



Pension Investment Association of Canada

Association Canadienne des gestionnaires de fonds de retraite

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Via e-mail

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Dear Madam: **Re: Proposed NP 41-201 Income Trusts and Other Indirect Offerings**

The Pension Investment Association of Canada (PIAC) is the representative Association for pension funds in Canada in pension investment and related matters. The Member funds of PIAC collectively manage over \$500 billion in assets on behalf of more than six million beneficiaries. PIAC has an interest in the subject Proposed Policy because many of its Members will invest in such vehicles and have a significant interest in the governance practices of income trusts.

First, PIAC wishes to congratulate the CSA for the introduction of this Proposed Policy as institutional investors are desirous of a framework for disclosure similar to that required of corporations. Our comments will focus only on a few areas which we believe could be improved.

Executive Compensation:

In a February 27, 2003 article *Income trusts raise bundles -- and eyebrows*, the Globe and Mail noted: "... fewer than half of the funds disclosed such details... the accepted rules of transparency and full disclosure apparently do not apply."

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In a November 25, 2002 press release http://www.csa-acvm.ca/html_CSA/news/exec_comp1105.htm, the CSA itself has noted that executive compensation disclosure by issuers could be improved. Rather than to allow companies to use “boilerplate language” and other similarly unhelpful disclosures, PIAC believes the CSA should require companies disclose specific information, including explaining clearly the reasons for the salaries and bonuses paid, the options granted and the other compensation awarded to executive officers. In the case of Income Trusts and, as mentioned in the Policy draft, these requirements should obviously apply to the Operating Company or another other “creative” entity where significant leakage of shareholder value may occur.

The CSA has an opportunity to raise the bar and require specific and detailed executive compensation disclosure. Given that some Income Trusts have previously chosen to disregard even conventional practices, robust requirements along with some form of punitive action for non-compliance would assist investors.

Policy should be officially revisited shortly following inclusion in mainstream Indices such as the S&P/TSX Composite):

While Income Trusts are of great interest to specific market segments, particularly retail mutual funds investing in Income Trusts and those institutions offering such products, they have yet to become mainstream investments themselves. Many pension funds and institutional investors do not yet invest in this class of securities for a variety of reasons including the unlimited liability issue or the fact that they are not in the S&P/TSX Composite Index.

It is these same institutions which tend to be more proactive in corporate governance and disclosure requirement matters. Thus, this Policy has been introduced before most institutional investors have begun to focus narrowly on issues surrounding Income Trusts. If the CSA is truly interested in a rigorous and thorough response to the Policy draft, then a second comment period should be allowed shortly following the resolution of the unlimited liability issue and/or the inclusion of Income Trusts in the S&P/TSX Composite Index.

Policy should require specific disclosure of the valuation of assets:

Income Trusts are primarily a retail product and it is unreasonable to expect that comparatively unsophisticated investors are able to determine for themselves if assets have been transferred to Income Trusts at appropriate valuations. Indeed, PIAC believes that some of these valuations have been suspect and often at a premium to what the market would pay outside the trust structure. Accordingly, we recommend that the valuation provisions of the Policy be made more rigorous.

Debt disclosure:

PIAC is concerned that details of debt for a term of more than five years is not required to be disclosed. We understand that risk factor disclosure need not be addressed in respect of longer term debt but certainly the other details of such debt are important to investors’ judgement of the value of the investment.

General observation:

PIAC finds the language used throughout the Policy to be curious in comparison with other National Policies. The words, “expect” or “encourage” rather than “require” are not normally used and we believe that such words imply a more generous and equivocating approach by regulators than that to which the financial services industry has become accustomed. We would support the strengthening of all such language so that it is clear securities regulators mean business in requiring that Income Trusts comply.

Finally, we reiterate our support for the Proposed Policy and believe that its direction and provisions, subject to our comments above, will greatly enhance the quality of information in these offerings.

Respectfully submitted on behalf of the institutional investors that are Members of PIAC,

A handwritten signature in black ink, appearing to read "G. T. Gunn". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

G. T. Gunn
Chairman