December 23, 2003

Ontario Securities Commission
Alberta Securities Commission
British Columbia Securities Commission
Commission des valeurs mobilieres du Quebec
Saskatchewan Financial Services Commission
The Manitoba Securities Commission

c/o Ilana Singer
Legal Counsel, Corporate Finance
Ontario Securities Commission
Suite 1900, Box 55
Toronto, Ontario
M5H 3S8

Dear Sirs:

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

The Committee on Corporate Reporting ("CCR") of Financial Executives International (Canada) ("FEI Canada") is pleased to have the opportunity to provide comments to the Commissions on the proposed National Policy 41-201 as outlined in the Request for Comment dated October 24, 2003. The following remarks are made on behalf of the Committee and do not necessarily represent the views of FEI Canada or its members.

FEI (Canada) is an all-industry professional association for senior financial executives, with eleven chapters across Canada and approximately 1,500 members. Membership is generally restricted to senior financial officers of medium to large corporations. CCR is a technical committee of FEI Canada, which reviews and responds to research studies, statements, pronouncements, pending legislation, proposals and other documents issued by domestic and international agencies and organizations.

CCR recognizes the need for a policy on income trusts and other indirect offerings but has concerns with certain provisions of the proposed policy. Responses to the Commissions' specific requests for comment as well as CCR's views on other aspects of the proposal are noted below.

Part 1 - Introduction

Do you agree that the scope of the Policy is appropriate?

Yes, we believe that there has been some confusion as to how the existing securities regulatory framework applied to income trusts and other indirect offerings which have become a significant part of the securities market over the last few years. We also support the view that income trusts and other indirect offerings should be held to the same standard as direct offering structures.

Do you think that the discussion about indirect offerings is clear? Do you agree with the distinctions that we make between direct and indirect offerings?

Some additional clarity that an operating entity itself may be a holding company with its business activities carried out in other legal entities would be desirable. Otherwise the discussion is clear.

We would agree that in an initial public offering (IPO) by most income trusts, the vendors of the business and the income trust are generally not arms-length parties. However, following the IPO any subsequent offerings by an income trust would, we believe, generally be considered arms-length due to the role of the independent trustees/ directors and the related party transaction rules in the negotiation of any transactions (whether with the original vendor or another entity). This difference is not clear in the discussion.

As currently drafted, the Policy is targeted to all market participants, including issuers, their advisors, and investors. Do you think that the format of the Policy is easy for market participants to follow? Do you think that the Policy would be easier to follow if it were divided into a number of different parts? For example, do you think that separating the descriptive part from the core guidance would be helpful?

The policy has been structured in a logical way and is relatively easy to follow. As the policy is already divided into a number of different parts which aid understanding, further subdivision is not necessary. However, a summary of the core guidance only would be a useful addition, allowing market participants to quickly access the required elements without reading the entire document.

Part 2 – Prospectus Disclosure: Unique Attributes of Income Trusts

We are considering whether to give direction regarding the risk factors that issuers describe in relation to the operating entity. Do you agree that this guidance would be appropriate?

CCR agrees that guidance with respect to risk factors relating to the operating entity is useful in order to enhance the prospective investor's ability to properly compare investment opportunities. Cash distributions can be significantly affected not only by the financial performance of the operating entity, including the sustainability of its margins, but also by its short term debt obligations, fluctuations in its working capital, and capital expenditure requirements. Therefore, we believe that National Policy 41-201 should expressly state that risk factor disclosures must include the risk factors material to the operating entity (or entities) as well as risk factors material to the issuer. CCR does not believe that the specific factors can be listed in the Instrument because they are unique to each trust. This is consistent with existing National Instrument 41-501 (General Prospectus Requirements) only requires risk factors material to the issuer.

A. Distributable Cash

We recommend that issuers include in their cover page disclosure a breakdown of the anticipated distributable cash figure that sets out its estimated "return on" versus "return of" capital. We believe this breakdown would provide investors with important information regarding their investment. Do you agree with this recommendation?

Prospective investors should be informed that the form of cash distribution may change over time. However, representations should not be made as to the estimated after-tax yield of units. Estimates of the allocation of distributed amounts between taxable income and return of capital may be dependent on tax elections that may be final at the time that the prospectus is filed, and may change over time. Therefore, instead, there should be a cross-reference to a section that explains Canadian Federal income tax considerations. The after-tax return to unitholders subject to Canadian federal income tax from an investment in units will depend on the composition of the underlying distributions paid.

B. Distributable Cash: Non-GAAP Measures

Full reconciliation of all non-GAAP measures should be completed in order to enhance comparability for financial analysis and minimize confusion or the potential for misleading investors. Wherever a non-GAAP measure is disclosed, the GAAP measure should be disclosed with equal prominence. This should include graphical representations. In all cases, an explanation should be provided as to how management uses the non-GAAP measure.

C. Short Term Debt

It is difficult to reconcile the view of the Commission that five-year debt (assuming bullet repayment) is short term with the normal concept of short-term debt for accounting purposes.

That said, the capital structure of an income trust includes third party debt and the Commission is correct in that certain events related to the outstanding debt of an income trust could affect cash distributions. Current reporting requirements include appropriate disclosure for long term debt, including, in certain cases, an estimate of estimated payments due in the next five years. Therefore, current reporting standards include extensive disclosure on long-term debt, which should be satisfactory.

Certain of the risks mentioned by the Commission (renewal, interest rate changes on floating debt) are best described in the MD&A.

The concept of additional disclosure for debt maturing within one year, including commentary on the related renewal risk, is reasonable.

We do not agree that filing the credit agreement on SEDAR is necessary, as the contract is no less material for equity financed companies, where it is not required to be filed and may not be disclosed. Filing of the credit agreement discloses the full nature of the credit relationship between the income trust and its banker(s), which normally is not publicly available information.

D. Stability Ratings

Do stability ratings play a valuable role in an investor's decision?

It is difficult to concur that a stability rating by itself will facilitate investment decisions, as such ratings normally include caveats about applicability to investment decisions. In addition, the great majority of diversified income trusts currently do not have stability ratings, and have still managed to raise billions of dollars in the public equity markets. CCR believes that if investors find stability ratings to be useful they will be provided by the management of the income trust.

We are concerned that investors may have difficulty comparing income trusts. Do stability ratings offer an appropriate and effective means of comparison? Is there a more appropriate or effective method?

The Commission is concerned as Distributable Cash is an important metric in the investment decision, and as it is a non-GAAP measure, comparability between Trusts is allegedly difficult. We believe the best way to facilitate such a comparison is to ensure that the underlying business model is clearly explained, including related significant risks. Clear, full disclosure (and appropriate reconciliations) of distributable cash would facilitate the ability to make the comparison which the Commission is seeking.

The above recommendations for disclosure should ensure that an investor has the information necessary to facilitate a comparison between trusts. Fundamental research remains an effective method of comparing income trusts.

Part 3 - Continuous Disclosure

We are considering asking that issuers who disclosed expected distributable cash to provide, on an annual basis, an updated comparison of distributed and distributable cash to the expected distributable cash figure. We are also considering recommending that issuers include in this annual update a breakdown of distributed and distributable cash between the "return on" versus "return of" capital to allow investors to analyze the tax attributes of their return. What do you think of these recommendations?

A comparison of distributed and distributable cash to expected distributable cash increases accountability and provides investors with a readily available analysis. The continuous disclosure policy should consider that a fund's distribution policy changes over time and therefore a comparison to the targets originally outlined in a prospectus may not be the most appropriate. For instance, the objective of many funds is to grow distributions modestly over time. Therefore, a comparative analysis may be more appropriate using a fund's current guidance rather than that originally outlined in the prospectus. A comparative analysis could be made based on current guidance and prospectus guidance.

A breakdown of distributions between "return on" and "return of" capital will improve an investor's ability to calculate the total potential return of a fund's distributions and will also support tax calculations.

CCR hopes its comments will be useful to the Commissions as it continues its deliberations on the proposed policy. If you require further clarification with respect to any of our comments, please do not hesitate to contact us.

Yours very truly,

Karyn A Brooks

Karyn A. Brooks, CA
Chair
Committee on Corporate Reporting
Financial Executives International (Canada)