45-501CP Mortgages [CP - Rescinded]

PART 1 BACKGROUND

1.1 Background

A mortgage is a security. Sections 46(e) and 75(a) of the *Securities Act* exempt distributions of mortgages and other encumbrances of property from the registration and prospectus requirements of the *Ac*t. Neither the exemption nor the *Mortgage Brokers Act* was intended to cover mortgage syndications, where a single mortgage is sold to a number of investors. Syndicated mortgages, particularly on commercial property and development property, are complex and risky securities similar to other real estate based securities that are subject to the general requirements of the *Securities Act.*

1.2 Purpose

The purpose of the Commission Rule 45-501(BC) is to

(1) remove the mortgage exemption in the Securities Act for syndicated mortgages or for mortgages on property that is not real property, except where the purchaser is an institutional investor, and

(2) provide a new exemption from the registration and prospectus requirements of the Act for relatively simple syndicated mortgages, called "qualified syndicated mortgages".

A qualified syndicated mortgage is defined to be a syndicated mortgage on property that is used solely for residential purposes, that contains no more than four residential dwelling units, that is not under construction and that meets other conditions set out in the Commission Rule. Qualified syndicated mortgages would continue to be governed by the *Mortgage Brokers Act.*

PART 2 STATUTORY EXEMPTIONS

2.1 General - The Commission Rule is not intended to restrict the use of other exemptions that are available to issuers in general. These exemptions are described briefly below and are described in greater detail in Local Policy.Statement 3-24 *Statutory and Discretionary Exemption*s. Where an offering memorandum is required for the use of an exemption, Interim Form 45-901F is the required form of offering memorandum when mortgages are sold under these exemptions.

2.2 $97,000 exemption - This exemption is found in sections 45(2)(5) and 74(2)(4) of the Securities Act and in sections 90 and 129 of the Securities Rules. It requires that the purchaser purchase as principal and that the securities have an aggregate acquisition cost of no less than $97,000. The exemption is therefore not available if, for example, the purchaser gathers 10 individuals who each put up $9,700. In that case, the purchaser would not be purchasing as principal.

As long as the issuer does not advertise to find investors, the issuer does not have to provide purchasers with a prescribed form of disclosure under the Securities Act. However, as noted above, the issuer would have to be registered, and have to provide the disclosure required, under the Mortgage Brokers Act. Section 134 of the Securities Rules sets out what types of communication issuers can make to certain prospective purchasers without an offering memorandum being required. If the issuer does advertise, it must deliver an offering memorandum to the purchasers before an agreement of purchase and sale is entered into. The offering memorandum must be in the required form and provide contractual rights of action to the purchaser if there is a misrepresentation.

If the issuer relies on this exemption, it must obtain an acknowledgement from each individual purchaser of their limited rights (Form 20A) and must file with the Commission a report of the distribution (Form 20) and the offering memorandum (if any) within ten days of the distribution.

If available, this exemption may be used by both the issuer and holders of its securities.

2.3 50 Purchaser Exemption - This exemption, which is found in sections 89(a) and 128 (a) of the Securities Rules, allows an issuer to sell securities to no more than 49 purchasers in any 12-month period. Each purchaser must be a spouse, parent, brother, sister or child of a director or senior officer of the issuer or a sophisticated purchaser (described below) and must purchase as principal. The issuer must not advertise and must not pay any selling or promotional expenses, other than for fees for professional services or services performed by a registered dealer. The issuer must also deliver an offering memorandum in the required form to each purchaser.

Each purchaser must sign a Form 20A acknowledging their limited rights and also certifying that the purchaser is a spouse, parent, brother, sister or child of a director or senior officer of the issuer or is a sophisticated purchaser. The issuer must retain those forms for six years and make them available to the Commission upon request. The issuer must also file a Form 20 and the offering memorandum with the Commission within ten days of the distribution.

2.4 $25,000 Exemption for Sales to Sophisticated Purchasers - This exemption, which is found in sections 89(b) and 128 (b) of the Securities Rules, allows an issuer to sell securities to sophisticated purchasers in minimum amounts of at least $25,000.

The term sophisticated purchaser is defined in section 1(1) of the *Securities Rules* and means a purchaser that gives an acknowledgement to the issuer (Form 20A) that the purchaser has a net worth of at least $400,000 or an annual net income for each of the previous two years of at least $75,000 (or $125,000 if including annual net income of one’s spouse) and reasonably expects that level of income in the current year. In addition, the purchaser must be able to evaluate the risks and merits of the investment on the basis of financial, business or investment experience or on the basis of advice from someone registered under the *Securities Ac*t, or exempted from the requirement to be registered, to provide advice.

Again, the issuer must deliver an offering memorandum to the purchaser, must file the offering memorandum and a Form 20 with the Commission within ten days of the distribution and must obtain an acknowledgement in Form 20A from each purchaser.

2.5 $25,000 Exemption Where Sales Through a Registrant - This prospectus exemption, which is found in section 128(c) of the Securities Rules, is available for an issuer that uses a person registered under the Securities Act to sell securities in amounts of at least $25,000. The registrant must be qualified to sell the securities that are being offered. Unlike the other exemptions discussed, a corresponding registration exemption is not provided.

Once again, the issuer must deliver an offering memorandum to the purchaser, must file the offering memorandum and a Form 20 with the Commission within ten days of the distribution and must obtain an acknowledgement in Form 20A from each purchaser. In the Form 20A, the purchaser must identify the registrant who acted for him or her in the purchase of the securities.

Amended August 14, 2000