursuant to section 81 of the Alberta Securities Act (the "Act").

**2.2 *Definitions***

In construing terms, reference should be made to the definitions contained in the Act and the regulations made under the Act (the "Regulations") except as defined below.

- 2.2.1 "Adviser" means any person or company appointed, employed or contracted with by the issuer under which advisory and administrative services are provided to the issuer.
- 2.2.2 "Affiliate" means an insider or associate, and includes affiliated, controlled and subsidiary issuers as referred to in section 2 of the Act.

- 2.2.3 "Appraised Value" means the fair market value, as of the date of appraisal, of real property in its existing state as determined by a bank, trust company, or insurance company or other person or company which makes appraisals and whose opinions are relied upon in connection with lending or servicing activities and which in the judgment of the trustees is properly qualified to make such a determination.
- 2.2.4 "Debt" means the aggregate borrowings of an issuer, whether convertible or not, secured or unsecured, subordinated or unsubordinated, to which is added an amount equal to the amount by which the equity capital of the issuer would be exceeded by the amount which the issuer would have to borrow if the issuer were called upon to advance or pay money to meet its existing contractual commitments; provided that where a company borrows money for the purpose of lending it to the trust and where, as a condition of its loan of that money to the trust, the trust guarantees the obligations of the company to the original lender, the amount of the guarantee shall not be calculated as debt if the guarantee does not exceed the obligations of the trust to the company and the company has not assigned, pledged or otherwise dealt with the security it receives from the trust as evidence of the obligation of the trust.
- 2.2.5 "Declaration of Trust" shall include partnership agreements or other similar originating (constating) documents.
- 2.2.6 "Equity Capital" means the aggregate sum paid to the issuer for its units into which the beneficial interest in the issuer may from time to time be divided.
- 2.2.7 "Invested Assets" means the total assets under management or administration at the lower of cost or market before deducting accumulated depreciation, but excluding cash and cash items, calculated at least quarterly on a basis consistently applied.
- 2.2.8 "Mortgages" means mortgages, charges, hypothecs, deeds of trust or other security interests of or in real property used to secure obligations to repay money whether or not evidenced by notes, debentures, bonds, or other evidence of indebtedness and whether negotiable or nonnegotiable.
- 2.2.9 "Net Assets" means the total invested assets less total liabilities (including debt) calculated at the end of the last completed quarter of the issuer's fiscal year on a basis consistency applied.
- 2.2.10 "Real Property" means land, rights or interest in land (including without limitation leaseholds, air rights and rights in condominiums) and any buildings, structures, improvements and fixtures located thereon.

2.2.11 "Trustees" means trustees of a trust, managing partners, the executive committee or managing committee of a partnership, or the equivalent for other forms of unincorporated issuers.

### 3. THE ISSUER - CAPITAL

- 3.1 The equity capital of the issuer shall not be less than \$5,000,000.
- 3.2 The beneficial interest in the assets shall be divided into equal units and no unit shall be issued unless fully paid for.
- 3.3 The units shall be of one class, without par value, and shall have no preference, conversion or exchange rights.
- 3.4 The units shall not be redeemed or repurchased by the issuer if the result would be contrary to this policy, including item 5 and item 12.14.
- 3.5 The issuer shall maintain or cause to be maintained a transfer register for its units and the units shall be transferable.
- 3.6 Each unit holder shall be entitled to receive a certificate, in such form as the trustees authorize, specifying the number of units held by such unit holder.
- 3.7 The nature of the unit holder's liability shall be clearly stated on the certificate issued to evidence ownership of units.
- 3.8 The units shall each be entitled to one vote.
- 3.9 Subject to approval by at least a majority of the votes cast at a meeting of unit holders called for that purpose, the trustee may from time to time cause the units to be subdivided or consolidated or, where a limit has been placed on the number of units authorized to be issued, increase the number of units authorized.

### 4. RECORDS AND TRANSFER OF UNITS

- 4.1 The issuer shall keep such books and records as are necessary for the proper recording of its business transactions.
- 4.2 These records, so near as may be, should be in accordance with those required to be maintained by a corporation offering its securities to the public under the Alberta Business Corporations Act (the "CA") and the unit holders shall have access to such records to the same extent as though they were a shareholder or creditor of such a corporation.

- 4.3 The issuer shall furnish to any unit holder, upon written request, a copy of the declaration of trust.

5. BORROWINGS - LIMIT ON LEVERAGE

- 5.1 Subject to items 5.2 and 5.3, the debt of the issuer shall not exceed three times the equity capital plus retained earnings and realized capital gains less deficit and capital losses whether realized or not.

- 5.2 When and so long as at least 50% of the book value of the total assets of the issuer consists of:

5.2.1 National Housing Act ("NHA") mortgages;

5.2.2 conventional first mortgage loans where the ratio of the loan to appraised value of the real estate securing the loan ratio does not exceed 75% unless the excess is insured by an insurance company registered under the Canadian and British Insurance Company Act (Canada), the Foreign Insurance Companies Act (Canada) or the Insurance Act (Alberta); and

5.2.3 cash, cash items and obligations of Canadian municipal, provincial and federal governments and government agencies;

in the discretion of the trustees the debt of the issuer may be increased so as not to exceed five times the equity capital plus retained earnings and realized capital gains less deficit and capital losses whether realized or not.

- 5.3 When and so long as at least 90% of the book value of the total assets of the issuer consists of:

5.3.1 NHA mortgages,

5.3.2 conventional first mortgage loans where the ratio of the loan to appraised value of the real estate securing the loan ratio does not exceed 75% unless the excess is insured by an insurance company registered under the Canadian and British Insurance Companies Act (Canada), the Foreign Insurance Companies Act (Canada) or the Insurance Act (Alberta),

on single-family dwellings (including condominiums) and duplexes; and

5.3.3 cash, cash items and obligations of Canadian municipal, provincial and federal governments and government agencies,

in the discretion of the trustees and subject to the prior approval of the Alberta Securities Commission (the "Commission") the debt of the issuer may be increased so as not to exceed ten times the equity capital plus retained earnings and realized capital gains less deficit and capital losses whether realized or not.

## 6. HEAD OFFICE - SITUS OF THE ISSUER

- 6.1 The head office and the principal office and situs of administration of the issuer shall be in Alberta or in another Canadian province in which the law recognizes trusts and is substantially similar to the law of Alberta with respect to the matters referred to in item 6.2.
- 6.2 The rights and obligations of the unit holders and trustees and the validity, construction and effect of every provision of the declaration of trust shall be subject to and construed according to the laws of the Canadian province in which the head office is situate pursuant to item 6.1.

## 7. TRUSTEES

- 7.1 There shall be not fewer than 7 trustees.
- 7.2 The trustees shall be elected and removed by the unit holders, so near as may be, in the same manner as directors under the ABCA, provided that the majority of the trustees shall be Canadian citizens and resident in Canada.
- 7.3 The majority of the trustees shall have at least 5 years substantial experience in the real estate financing field and shall reflect experience consistent with the stated investment objectives of the trust.
- 7.4 The majority of the trustees shall be independent of the adviser or its affiliates and shall not be employed by the adviser or its affiliate. At any meeting of the trustees the majority of those present shall be independent, provided that if at any time a majority of the trustees cease to be so qualified because of the death, resignation or change of affiliation of any of them, the remaining independent trustees may function as though they were a majority but the trustees shall within 30 days appoint additional trustees to restore the independent majority.
- 7.5 Unless otherwise provided, a majority of the trustees or a majority of the members of the investment committee shall constitute a quorum, but in no case shall a quorum be less than 2/5 of the trustees or the members of the investment committee.
- 7.6 *Investments and the Investment Committee*
  - 7.6.1 Any investment or the making of any commitment for any investment or the assumption of any obligation shall require prior approval by the trustees or the

investment committee.

- 7.6.2 Without derogating from the ultimate responsibility of the trustees to approve all investments, there may be an investment committee consisting of not less than 3 trustees, at least 75% of whom shall have had 5 years or more experience as set out in item 7.3.
- 7.6.3 In the investment committee the majority of those voting on an investment decision shall be independent of the adviser or its affiliates and shall not be an employee of either of them.
- 7.6.4 Subject to item 7.6.2, if for any reason a member of the committee is disqualified from participating in a decision, any other independent and disinterested trustee not already a member of the committee may be designated by the trustees to act as an alternate.
- 7.6.5 The investment committee may approve or reject all proposed investments or dispositions of investments.
- 7.6.6 If an investment decision is made by the trustees as a whole and not by the committee, the majority of those voting shall be independent of the adviser or its affiliates and shall not be an employee of either of them, and at least 75% shall have the experience set out in item 7.3.
- 7.7 The standard of care and duties imposed upon trustees and officers of the issuer through the declaration of trust shall not be less than that imposed on the officers and directors of Alberta business corporations by statute and common law, and the declaration of trust shall include an undertaking to exercise the powers and discharge the duties of his office honestly, in good faith and in the best interests of the issuer, and in connection therewith to exercise that degree of care, diligence and skill that a reasonably prudent person of his experience would exercise in comparable circumstances.
- 7.8 Without limiting the generality of item 7.7:
  - 7.8.1 if a transaction is being considered in which a trustee directly or indirectly has an interest, the trustee shall declare the nature and extent of his interest and shall not vote on the transaction.
  - 7.8.2 a trustee is deemed to have an interest if he is associated with or not independent of the adviser or an affiliate of the adviser and the transaction is one in which the adviser or any of its affiliates directly or indirectly has an interest or if the transaction is one in which the trustee or any of his affiliates directly or indirectly has an interest.

- 7.8.3 if a trustee has declared his interest he shall not be included in determining whether there is a quorum present to deal with the transaction.

## 8. ADVISER - MANAGEMENT COMPANY

- 8.1 There shall be one adviser, the terms of whose appointment and employment shall be detailed in a management contract.
- 8.2 Subject to item 8.4, neither the adviser nor any affiliate of the adviser shall engage in any business that would bring it in real or apparent conflict with the interests of the issuer.
- 8.3 Subject to item 8.4, the majority of the directors and officers of the adviser shall have had at least 5 years substantial experience in the real estate financing field and shall reflect experience consistent with the stated investment objectives of the trust, provided that the majority of directors and officers of the adviser shall be Canadian citizens resident in Canada.
- 8.4 The requirements of items 8.2 and 8.3 may be waived in whole or in part by the Director if the adviser is a well established federal or provincial government supervised financial institution such as a bank, insurance company or trust company.
- 8.5 *Responsibility of the Adviser*
- 8.5.1 The adviser shall be the management company and as such shall administer the day-to-day affairs of the issuer.
- 8.5.2 Officers and directors of the adviser or of its affiliates may also be trustees and officers of the issuer.
- 8.5.3 The adviser shall use its best efforts to present and recommend continuing and suitable investments to the investment committee or trustees consistent with the investment policies and objectives of the issuer and to provide advice with respect to changes in the investment policies and objectives.
- 8.5.4 The adviser shall seek such investments for the issuer and conduct negotiations with prospective borrowers, developers, mortgage loan brokers, real estate brokers and others who can furnish investments to the issuer and shall determine whether the loans and participations offered to the issuer are within the investment policies of the issuer.
- 8.5.5 The adviser shall be responsible for providing and ensuring adequate supervision of the clerical and administrative services necessary to the administration of the issuer, including the provision of office space and office equipment, personnel for

the performance of such services, including property management, mortgage servicing, construction and development loan disbursements and other activities relating to the investment portfolio, the maintenance of books and records for the issuer, communication with unit holders, the receipt and disbursement of the assets of the issuer, including the servicing and payment of debt and mortgages and the payment of interest and dividends and, generally, all matters relating to the obtaining and servicing of the assets of the issuer and the issuance, transfer and listing of the securities issued.

## 8.6 *Fees and Expenses*

### 8.6.1 The aggregate annual expenses paid or incurred by the trust excluding

8.6.1.1 interest, taxes, extra-ordinary expenses, losses and reasonable provisions for losses, provision for depreciation, expenses in connection with construction and development loan disbursement and other activities, and expenses in connection with acquisition, operation, maintenance, protection and disposition of real property of the issuer other than the repayment of mortgages and loans

but including:

8.6.1.2 advisory fees, mortgage servicing fees, and all other expenses shall not exceed the greater of:

8.6.1.3 1 ½ % of the average net assets of the trust, or

8.6.1.4 25 % of the net income of the trust before deducting advisory fees,

but in no event shall aggregate annual expenses paid or incurred by the trust, with the exclusions noted above, exceed 1 ½ % of total invested assets of the fund.

8.6.2 The adviser shall reimburse the trust at least annually for the amount by which the aggregate annual expenses paid or incurred by the trust as defined in item 8.6.1 exceed the maximum permitted under that item.

8.7 With respect to loan transactions, whether secured or unsecured, the adviser or any of its affiliates shall receive no fees or benefits other than the advisory fees referred to in item 8.6.1.2.

## 8.8 *Term and Renewal of Contract*



- 8.8.1 The initial advisory and management contract shall be for a term of not less than 2 but not more than 3 years.
- 8.8.2 Subject to approval by the unit holders, the contract shall be renewed at least every 2 years and not more often than annually.
- 8.8.3 The issuer may terminate the contract, subject to the approval of the unit holders, upon not less than 60 days notice in writing.
- 8.8.4 The adviser may not terminate the contract during its term and shall give the issuer at least six months' notice, of its intention not to renew the contract.
- 8.8.5 The termination or non-renewal of the contract shall not result in any penalty or other fee.

## 9. MINIMUM CAPITAL - INVESTMENT OF ADVISER

- 9.1 The adviser shall have a net worth of not less than \$2,000,000.
- 9.2 The adviser shall maintain an investment in the equity capital of the issuer to the extent of at least 5% of the equity capital or \$1,000,000, whichever is the greater, and in no event shall own directly or indirectly more than 35% of the equity capital of the issuer, provided the maximum investment required need not exceed \$5,000,000.
- 9.3 For the purpose of item 9.1 the minimum investment made pursuant to item 9.2 may be used in the calculation of the adviser's net worth.
- 9.4 The adviser's minimum investment under item 9.3 shall be placed in escrow with an independent trust company and transfer or release of these units shall not be made without the consent of the Commission.

## 10. INVESTMENT POLICY

- 10.1 The fundamental investment policy should be clearly defined in the declaration of trust, fixing limits in general terms on the percentage of assets the trustees are empowered to invest in each type of investment such as NHA mortgages, conventional mortgages, construction mortgage loans, standing loans, wraparound loans, gap financing, purchase-leaseback financing, stand-by commitments and real estate equity investments related to mortgage loans.
- 10.2 The issuer shall not invest more than 10% of the total book value of all the assets of the issuer in any single investment or related group of investments involving one property, development or developer and its affiliates.
- 10.3 Investments in real property shall be confined to income producing real property and in the aggregate shall not exceed 20% of the total book value of all of the assets of the issuer.

## 11. PROHIBITIONS AND RESTRICTIONS

- 11.1 The issuer shall not participate in mining, oil or like ventures or acquire real property for development purposes (but not including development mortgage loans).
- 11.2 The issuer shall not invest in other real estate or mortgage investment issuers, whether incorporated or unincorporated, but this shall not exclude the purchase of the equity of a company formed and operated only for the purpose of holding an income producing real estate property.
- 11.3 Not more than 10% of the equity capital and debt raised in Canada shall be invested outside of Canada.
- 11.4 The property of the issuer shall be held in the names of the issuer, of the trustees or in the custody of a Canadian chartered bank or federally or provincially licensed trust company.
- 11.5 There shall be no change in the control of the adviser without the approval of the Director and the Director must be advised immediately if there is a change of trustee or officer of the issuer or the adviser.
- 11.6 Equity securities issued by an unincorporated entity shall not be described as shares.
- 11.7 The issuer shall not lend money to or invest in the securities of the adviser, except by way of deposit with a bank or trust company in the ordinary course of business.

## 12. OBLIGATIONS OF ISSUER

- 12.1 The issuer will be a "finance company" within the meaning of the Act and the Regulations.
- 12.2 The trustees shall convene meetings of unit holders after furnishing the information required so near as may be and to the same extent as though they were directors of a distributing corporation under the ABCA.
- 12.3 A creditor is entitled to the information provided for in sections 161 and 162 of the Regulations.
- 12.4 Without limiting the generality of the foregoing the trustees shall convene a meeting of the unit holders to consider and approve
  - 12.4.1 the renewal of or a material change in the advisory contract
  - 12.4.2 a change of adviser
  - 12.4.3 any material change in the fundamental investment policy in the declaration of trust, or

- 12.4.4 a change of auditors.
- 12.5 Meetings of the unit holders may be called at any time by the trustees and shall be called by any trustee upon written request of unit holders holding in the aggregate not less than 20% of the units.
- 12.6 Material amendments to the declaration of trust or in the fundamental investment policies shall be approved by at least two-thirds of the votes cast at a meeting of unit holders called and held for that purpose, provided that the trustees may amend for the following purposes:
- 12.6.1 adding any provisions for the purpose of protecting the unit holders,
- 12.6.2 removing any conflicts or other inconsistencies which may exist between any of the terms of the declaration of trust or other basic agreement and any provisions of any applicable law or regulation of the situs of the issuer, provided that the trustees shall be of the opinion that such amendments will not be prejudicial to the interests of the unit holders, and
- 12.6.3 making any change or correction in the declaration of trust as to which the trustees shall have been advised by legal counsel that the same are typographical corrections or changes or are required for the purpose of curing or correcting any ambiguity or defective or inconsistent provisions or clerical omissions or mistake or manifest error contained therein.
- 12.7 A meeting of the unit holders shall be called by any trustee upon the written request of unit holders holding in the aggregate not less than 5% of the units for the purpose of considering the appointment of an inspector to investigate whether the adviser has acted on a basis which is fair and reasonable to the issuer and such an inspector may be appointed by a resolution approved by the majority of the votes duly cast at the meeting held for that purpose.
- 12.8 In all cases not provided for in items 12.6 or 12.7, the unit holders may, by resolution passed by a majority of the votes cast at a meeting duly called to consider the matter, approve any matter placed before them.
- 12.9 Trustees, officers or employees of the issuer and adviser shall be insured and bonded to the same extent as the officers and employees of trust companies administering comparable assets in Alberta.
- 12.10 Trustees may be indemnified only to the same extent as directors may be indemnified under the ABCA.
- 12.11 At the time of recommending an investment, the adviser must be satisfied as to the fair

market value of the real estate which provides the security underlying the investment or in which the investment is to be made and where the investment is not based upon the underlying security but rather the credit of the borrower or the continued development of the property, the adviser must be satisfied as to the reasonableness of the investment.

- 12.12 The trustee shall review the investments at least annually prior to the annual meeting for the purpose of determining whether the fair market value of the assets underlying a particular investment or of each real estate investment held by the trust is equal to or has fallen, below the fair market value at the time of the investment and, in the case of outstanding loans, whether the security is still adequate.
- 12.13 The trustees shall prepare a statement prior to the annual meeting setting out in the aggregate, if material, the amount, if any, by which the security on each loan is in their opinion inadequate to secure the loan and the amount by which the fair market value of all real estate has fallen below the amount at which such real estate is carried on the books of the issuer and the statement shall be sent to each unit holder with the notice of the annual meeting.
- 12.14 The trustees or managing partners shall not make a distribution of assets by way of cash dividends or otherwise which would impair the ability of the issuer to repay loans or meet other commitments, as and when they become due in the ordinary course.

### 13. LIABILITY OF UNIT HOLDERS AND TRUSTEES

- 13.1 The nature and extent of the potential liability of the unit holders personally to third parties must be clearly stated on each unit certificate, as well as in every prospectus, listing statement, statement of material fact or similar document.
- 13.2 The declaration of trust must stipulate that the trustees may not look to the unit holders for indemnification.
- 13.3 As to any contract entered into by the trust, the declaration of trust must require that there be a term in each contract entered into by the issuer that the personal liability of the unit holders and trustees to third parties, including the adviser, shall be limited to their interest in the trust assets.

### 14. PROSPECTUS DISCLOSURE

- 14.1 The following are illustrative of a number of the material matters dealt with in the previous sections which must be disclosed in the prospectus:
  - 14.1.1 The nature and extent of the potential personal liability of each unit holder shall be clearly disclosed and a supporting written legal opinion filed with the Commission.
  - 14.1.2 The investment policy of the issuer must be defined.

- 14.1.3 Each of the classes of investment contemplated must be defined, including the nature of the risks involved.
- 14.1.4 Units of interest in the issuer shall not be called "shares".
- 14.1.5 The units shall be freely transferable and their transferability shall be the subject of a written legal opinion filed with the Commission.
- 14.1.6 The conflicts of interest or potential conflicts of interest of the adviser and the issuer should be set out together with the steps taken to avoid or minimize the potential of these conflicts.

Effective date: March 15, 1987