

**A.S.C. POLICY 4.4**  
**CLOSED-END INCOME INVESTMENT TRUSTS AND PARTNERSHIPS**  
**(OTHER THAN MORTGAGE AND REAL ESTATE INVESTMENT TRUSTS**  
**AND PARTNERSHIPS)**

1. APPLICATION

- 1.1 This policy is directed to unincorporated issuers formed as investment trusts or partnerships which are outside the scope of mortgage and real estate investment trusts and partnerships referred to in A.S.C. Policy 4.3. Where closed-end income investment issuers (other than trusts and partnerships) are used, the Director of the Alberta Securities Commission (the "Director") may find this policy helpful in reviewing such issuers proposing to raise and invest money as closed-end income investment entities.
- 1.2 The Alberta Securities Commission (the "Commission") suggests that the following conditions should be present in the declaration of trust or other constating documents relating to this type of issuer before the Director directs the issuance of a receipt for a prospectus required by section 81 of the Alberta Securities Act (the "Act"). This policy in large measure is identical to A.S.C. Policy 4.3 but since there are significant important differences in areas such as minimum capital, the necessity for an adviser, the basis of computing management fees, limits on borrowing (leverage) and investment objectives, the Commission considers it appropriate to issue this policy.

2. REQUIRED CONDITIONS

2.1 *Definitions*

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

- 2.1.1 "Adviser" means any person or company appointed, employed or contracted with by the issuer under which advisory or administrative services are provided to the issuer.
- 2.1.2 "Affiliate" means an "insider" or "associate", including affiliated, controlled and subsidiary companies as referred to in section 2 of the Act.
- 2.1.3 "Appraisal" means a determination of the fair market value, as of the date of appraisal, of real property in its existing state, by a bank, trust company, loan company or insurance company or other person or company which makes appraisals in connection with lending or servicing activities and who in the judgment of the trustees is properly qualified to

make such a determination.

- 2.1.4 "Debt" means the aggregate borrowings of the issuer, whether convertible or not, secured or unsecured or subordinated or unsubordinated.
- 2.1.5 "Declaration of Trust" shall include partnership agreements or other similar constating documents.
- 2.1.6 "Equity Capital" means the aggregate sum paid to the issuer for the units into which the beneficial interest of the issuer may from time to time be divided.
- 2.1.7 "Total Assets" means the tangible assets of the issuer under management or administration at the lower of cost or market before deducting depreciation calculated at least quarterly on a basis consistently applied.

## 2.2

### *The Issuer: Capital*

- 2.2.1 The equity capital of the issuer shall not be less than \$1,000,000.
- 2.2.2 The beneficial interests in the assets shall be divided into equal units, and no unit shall be issued unless fully paid.
- 2.2.3 Subject to item 2.2.4 the units shall be of one class, without par value, shall not be redeemed or repurchased by the issuer, and shall have no preference, conversion or exchange rights.
- 2.2.4 The issuer 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.
- 2.2.5 The units shall be registered and be freely transferable.
- 2.2.6 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.
- 2.2.7 The nature of the unit holder's liability shall be clearly stated on the certificate issued to evidence ownership of units.
- 2.2.8 The units shall each be entitled to one vote.
- 2.2.9 Subject to approval by at least a majority of the votes cast at a meeting of unit holders called for that purpose, the trustees 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.

### 2.3 *Records and Transfer of Units*

2.3.1 The issuer shall keep such books and records as are necessary for the proper recording of its business transactions.

2.3.2 These records, as 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 Corporation Act (the "ABCA"); and the security holders shall have access to such records to the same extent as though they were shareholders or creditors of a corporation under the ABCA.

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

### 2.4 *Borrowing: Limit on Leverage*

The debt of the issuer shall not exceed 25% of the issuer's total assets except for an additional amount equal to 5% of the total assets which may be borrowed for temporary purposes.

### 2.5 *Head Office: Situs of the Issuer*

2.5.1 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 governing the matters referred to in item 2.5.2 are substantially identical to Alberta.

2.5.2 The rights of all parties 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 situated pursuant to item 2.5. 1.

### 2.6 *Trustees*

2.6.1 There shall be not fewer than 7 trustees.

2.6.2 The trustees shall be elected and removed by the unit holders, as 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.

2.6.3 The majority of the trustees shall have at least 5 years experience consistent with the stated investment objectives of the trust. The majority of the trustees shall be independent of the adviser or its affiliates and, at any meeting of the trustees, the majority of the quorum shall be so independent.

2.6.4 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.

2.6.5 *Investments and the investment committee.*

2.6.5.1 Prior to any investment being made or the making of any commitment for any investment or the assumption of any obligation, approval by the trustees or the investment committee must be obtained.

2.6.5.2 Without derogating from the ultimate responsibility of the trustees to approve all investments, there may be an investment committee consisting of not fewer than 3 trustees, at least 75% of whom shall have had 5 or more years of experience as set out in item 2.6.3.

2.6.5.3 In the investment committee, the majority of those voting on an investment decision shall be independent of the adviser.

2.6.5.4 Subject to item 2.6.5.2, if for any reason a member of the committee is disqualified from participating in a decision, any other independent trustee not already a member of the committee may be designated by the trustees to act as an alternate in such an event.

2.6.5.5 The investment committee may approve or reject all proposed investments or dispositions of investments.

2.6.5.6 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 and at least 75% shall have the experience set out in item 2.6.3.

2.6.6 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.

2.6.7 Without limiting the generality of item 2.6.6:

2.6.7.1 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.

2.6.7.2 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.

2.6.7.3 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.

## 2.7 *Adviser. Management Company*

2.7.1 The terms of appointment or employment of an adviser, if any, shall be detailed in a management contract.

2.7.2 Subject to item 2.7.4 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.

2.7.3 Subject to item 2.7.4 the majority of directors and officers of the adviser shall have had at least 5 years experience consistent with the stated investment objectives of the trust provided that the majority of the directors and officers of the adviser shall be Canadian citizens resident in

Canada.

2.7.4 The requirements of items 2.7.2 and 2.7.3 may be waived in whole or in part by the Director if the adviser is a bank, insurance company, loan or trust company licensed or registered and supervised by the Government of Canada or of a Canadian province.

2.7.5 Officers and directors of the adviser, if any, or of its affiliates may also be trustees and officers of the issuer.

2.7.6 *Fees and expenses.*

2.7.6.1 The maximum annual advisory fees and other expenses which may be charged against assets of an issuer calculated as a fixed percentage of the average total assets less cash, under administration, shall be as follows:

	up to \$ 5,000,000	- 1 ½ %
\$ 5,000,000	up to \$ 10,000,000	- 1 ¼ %
\$ 10,000,000	up to \$ 100,000,000	- 1%
\$100,000,000	and over	- ¾ of 1%

2.7.6.2 It is emphasized that the maximum percentage must include both the advisory fee chargeable and all other expenses. The term "other expenses" shall mean all other expenses incurred in the ordinary course of business relating to the organization, management and operation of the issuer with the exception of the cost of borrowing and equity, commissions and fees on the purchase and sale of portfolio assets and taxes of all kinds to which the issuer is or might be subject.

2.7.6.3 In applying the schedule of rates in item 2.7.6.1, it is only that portion of total assets, less cash, under administration in excess of the upper limits of each fee range that is subject to the next lower maximum of advisory fees and other expenses. For example, an issuer having assets in excess of \$5,000,000 would be subject to maximum rates of less than 1 ½% only on that portion of assets under administration in excess of \$5,000,000.

- 2.7.6.4 The advisory fees shall be calculated in accordance with the formula set out in the prospectus. However, the maximum period of time between such calculations shall not exceed 3 months.
- 2.7.6.5 The calculation of "other expenses" shall be the same time periods as the advisory fees. The maximum period of time between such calculations shall not exceed 3 months.
- 2.7.6.6 While the calculation of "other expenses" shall be made for the same periods of time as the advisory fees, the amount by which the "other expenses" exceeds the maximum permitted under the policy during any one three-month period may be held over to a succeeding three-month period (or lesser period, if not operative over a full year) providing the total amount charged during such combined periods does not exceed the maximum annual permitted under this policy.
- 2.7.6.7 The adviser shall reimburse the issuer at least annually for the amount by which the aggregate advisory fees and expenses paid or incurred by the issuer exceeds the maximum annual permitted under this policy.
- 2.7.7 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 2.7.6.
- 2.7.8 *Term and renewal of contract*
- 2.7.8.1 The initial management contract, if any, shall be for a term of not less than 2 years but not more than 3 years.
- 2.7.8.2 Subject to approval by the unit holders, the contract shall be renewed at least every 2 years and not more often than annually.
- 2.7.8.3 The issuer may terminate the contract, subject to the approval of the unit holders, upon not less than 60 days notice in writing.

2.7.8.4 The adviser may not terminate the contract during its term and shall give the issuer at least 6 months notice of its intention not to renew the contract.

2.7.8.5 The termination or non-renewal of the contract shall not result in penalty or other fee.

## 2.8 *Minimum capital: Investment of Adviser*

2.8.1 The adviser, if any, shall have a net worth of not less than \$200,000.

2.8.2 The adviser, if any, shall invest in the equity capital of the issuer to the extent of at least \$200,000.

2.8.3 For the purpose of item 2.8.1 the minimum investment made pursuant to item 2.8.2 may be used in the calculation of the adviser's net worth.

2.8.4 The adviser's minimum investment under item 2.8.3 shall be placed in escrow with an independent trust company and no transfer or release of these units shall be made without the consent of the Director.

## 2.9 *Investment Policy*

2.9.1 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, e.g. straight-debt securities issued by corporations and other entities, debt securities issued or guaranteed by the Government of Canada, any Canadian province or municipality or agency thereof, short-term promissory notes issued by corporations and other entities and cash equivalents, conventional first mortgages or mortgages insured or guaranteed by the Government of Canada, any Canadian province or any agency thereof, convertible debt securities, preferred shares and equity interests.

2.9.2 The issuer shall not have more than 25% of its total assets in securities acquired through private placement transactions or other transactions which require the giving of an investment letter except that more than 25% of its total assets may be invested in such a way if

2.9.2.1 a legal opinion can be given that the securities are those in which the Canadian and British Insurance Companies



Act (Canada) states that a company registered under Part III thereof may invest its funds without resorting for that purpose to the provisions of subsection (4) of section 63 of that Act.

2.9.2.2 the issuer of the securities is a reporting issuer under the Act; and

2.9.2.3 the issuer of the securities had a net worth on its latest published financial statement in excess of \$20,000,000.

## 2.10 *Fundamental Investment Restrictions*

2.10.1 Not more than 10% of the total assets of the issuer shall consist of securities, including mortgages of any company or other issuer other than securities issued or guaranteed by the Government of Canada, any Canadian province or municipality or agency thereof. For this purpose, if securities of one company or other issuer are guaranteed or similarly secured by its affiliate, the securities of that affiliate shall be deemed to be the securities of such company or other issuer.

2.10.2 The issuer shall not borrow except as permitted under item 2.4.

2.10.3 The issuer shall not mortgage any of its assets for the purpose of borrowing and leverage, and a maximum of 50% of its total assets may be pledged as security for the long term borrowing permitted under item 2.4 and up to any additional 10% of its total assets may be pledged as security for temporary borrowing permitted under item 2.4.

2.10.4 The issuer shall not make loans except in the ordinary course of investing its funds.

2.10.5 The issuer shall not loan portfolio assets unless the security received by the issuer and maintained by the borrower is not less than that required under the by-laws of The Alberta Stock Exchange for margin accounts.

2.10.6 The issuer shall not invest in mortgages or other debt instruments secured by real estate unless insured or guaranteed by the Government of Canada, any Canadian province or agency thereof, or unless they are conventional first mortgages and not more than 25% of the total assets of the issuer shall be invested in such mortgages or debt instruments.

- 2.10.7 The issuer shall not purchase or sell real estate.
- 2.10.8 The issuer shall not participate in mining, oil or similar ventures.
- 2.10.9 The issuer shall not invest in securities of any "open" or "closed-end" investment funds.
- 2.10.10 The issuer shall not invest in the securities of a company for the purpose of controlling or managing such company.
- 2.10.11 The issuer shall not invest in securities issued by the adviser or any of its affiliates or any investment company or trust managed by the adviser or its affiliates, provided that this restriction shall not prohibit the trust from entering into deposit or similar transactions with the adviser if the adviser is a bank or licensed loan or trust company.
- 2.10.12 The issuer shall not make short sales of securities or purchase securities on margin.
- 2.10.13 The issuer shall not act as an underwriter of securities.
- 2.10.14 The issuer shall not trade in commodities or commodity contracts or create, issue or purchase puts, calls or combinations thereof
- 2.10.15 Not more than 10% of the funds raised in Canada shall be invested outside of Canada.
- 2.10.16 The property of the issuer shall be held in the name of the issuer or the trustees and in the custody of a Canadian chartered bank or federally or provincially licensed trust company.
- 2.10.17 There shall be no change of custodian without the prior approval of the Director.
- 2.10.18 There shall be no change of the adviser or control of the adviser without the prior approval of the Director.
- 2.10.19 The Director shall be advised in writing of every change of trustee and of every change in directors and officers of the issuer and of the adviser.
- 2.10.20 Equity securities issued by an unincorporated entity shall not be described as shares.

2.10.21 The issuer shall not loan money to or invest in securities of the adviser.

2.11 *Obligations of the Issuer*

2.11.1 The trustees shall convene meetings of unit holders after furnishing the information required, as near as may be and to the same extent, as though they were directors of a distributing corporation under the ABCA.

2.11.2 Without limiting the generality of the foregoing, the trustees shall convene a meeting of the unit holders to consider and approve:

2.11.2.1 the renewal of or a material change in the advisory contract; 2.11.2.2 a change of adviser;

2.11.2.3 any material change in the fundamental investment policy in the declaration of trust, or

2.11.2.4 a change of auditors.

2.11.3 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.

2.11.4 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, but the trustees may, without approval of the unit holders, amend the declaration of trust and fundamental investment policies for the following purposes:

2.11.4.1 adding any provision for the purpose of protecting the unit holders;

2.11.4.2 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

2.11.4.3 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.

- 2.11.5 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.
- 2.11.6 In all cases not provided for in items 2.11.4 and 2.11.5 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.
- 2.11.7 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.
- 2.11.8 Trustees may be indemnified only to the same extent as directors may be indemnified under the ABCA.
- 2.11.9 Appraisals shall not be required for mortgages insured or guaranteed by the Government of Canada, any Canadian province or agency thereof
- 2.11.10 Appraisals shall be required for conventional first mortgages being acquired by the issuer.

2.12 *Termination of Trust by Trustees*

- 2.12.1 The trust may be terminated by the trustees provided confirmation of resolution is evidenced by two-thirds of the votes of unit holders cast at a meeting of unit holders duly called and held for that purpose.
- 2.12.2 The trustees shall carry on no activities except for the purpose of winding up its affairs after unit holders have confirmed the resolution of the trustees to terminate the trust.

2.12.3 The trustees shall proceed to wind up the affairs of the trust and all of the power of the trustees under the declaration of trust shall continue until the affairs of the trust have been wound up with unit holder approval having been obtained where necessary.

### 2.13 *Liability of Unit Holders and Trustees*

2.13.1 The nature and extent of the potential liability of 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.

2.13.2 The declaration of trust must stipulate that the trustees may only look to the trust assets for indemnification.

2.13.3 As to any contract entered into by the trust which would, in the ordinary course of business, be in writing, 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 interests in the trust assets.

### 2.14 *Prospectus Disclosure*

The following are illustrative of a number of the material matters dealt with in this policy which must be disclosed in the prospectus:

2.14.1 The nature and extent of the potential personal liability of each unit holder shall be clearly disclosed and the supporting written legal opinions filed with the Commission.

2.14.2 The investment policy of the issuer must be defined.

2.14.3 Each of the classes of investment contemplated must be defined, including the nature of the risks involved.

2.14.4 Units of interest in the issuer shall not be called "shares".

2.14.5 The units shall be freely transferable, and their transferability shall be the subject of written legal opinion filed with the Commission.

2.14.6 The conflicts of interest or potential conflicts of interest between the adviser and the issuer should be set out together with steps taken to avoid or minimize the of these conflicts.