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December 17, 2003

VIA E-MAIL

Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, Ontario M5H 3S8

Attention: Illana Singer, Legal Counsel

Alberta Securities Commission
Alberta Stock Exchange Tower
4th Floor, 300 – 5th Ave S.W.
Calgary, Alberta T2P 3C4

Attention: Marsha Manolescu/Jennifer Wong

The Manitoba Securities Commission
1130 - 405 Broadway
Winnipeg Manitoba R3C 3L6

Attention: Wayne Bridgeman

Saskatchewan Financial Services Commission
6th Floor
1919 Saskatchewan Drive
Regina, Saskatchewan S4P 3V7

Attention: Ian McIntosh

Commission des valeurs mobilières du Québec
800, Square Victoria, 22nd Floor
Tour do la Bourse
P.O. Box 246
Montréal, Québec H4Z 1G3

Attention: Denise Brosseau, Secretary

British Columbia Securities Commission
701 West Georgia Street
P.O. Box 10142, Pacific Centre
Vancouver, B.C. V7Y 1L2

Attention: Tracy Hedberg/Pamela Egger

Dear Sir/Madam:

Re: Comments on Proposed National Policy 41-201(the "Policy")

With respect to the above noted Policy, Canadian Oil Sands Limited (the "Corporation") and Canadian Oil Sands Trust (the "Trust"), (collectively, "Canadian Oil Sands"), would like to submit the following comments for your consideration. Both the Corporation, which manages the Trust, and the Trust are reporting issuers under the applicable securities legislation in Canada.

Canadian Oil Sands supports the Canadian Securities Administrators' recognizing the need to address some of the ambiguity in the current legislation regarding income trusts and indirect

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offerings by the operating subsidiaries or affiliates of income trusts. We strongly believe that a public issuer, whether it is a trust or a corporation, should be treated on a "level playing field" in terms of disclosure and the type of information to which a potential or actual investor has access.

While we agree with the general scope and intent of National Policy 41-201, we believe that there are some items which are inappropriate or, in some cases, even potentially misleading to investors. In that regard, we make the following submissions:

1. **Part 1, Section 1.1 and 1.3 – What is the purpose of the Policy? and What is an operating entity?**

   We believe that the Policy needs to add clarifying language that only the material subsidiaries or operating entities are included in provisions of the Policy. For example, if there are subsidiary entities which constitute less than 20 per cent of the overall consolidated operations of a trust, there should not be specific disclosure (such as separate financial statements or detailed disclosure) required in relation to such smaller entities if those smaller entities comprise a different segment of the business. Information regarding these smaller entities should simply be part of the general information relating to the trust if all of the entities operate the same type of business. An analogous position is a corporation which derives its income from several subsidiary companies. Large oil and gas entities typically have their operations in several segregated legal entities yet report the information on an overall consolidated corporate basis along business segments in accordance with the securities rules and regulations. We believe that the current legislation as it relates to disclosure of subsidiary interests of a corporate issuer should be applied equally to the disclosure requirements for an issuer which is a trust.

   We also submit that the Policy should clarify that reorganizations of a trust and its subsidiary structure should not be included in the Policy unless there is an issuance of a security to the public outside of the trust (e.g. shares and partnership interests may be transferred and issued among the entities below the trust without additional disclosure or filing requirements; only if the public is being issued a security of a subsidiary entity as part of such restructuring should additional disclosure be triggered). Again, this approach would place trusts on the same basis that corporate reorganization or tax effective restructuring is completed when involving an all "corporate" structure. There should not be a "two-tier" system that has one set of disclosure requirements for a corporate reporting issuer and a more onerous set of disclosure requirements for a trust reporting issuer.

2. **Part 2 A, Section 2.2 – Does an income trust's distributable cash provide an investor with a consistent rate of return?**

   Canadian Oil Sands concurs that an investment in trust units of an income fund is an investment in an equity security and not a bond or debt instrument. We would respectfully submit, however, that the reference to "non-taxable return of capital" in this section and in sections 2.4 and 5.2 of the Policy to "tax-deferred" returns of capital are misleading in that a return of capital may or may not be taxable in particular circumstances. Rather, a portion of a distribution will be either taxable or non-taxable. The level of taxability of any particular distribution is dependent on the overall tax position of the issuer at the end of the year and is dependant on a number of factual

events. Additionally, it should be noted that if a corporation makes a distribution the distribution will either be taxable or non-taxable depending on the nature of the distribution. If such corporate distribution is a return of capital, there would be the same effect on the investor (e.g. this issue is not only applicable to returns of capital for income trusts but also on corporations which are reporting issuers). We support the submissions made by the Canadian Association of Income Funds in this regard as a possible clarification of the Policy.

3. **Part 2 A, Section 2.4 – What cover page disclosure do we expect about distributable cash?**

Canadian Oil Sands does not believe that it is appropriate to have income trusts make the following statement on the cover page of the prospectus: "The pricing of the units has been determined, in part, based on the estimate of distributable cash for the year ended* on page *". In the case of Canadian Oil Sands and, we would submit a number of other income trusts, the price paid for trust units is not a function of the distribution levels but instead is a function of the underlying value of the assets and business that the trust operates. In our case, distributions are relatively small compared to other income trusts and instead we believe that investors are looking at the potential cash flow that may be available in future years. This position is analogous to how shares of a corporation are priced. While investors consider the distribution history of an issuing entity, investors need to be aware that, just as a corporation may change its distribution policy, so too may an income trust. Accordingly, we believe that it is misleading to infer that a particular value is derived from a "flow of investment income". The proposed language under Section 2.4 may lead investors to attribute a higher weighting to the payment of distributions than is appropriate for the nature of the particular income trust.

We also submit that the requirement to state "The estimated portion of your investment that will be taxed as a return of capital is __ and the estimated portion that will be taxed as a return of capital is__" is not useful information for the investor and would cause additional expense and time expenditures to the issuer. The taxability of any distributions is a function of a number of factors such as the amount of production where royalty income is involved, the availability of capital deductions in the year, the acquisition activity of the trust in the year, and numerous other factors. In our own case, each quarter entails further calculation and modeling to determine the anticipated tax impact relating to distributions. We believe that, due to the number of factors involved in the calculation which may change over a twelve month period, inserting the above requirement would not accurately reflect the taxable position at the end of the year. Accordingly, we believe that this information is not useful to the investor and in fact may be misleading without a long list of qualifications being inserted by the issuer to explain the variability of the calculations. Given the assumptions and qualifications that would need to be inserted into the prospectus, we believe that an investor would not find the information to be meaningful or useful. There would also be the added expense and time involved to the trust in being able to make such forecast of the tax position. We would also point out that there is no similar requirement that a reporting issuer who is a corporation disclose the amount of tax that they estimate paying in the year. The amount of tax payable by a corporate issuer has an equal impact on the amount of funds available for the corporation to re-invest in the business or distribute to its shareholders. In our view, requiring disclosure by a trust as to the taxability of the distributions creates unequal treatment where there is no equivalent provision requiring an issuing

corporation to disclose in advance how much tax the corporation would expect to pay in the upcoming year.

4. Part 2 C, Sections 2.6 and 2.7 – Why are we concerned about the operating entity's short-term debt? and What disclosure do we expect about short-term debt?

We believe that the proposed disclosure is too expansive and does not provide useful information to the investor. Investors in any reporting issuer should have an understanding of the short-term and long-term liabilities of the issuer and any significant terms or conditions which could impact the operations or financial position of that reporting issuer. We would note that most income funds generally operate with more modest financial ratios than a number of corporations. Accordingly, we would submit that the proposed Policy is discriminating against income trusts compared to how the Canadian Securities Administrators treat corporate reporting issuers. The proposed level of disclosure goes well beyond any similar requirement that is applicable to non-trust reporting issuers. We agree that any debt arrangements that are significant should be disclosed. However, to specifically designate that credit agreements are material contracts and to require the trust to file them on SEDAR causes undue hardship. Many credit agreements are confidential so that both the borrower and the lenders are not prejudiced in their discussions with other parties in relation to certain covenants. To require credit agreements to be filed on SEDAR would require consents from the lenders and would seriously prejudice the borrower's ability to negotiate favourable terms with lenders and other third parties. This requirement would also create an unfair advantage for corporate issuers who are not required to make this type of filing disclosure. We respectfully submit that most investors would either not know how to read and interpret the 60 plus page credit agreements or would find the exercise too time consuming to be of any use. The more relevant requirement would be for all issuers (trusts and corporations) to provide adequate disclosure in the financial statements, the prospectus or other continuous disclosure documents. We believe that by describing the overall debt obligations, the investor will be better informed and find the disclosure more useful and accessible. This approach is one that should treat all reporting issuers the same. Income trusts and their operating subsidiaries should not be singled out for different treatment than a corporate reporting issuer.

Additionally, the language in the Policy does not exclude inter-company debt between not only the trust and its operating entity but also among the entire "corporate structure". Often the operating entity has debt owing to other affiliates that are subsidiaries of the trust just as corporations often have inter-company debt amongst the corporate family. We believe that as a minimum, there should not be a requirement for the disclosure of any short-term debt obligations which are owed within the overall ownership structure of the trust or any debt which would be eliminated upon consolidation of the financial statements for the trust nor should ordinary course short-term debt obligations be required to be disclosed in the detail currently contemplated by the Policy.

5. Part 2 D – Stability Ratings

Canadian Oil Sands believes that stability ratings offer no valuable information to an investor and, in fact, may create confusion and misinterpretation of what an investment in an income fund is. Investment in trust units of an income fund is not an investment in a bond, a fixed rate of return type of security or debt security. It is an investment in an equity security. Stability ratings are issued by bond rating agencies and many of the

investors may view a stability rating as a sign that they are investing in a fixed income security or bond. While the Policy does not require a stability rating, the requirement to explain why a trust does not have a rating implies that an issue exists if no rating is obtained. The negative optics of this position may force management to spend the time and effort to seek a rating so that their issuer is not the "exception" in the market place. We strongly recommend deleting this provision of the Policy.

6. **Part 2 E, Section 2.14 – Determination of unit offering price**

   Again, the current disclosure rules regarding the acquisition of a significant business should be applied to the operating entity that a trust is purchasing just as these rules today apply to a corporate issuer. We do not believe that there should be any lesser or greater disclosure required where a trust and its operating entity versus a corporation are making the acquisition.

7. **Part 2 F – Executive Compensation**

   We strongly support the Policy's disclosure in this regard.

8. **Part 3 – Continuous Disclosure – Reporting obligations relating to the operating entity**

   We support full disclosure of the operating entity of a trust. However, we believe that the appropriate level of disclosure is already achieved by providing consolidated financial information in accordance with Canadian generally accepted accounting rules. Alternatively, if the operating activities of the subsidiaries are not consolidated, we believe that your proposed rules are appropriate. We also support the submissions made by the Canadian Association of Income Funds in respect of **Section 3.2 Comparative financial information**.

9. **Part 5, Section 5.1. – Sales and marketing materials – What are our concerns about sales and marketing materials?**

   The Policy defines "Yield" to mean "the return (other than a return on capital) that would...". We do not understand what this means since the term "return" is generally meant to be the total amount distributed by an issuer divided by the market price of the issuer's particular security to which the distribution applies. We also believe that if the trust does not use the term "yield" in any of its marketing or sales materials, then there should be no requirement to provide the information contemplated by the Policy in regard to this matter. We believe that your use of the terms "return of capital" throughout the Policy may in fact create confusion in the market place. The term "return of capital" has a different meaning from a financial perspective as compared to a tax perspective. We would submit that the more appropriate terms to use are "taxable" and "tax deferred" distributions. For example, an entity which distributes all its surplus cash while at the same time not spending sufficient capital to replace existing reserves or assets is, in a financial sense, providing a return of capital to the investor when it makes this distribution. From a tax perspective though, this may be a different result. Therefore, we believe stating that distributions will be made which are taxable and tax deferred without giving specific percentages as to how much is taxable until the end of the year provides clear and more effective information to investors.

We would also recommend that the Policy be expanded to clarify how the existing rules regarding Audit Committees and CEO/CFO certifications under MI 51-109 and MI51-110 apply to trusts if these items are not clarified in the final rules for these Multi-national Instruments. Canadian Oil Sands has made specific submissions to the Canadian Securities Administrators in relation to these instruments and we would be pleased to forward a copy of those submissions to you should you wish.

Should you have any questions, or require anything further, please do not hesitate to contact me directly at (403) 218-6240.

Yours truly,

CANADIAN OIL SANDS LIMITED

Trudy M. Curran
General Counsel and Corporate Secretary

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