Canoe FINANCIAL

April 30, 2025

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Registrar of Securities, Yukon Territory
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Dear Sirs/Mesdames:

**Re: CSA Notice and Request for Comment**
**Proposed Amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, National Instrument 81-102 *Investment Funds*, National Instrument 81-106 *Investment Fund Continuous Disclosure* (“NI 81-106”), National Instrument 81-107 *Independent Review Committee for Investment Funds*, published for comment on September 19, 2024 (the “Proposed Amendments”)**

Canoe Financial LP (“**Canoe**”) is the manager of Canoe EIT Income Fund (the “**EIT Fund**”). Currently, the market capitalization of the EIT Fund on the Toronto Stock Exchange is approximately $2.8 billion and Canoe manages over $19.5 billion in assets.

The beneficial interest in the assets of the EIT Fund is divided into interests of two classes: preferred units and units (the “**Units**”). The preferred units are issuable in one or more series and, as of the date hereof, the EIT Fund has authorized and issued series 1 preferred units and series 2 preferred units (together, the “**Preferred Units**”). The Preferred Units and the Units are each listed and trade separately on a stock exchange in Canada. The Preferred Units and the Units have different financial attributes as follows:

- **Preferred Units:** customarily offer (a) cumulative preferential cash distributions at a fixed rate per annum which primarily consist of the net income and net capital gains on the securities or assets held in the EIT Fund's portfolio and (b) priority with respect to the distribution of assets of the EIT Fund or return of capital in the event of liquidation, dissolution or winding-up of the EIT Fund, whether voluntary or involuntary, or any other return of capital or distribution of assets of the EIT Fund among the securityholders of the EIT Fund for the purpose of winding-up its affairs.

- **Units:** customarily offer (a) monthly distributions to their holders and an annual special distribution if any net income or net realized capital gains of the EIT Fund generated during the year have not been fully distributed to unitholders through monthly distributions, however, the EIT Fund will not pay any distributions on the Units unless all accrued and unpaid distributions on the Preferred Units have been paid or monies have been set aside for such payment and (b) subject to the priority of the Preferred Units, capital appreciation on the underlying portfolio securities held by the EIT Fund in the event of liquidation, dissolution or winding-up of the EIT Fund, whether voluntary or involuntary, or any other return of capital or distribution of assets of the EIT Fund among the securityholders of the EIT Fund.

Canoe is pleased to provide the members of the Canadian Securities Administrators with comments on the Proposed Amendments as they relate to the EIT Fund. More specifically, we wish to respond to Question 15 with respect to whether modifications should be made for specific investment funds to improve the quality of disclosure provided to investors.

NI 81-106 requires that a fund's management expense ratio ("**MER**") be calculated and presented in Form 81-106F1 based on the "total expenses of the investment fund… commissions and other portfolio transaction costs, before income taxes… as shown on its statement of comprehensive income" (see section 15.1(a)(i)(A) of NI 81-106). These provisions have not been changed by the Proposed Amendments or in the Proposed Form 81-106A (the "**Proposed Form 81-106A**").

The MER is intended to be focused on *management* expenses, such as brokerage commissions, other security transaction expenses and advisory, accounting and custodial fees, and the reference above to "total expenses of the investment fund… commissions and other portfolio transaction costs, before income taxes… as shown on its statement of comprehensive income" is not intended to capture payments made on portfolio positions, such as borrowing costs to obtain leverage. Instead, Item 12 of the Proposed Form 81-106A requires specific disclosure in respect of the use of borrowing and leverage.

The problem with including borrowing costs in the MER is apparent from a simple example. If a leveraged fund were to borrow $20 million at 4% interest in order to purchase investment grade bonds earning 6% interest, then this would be a reasonable portfolio management strategy and the 2% net return on the $20 million would be reflected in portfolio returns. There is no benefit to investors to have the MER disclosure obscured by the inclusion of a 4% borrowing cost as part of the MER. Furthermore, if an investment fund were to obtain exactly the same investment exposure to the $20 million investment by entering into a total return swap with identical risks and rewards to the investment fund, the 4% borrowing cost would not be required to be reflected in the MER.

In the case of the Canoe EIT Income Fund, the EIT Fund has approximately $160 million of preferred shares outstanding on which it pays a fixed 4.8% distribution. The proposed rules require these ‘interest’ costs to be added to the EIT Fund’s reported MER making the EIT Fund’s MER look higher. Investors might compare the MER of the Canoe EIT Income Fund to other mutual funds or ETFs and conclude that Canoe is charging really high management fees, when in fact the MER looks higher as it includes these ‘interest’ payments of 4.8% which are not paid/retained by Canoe but are in fact paid to the holders of the Preferred Shares (who are providing leverage financing to the Canoe EIT Income Fund). The requirement of the Proposed Amendment that Canoe include the cost of these interest payments on the Preferred Units in the EIT Fund’s MER we believe distorts EIT’s MER and creates a misleading comparison for investors.

**Canoe is of the opinion that disclosure should be added to the Companion Policy to NI 81-106 to clarify that costs of borrowing for the purpose of investing are not required to be included as part of total expenses, commissions and portfolio transaction costs of the investment fund for the purposes of the MER and section 15.1 of NI 81-106.**

This issue is particularly acute for the EIT Fund because Section 10.1(2) of the Companion Policy to NI 81-106 labels payments to holders of Preferred Units (i.e. “debt-like securities or securities that otherwise provide leverage to the fund”) as “financing costs” which are to be included in total expenses when calculating the MER for the other classes of securities that “benefit from the financing or leverage”.

We note that the structuring purpose of the EIT Fund is not solely to “provide leverage” for the Units but also to facilitate streaming of distributions. Moreover, the Preferred Units and the Units share the benefit of this arrangement. Accordingly, Canoe suggests that if it is not possible to correct what we consider to be the incorrect inclusion of borrowing costs in the MER calculation, then it would be appropriate to amend section 10.1(2) of the Companion Policy to NI 81-106 to specify that distributions on Preferred Units will not be considered to constitute financing costs of the Units which are to be included in total expenses when calculating the MER.

We note that Canoe and managers of funds similar to the EIT Fund have historically included additional disclosure in their continuous disclosure documents relating to the calculation of the MER which takes into consideration the unique structure of such funds. This additional disclosure includes the carveout of distributions made to the holders of Preferred Units (or preferred shares, as applicable). However, due to the new form of presentation of the MER under the Proposed Amendments and the current form of section 15.1(a)(i)(A) of NI 81-106 and section 10.1(2) of the Companion Policy to NI 81-106, the Proposed Amendments do not provide such funds with the ability to present the MER of the Units (or class A shares, as applicable) without including Preferred Unit (or preferred share, as applicable) distributions as an expense of the Units (or class A shares, as applicable).

Canoe respectfully submits that modifications to the Proposed Amendments, in particular those amendments which relate to the presentation of the MER and fund expense ratio (“**FER**”), are necessary in order to allow Canoe to (a) provide clear, transparent and meaningful disclosure relating to fund costs and operations of the Preferred Units and the Units and (b) present the MER and FER of the EIT Fund on the same basis as a fund that offers only one class of equity securities. Such modifications will allow investors to compare the MER of their investments in Units with equity securities of other investment funds and make more informed investment decisions.

Canoe also respectfully submits that modifications be made to the Proposed Amendments to permit the EIT Fund to exclude Preferred Unit distributions as an expense of the Units. Alternatively, the Proposed Amendments should be modified to permit the EIT Fund to: (a) include two additional columns to the table in Item 6: (i) "MER without cost of preferred units" and (ii) "Cost of preferred units", and (b) calculate FER as the sum of (i) "MER without cost of preferred units" and (ii) the fund's trading expense ratio (collectively, the "**Proposed Changes**"). The Proposed Changes will allow the EIT Fund to provide its investors with a clearer understanding of the costs associated with the EIT Fund. We respectfully submit that without the Proposed Changes, disclosure relating to the MER of the Units would be misleading to investors.

Thank you for the opportunity to provide our comments on the Proposed Amendments.

Please contact Darcy M. Lake (lake@canoefinancial.com) or (403) 681-1521, if you have any questions relating to our comments or wish to meet with us to further discuss.

Sincerely,

(signed) "*Darcy M. Lake*"

Darcy M. Lake
General Counsel & Chief Compliance Officer