

Appendix D

BC Instrument 45-501

Mortgages

Amending Instrument

The British Columbia Securities Commission orders that, effective September 28, 2009, Rule 45-501 (BC): Mortgages, B.C. Reg. 189/2000, is amended as follows,

1 *Rule 45-501 (BC): Mortgages, B.C. Reg. 189/2000, is amended in section 1 by repealing the definition of “syndicated mortgage” and substituting the following:*

“**syndicated mortgage**” means a mortgage in which two or more persons participate, directly or indirectly, as lenders in the debt obligation that is secured by the mortgage.

2 *Section 3 is repealed and the following substituted:*

Restriction on exemption under section 8.12 of National Instrument 31-103 *Registration Requirements and Exemptions*

- 3** Unless the purchaser of the securities is an institutional investor, section 8.12 of National Instrument 31-103 *Registration Requirements and Exemptions* does not apply to a person making a trade of a security if
- (a) the security is a debt obligation that is secured by a mortgage, or other encumbrance, on property that is not real property, or
 - (b) the security is a syndicated mortgage.

3 *Section 4 is repealed.*

4 *Section 5 is amended by striking out “Sections 34 and 61 of the Securities Act do not apply” and substituting “Section 34 of the Securities Act does not apply”.*

Clean Version of BC Instrument 45-501 Mortgages

BC Instrument 45-501 *Mortgages*

Definitions

1 In this rule:

“institutional investor” means

- (a) a government of Canada or any province of Canada or a crown corporation or agency of a Canadian federal or provincial government;
- (b) a municipal corporation, public board or commission in Canada;
- (c) a savings institution;
- (d) a cooperative credit society as defined in the *Cooperative Credit Associations Act* (Canada) or a savings and credit union, federation or confederation as defined in the *Savings and Credit Unions Act* (Quebec);
- (e) the Business Development Bank of Canada;
- (f) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a provincial pension supervisory authority;
- (g) an insurance company;
- (h) a trust company or insurer authorized under the laws of Canada or the laws of a province other than British Columbia to carry on business in Canada or that province;
- (i) a mortgage broker acting as principal;
- (j) a person registered under the *Securities Act* or the securities legislation of another province as an investment dealer or equivalent, acting as principal or as an agent or trustee for accounts that are fully managed by it;
- (k) a person registered under the *Securities Act* or the securities legislation of another province as a portfolio manager or equivalent, acting as principal or as an agent or trustee for accounts that are fully managed by it;
- (l) a mutual fund or non-redeemable investment fund, if the investment portfolio of the fund is managed by a person that is registered under the *Securities Act* or the securities legislation of another province as a portfolio manager or equivalent, or
- (m) such other person as may be designated by order of the commission;
“mortgage broker” means a person who is registered under the *Mortgage Brokers Act*;

“qualified syndicated mortgage” means a syndicated mortgage if

- (a) the syndicated mortgage is not contained in or secured by a bond, debenture or similar obligation or in a trust deed or other instrument to secure bonds or debentures or similar obligations;
- (b) the syndicated mortgage is sold through a mortgage broker;
- (c) the syndicated mortgage secures a debt obligation on property used solely for residential purposes and containing no more than four residential dwelling units;
- (d) the syndicated mortgage does not secure a debt obligation incurred for the construction or development of property;
- (e) at the time of issue, the amount of the debt secured by the syndicated mortgage, together with all other debt secured by mortgages on the property that have priority over, or the same priority as, the syndicated mortgage, does not exceed 90 percent of the fair market value of the property, excluding any value that may be attributed to proposed or pending development on the property;
- (f) the syndicated mortgage is limited to one identified debt obligation;
- (g) the rate of interest payable under the syndicated mortgage is equal to the rate of interest payable under the identified debt obligation;
- (h) any amount charged for the administration of the syndicated mortgage is disclosed to the purchaser, and
- (i) the term of the syndicated mortgage is not different from the term of the identified debt obligation;

“syndicated mortgage” means a mortgage in which two or more persons participate, directly or indirectly, as lenders in the debt obligation that is secured by the mortgage.

Interpretation

- 2 Unless otherwise defined in this rule, a term used in this rule that is defined or interpreted in the *Securities Act*, the Securities Rules or National Instrument 14-101 Definitions has the meaning set out in the *Securities Act*, Securities Rules or National Instrument, respectively.

Restriction on exemption under section 8.12 of National Instrument 31-103 Registration Requirements and Exemptions

- 3 Unless the purchaser of the securities is an institutional investor, section 8.12 of National Instrument 31-103 *Registration Requirements and Exemptions* does not apply to a person making a trade of a security if
 - (a) the security is a debt obligation that is secured by a mortgage, or other encumbrance, on property that is not real property, or
 - (b) the security is a syndicated mortgage.

Restriction on exemption under section 75 (a) of the Act

4 (Repealed)

Exemption from registration requirements

5 Section 34 of the *Securities Act* does not apply to a trade in a qualified syndicated mortgage if, before the agreement of purchase and sale is entered into, the purchaser is provided with the form of investor disclosure required by the *Mortgage Brokers Act*.

Effective Date

6 This rule comes into force on September 28, 2009.

British Columbia Securities Commission

Companion Policy 45-501CP (BC)

Mortgages

The British Columbia Securities Commission, considering that to do so would not be prejudicial to the public interest, orders that effective September 28, 2009, BC Policy 45-501CP entitled *Mortgages*, dated April 3, 2002 is revoked and the attached BC Policy 45-501CP *Mortgages* is made.

, 2009

Brent W. Aitken
Acting Chair

(This part for administrative purposes only and is not part of the Order)

Authority under which Order is made:

Act and sections:- *Securities Act*, section 171

Other (specify):-

Companion Policy 45-501CP
Mortgages

PART 1 BACKGROUND

1.1 Background

A mortgage is a security. Section 8.12 of National Instrument 31-103 *Registration requirements and exemptions* (NI 31-103) exempts trades in mortgages and other encumbrances of property from the registration requirements of the *Act*. 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 NI 31-103 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 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 are described in NI 31-103 and BC Instrument 35-xxx. Where an offering memorandum is required for the use of an exemption, BC Form 45-901F is the required form of offering memorandum when mortgages are sold under these exemptions.

Amended September 28, 2009