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December 16, 2003

Ms. Marsha Manolescu
Deputy Director, Legislation
Alberta Securities Commission
400, 300 – 5th Avenue S.W.
CALGARY, AB T2P 3C4

Dear Ms. Manolescu:

Re: Comments: Proposed National Policy 41-201, *Income Trusts and Other Indirect Offerings*

We have reviewed the proposed policy and are supportive of the Canadian Securities Administrators' (CSA) continuing efforts to clarify guidance and improve standards of disclosure among income trusts and other indirect offerings, and are pleased to provide comments on the draft.

Appreciating that the policy, as currently drafted, is targeted at different market participants, we believe the scope of the policy is generally appropriate and its informative contents will help provide meaningful and constructive guidance. However, to the extent that separating parts of the policy intended for individual investors can provide greater clarity, we would likely be supportive of that direction. Actually, in our view, the more pressing concern is that the average retail investor may not be aware of the policy's existence at all. As such, in order to maximize the potential benefits, we suggest that the CSA members consider the release of this policy in conjunction with visible support from the investor education departments of the various commissions to ensure that the reaches a broad audience.

Providing issuers with guidance regarding the disclosure of risk factors would likely augment the usefulness of the policy, given that trust issuers inherently come with a set of risks that may differ from that of issuers of more conventional equity or debt. The type of guidance provided in Item 20 (Risk Factors) of Ontario Securities Commission Form 41-501F1, *Information Required in a Prospectus*, augmented by mention of risks more specific to trust issuers (e.g., the use of short-term debt at the operating entity level, the potential variability of distributable cash, unique sensitivities in operating in specific industries, etc.), could be considered for the policy.

Furthermore, in addition to a brief discussion of risk factors in the "prospectus summary" section and a cross-reference to the detailed risk factors section on the cover page of a prospectus, it may be useful for investors if the policy recommended that trust issuers place the detailed risk factors section near the beginning of the prospectus, perhaps immediately following the discussion of the business of the issuer.

Cover page disclosure of a breakdown of anticipated distributable cash would likely provide a very pertinent source of information for potential investors. However, because we are concerned that less-sophisticated investors may associate the trust offering with a debt offering and wrongly assume that a trust issuer has a set obligation to pay cash distributions, it may be beneficial to direct in Part 2.4 of the policy that the cover page disclosure stating that cash distributions are not guaranteed be highlighted in bold print.

In Part 2.9 of the policy regarding the disclosure of separate risk factors about short-term debt, we suggest, for your consideration, providing guidance on a discussion concerning floating rate borrowings, which, due to its sensitivity to fluctuations in market interest rates, may cause significant interest expense volatility, thereby adversely affecting operating performance and the amount of distributable cash flow.

Recommending disclosure of stability ratings from those income trust issuers who have obtained them is an intriguing concept and may well provide investors with another highly useful source of information, but also raises several possible concerns. For instance, we are somewhat concerned that the average retail investor may have limited experience interpreting the stability ratings generated by rating agencies. However, we accept that this potential issue may be as easily solved as providing an Internet address to the websites describing the ratings methodologies of Dominion Bond Rating Service and Standard and Poor's.

On the question regarding whether stability ratings offer an appropriate and effective means of comparison, we certainly believe that stability ratings have the potential to accomplish this objective, but note that universe of ratings for income trusts generated by the two major ratings agencies is, currently, somewhat limited. Therefore, the utility of the ratings as a basis of comparison for investors may be restricted until a larger number of income trusts decide to obtain ratings. We do recognize, however, that the policy's consideration of stability ratings may encourage more income trusts to go this direction.

Another potential issue related to stability ratings worth additional consideration is the extent of costs associated with obtaining a rating, especially for smaller capitalization issuers.

We certainly concur with the statement made in Part 3.1 of the policy that the performance of an income trust is primarily dependent on the operations of its operating entities. We are concerned, however, that there may be potential for the avoidance of continuous disclosure requirements regarding material information at the operating entity level due to the structure of some trusts (e.g., in those situations where the trust does not have a controlling interest in an operating entity), and echo that it is crucial that income trusts take measures to ensure that the guidance provided in Part 3.1 of the policy is genuinely adhered to.

Yours sincerely,

Gail Armitage
Executive Director

FC/mfc

cc: Robert Bhatia, Deputy Minister of Revenue