RBC Capital Markets

RBC Dominion Securities Inc.
P.O. Box 50
Royal Bank Plaza
Toronto, Ontario M5J 2W7
Telephone: (416) 842-8900

December 23, 2003

Ontario Securities Commission
Alberta Securities Commission
British Columbia Securities Commission
Commission des valeurs mobilières du Québec
Saskatchewan Financial Services Commission
The Manitoba Securities Commisison

c/o

Ilana Singer
Legal Counsel, Corporate Finance
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-3683 and Email: isinger@osc.gov.on.ca

and

Denise Brosseau, Secretary
Commission des valeurs mobilières du Québec
800, Square Victoria, 22nd Floor
Tour de la Bourse
P.O. Box 246
Montréal, Québec H4Z 1G3
Fax: 514-864-6381 and Email: consultation-en-cours@cvmq.com

Dear Sirs/Mesdames:

Re: National Policy 41-201 – Income Trusts and Other Direct Offerings

We are writing in connection with the October 24, 2003 request for comments on proposed *National Policy 41-201 – Income Trusts and Other Indirect Offerings*.

RBC Capital Markets has been a leader in structuring and executing REIT and income trust initial public offerings and follow-on financings in Canada for over ten years and would like to take this opportunity to indicate our support for this CSA initiative.

RBC Capital Markets is a founding member of the Canadian Association of Income Funds (CAIF) and an active member of both CAIF and the Canadian Institute of Public and Private Real Estate Companies (CIPPREC). RBC Capital Markets actively participated in the preparation of the accompanying submissions made by CAIF and CIPPREC. Both submissions represent the views of RBC Capital Markets in relation to the proposed National Policy. This letter underscores our concurrence with

and strong support for the CAIF and CIPPREC submissions without repeating the comments contained therein.

Should you require any further information on the views of RBC Capital Markets in relation to the proposed National Policy, or clarification of any of its views expressed through the CAIF and CIPPREC submissions, please do not hesitate to contact Carolyn Blair (Managing Director, Real Estate Group, 416-842-8915) or William Wong (Managing Director, Global Investment Banking, 416-842-8926).

Respectfully submitted,
RBC Capital Markets

Enclosures

VIA FACSIMILE, COURIER AND EMAIL

December 19, 2003

Ontario Securities Commission
Alberta Securities Commission
British Columbia Securities Commission
Commission des valeurs mobilières du Québec
Saskatchewan Financial Services Commission
The Manitoba Securities Commisison

c/o

Ilana Singer
Legal Counsel, Corporate Finance
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-3683 and Email: isinger@osc.gov.on.ca

and

Denise Brosseau, Secretary
Commission des valeurs mobilières du Québec
800, Square Victoria, 22nd Floor
Tour de la Bourse
P.O. Box 246
Montréal, Québec H4Z 1G3
Fax: 514-864-6381 and Email: consultation-en-cours@cvmq.com

Dear Sirs/Mesdames:

Re: National Policy 41-201 – Income Trusts and Other Direct Offerings

INTRODUCTION AND INFORMATION CONCERNING OUR ASSOCIATION

We are writing in connection with the October 24, 2003 request for comments on proposed *National Policy 41-201 – Income Trusts and Other Indirect Offerings*.

CIPPREC is a national association comprised of the largest owners, developers and managers of commercial real estate in Canada, including real estate investment trusts (REITs), publicly-traded and large private companies, banks, brokerages, crown corporations, investment dealers, life insurance companies and pension funds. Our members currently own in excess of $70 billion in real estate assets located in the major centres across Canada, including retail, office, industrial, hotel, multi-residential

and seniors housing. Almost all of the 23 Canadian REITs are members of CIPPREC. A listing is attached as Schedule “A”. For more information concerning our association, please refer to our website (www.cipprec.ca).

OVERVIEW OF OUR COMMENTS

Our comments on the proposed policy are intended to provide you primarily with the perspective of existing Canadian REITs (which constitutes the subset of our members that we expect will be most directly impacted by the proposed policy). However, to the extent relevant, we have also provided some insights on how the proposed policy may impact real estate businesses that may choose to adopt a REIT structure in the future (whether as an initial public offering or through the “conversion” of an existing public corporation).

In providing our comments on the proposed policy, we have been guided by the following principles:

- the regulation of REITs from a securities law perspective should be designed to ensure that REITs operate on a “level playing field” with public real estate and other types of public corporations; and

- securities regulation should be designed primarily to ensure that investors are provided with appropriate information to make an informed investment decision – it should not (and arguably cannot) protect investors who do not properly consider potential alternative investments (or seek professional advice, to the extent that they are unable to so consider alternatives on their own).

In preparing this letter, we had the benefit of reviewing the comments of the Canadian Association of Income Funds (CAIF) on the proposed policy, which were set out in its letter to you dated November 26, 2003. We believe that the comments of CAIF are very constructive and, in most respects, equally relevant from the perspective of a REIT. In order to avoid unnecessary duplication in the comment process, we have not repeated many of those comments although, in certain instances, we have specifically endorsed comments set out in the letter from the CAIF.

SPECIFIC COMMENTS ON THE PROPOSED POLICY

Our specific comments on the proposed policy are set out below. For convenience of reference, we have set out our comments under the specific section of the proposed policy upon which we are commenting.

Section 1.6

See our comments below under the heading “Part 4 – Prospectus Liability”.

Section 2.2 – Consistency of Rate of Return

We agree with, and endorse, the comments made by CAIF in its letter to you with respect to the references to "non-taxable" returns of capital. We believe that the comments of CAIF are particularly relevant in the context of REITs because a large portion of the distributions of many REITs constitute "tax deferred" returns of capital (ie returns sheltered by the application of capital cost allowance to buildings and equipment).

Section 2.4 – Cover Page Disclosure relating to Distributable Cash

In its response to you, CAIF indicated that:

> Under the proposed instrument, issuers will be required to set out the following on the face of the prospectus; *"The estimated portion of your investment that will be taxed as a return on capital is ● and the estimated portion that will be taxed as a return of capital is ●".* We do not believe it is appropriate to assume that this information will be available consistently for every issuer. We are concerned that in order to estimate and insert the amounts expected to be applicable to each category of taxable portions, issuers will effectively need to develop detailed forecasts of their expected financial information which would need to be supported by a formal forecast included in the prospectus. If so, this will add significantly to the cost of the prospectus filing and increase the length of time needed for the offering process. We ask that you delete the requirement of providing the actual expected dollar amounts under each category of tax. Issuers that are in a position to provide this information can still do so without it being a requirement.

We agree with, and endorse, this comment. However, if you do not agree with the deletion of the above-noted disclosure, at a minimum, we would recommend that the proposed language be revised to:

- limit the time period for which the issuer must provide such estimates; and
- emphasize the uncertain nature of any such estimates because of their dependence on future developments in the business and affairs of the issuer.

We would suggest that the recommended disclosure be substantially similar to the following:

> Management of the [Fund] has estimated that, for the [twelve-month] period commencing on the closing of the Offering, the portion of your investment that will be taxed as a return on capital is ●% and the portion that will be taxed as a return of capital is ●%; however, this estimate should not be regarded as a forecast or projection of these portions and the actual portions may vary from these estimates, and such variation may be material.

Sections 2.6 through 2.9 (inclusive) – Short-term Debt

Disclosure

We believe that proposed level of disclosure set out in Sections 2.7 and 2.9 of the proposed policy relating to short-term debt is generally appropriate and useful information from an investor's perspective. However, we believe that:

- the disclosure should be explicitly limited to "material" short-term debt so as to avoid the impression in the proposed policy that an issuer is required to provide detailed disclosure regarding *all* short-term debt, regardless of its significance;

- in appropriate cases (such as where an issuer has several short-term debt obligations), an issuer should be explicitly permitted to provide disclosure substantially similar to that contemplated in Section 2.7 on an aggregated basis;

- more relevant information for REITs would be whether debt is fixed or floating rate debt, and aggregate debt maturities, since these are factors that may harm a REIT if not well managed. The REITs generally disclose these today.

In our view, these changes to Section 2.7 of the proposed policy will ensure that the disclosure being provided to an investor is not unduly voluminous and limited to material information.

Filing Short Term Debt Instruments as Material Contracts

We do not believe that it is appropriate to designate the agreements relating to short-term debt of an issuer as "material contracts", thus requiring issuers to file the agreements on SEDAR. We are of this view for three reasons:

- financing agreements often contain sensitive commercial information concerning an issuer's business and the terms of its financing;

- the financing arrangements between an issuer and its lender(s) are generally dynamic and involve frequent interaction between the issuer and the lender(s), such that a person simply reviewing the agreement relating to such financing is unlikely to obtain a meaningful understanding of the arrangements and may, in fact, be unintentionally misled concerning the precise nature of those arrangements; and

- to the extent that the proposed policy implies that income funds (including REITS) are to be subject to a more onerous requirement with respect to filing financing agreements, this distinction is unwarranted and may put income funds at a competitive disadvantage in relation to public corporations.

We believe that all of the concerns identified by you in Sections 2.6 through 2.9 (inclusive) of the proposed policy are adequately addressed through the disclosure set out in Sections 2.7 and 2.9 and that the additional obligation to file the agreements relating to short-term debt of an issuer as “material contracts” is not justified in the circumstances.

Sections 2.10 through 2.13 (inclusive) – Stability Ratings

We have serious concerns about the requirements of the proposed policy relating to stability ratings.

- there is no pervasive use of stability ratings to date in the REIT industry, and some REITs may be skeptical of the objectivity and reliability of stability ratings applied to something as transparent as real estate;

- rating agencies are for-profit businesses, have no professional accreditation, and may make their subjective assessments without particular accountability;

- as noted in CAIF’s letter to you, stability ratings merely perpetuate a myth that income funds are similar to bonds or other fixed-income securities and may confuse retail investors;

- other issuers, including issuers of debt securities, are not generally required to obtain stability or similar ratings or to disclose the reason for not obtaining such ratings. In this regard, we believe that the requirement that an income fund should obtain a stability rating or disclose its reason for not doing so to be a fundamental departure from the traditional offering process that encourages full, true and plain disclosure of an issuer’s business and the risks associated with that business and, based upon that information, permits an investor to undertake an analysis of that information and make an informed investment decision.

- Many of our members are concerned that the proposed policies regarding stability ratings will give a false sense of security, particularly in the minds of retail investors, who may not understand that stability ratings represent a subjective measurement of a group of parameters which are less transparent and much more narrow in scope than those which are considered in bond ratings and very significantly more narrow than those which are considered in fundamental research analysis of equities such as REITs, Income Trusts and Royalty Trusts. Through their own description of stability ratings, one of the rating agencies acknowledges that “there is a primary distinction between credit (i.e. debt) and stability ratings in that the credit ratings opine on the likelihood that an issuer will fulfill fixed principal and interest payment obligations. Stability ratings, in contrast, are determined in relation to distributions that are not fixed, but are variable in nature”.

For these reasons, we strongly urge you to delete the references in the proposed policy relating to stability ratings.

Section 2.14

The OSC's proposed policies suggest that valuations should be disclosed and made available on Sedar. REIT IPO prospectuses generally are disclosed and made available on Sedar. However, many REIT Declarations of Trust require an appraisal for every acquisition of real property throughout the life of the REIT. The disclosure and posting of such appraisals on an ongoing basis would represent a significant competitive disadvantage to the REIT as the appraisals will likely contain sensitive confidential information concerning tenant lease rates and expiries. Such disclosure, because of its volume, would also represent an unfair burden for the REITs compared to corporations in accessing the equity markets as short form issuers. As a result, we do not believe this should be a requirement.

PART 4 – PROSPECTUS LIABILITY

We do not intend to comment substantially on the prospectus liability sections of the proposed policy because we believe that others are in a better position to do so. However, we believe that there is one aspect of the prospectus liability sections that is particularly relevant to REITs and that requires clarification.

Because of the nature of the business of a REIT, it is not unusual for a REIT to undertake a public offering of its units in the context of acquiring a portfolio of real estate properties. Such an offering can occur in the context of the initial public offering of a new REIT or an acquisition by an existing REIT. In most cases, the vendor of the real estate properties is not the promoter, not involved in the establishment, or associated with the management, of the REIT but is simply selling its properties to the REIT. In the context of these types of transactions, we believe that the proposed policy might lead to unintended confusion and market-chilling liability.

Section 1.6 of the proposed policy suggests that where the issuer and the vendor(s) of a business or assets negotiate at arm’s length and the vendor is not directly involved in the offering process, the concerns associated with indirect offerings do not generally arise and the principles set out in Part 4 of the proposed policy are not applicable. However, portions of Part 4 of the proposed policy raise some uncertainty in this regard. In particular,

- certain portions suggest that a vendor may be a “promoter” if it receives a “significant portion” of the offering proceeds, and

- it is not clear whether simply receiving a portion of the offering proceeds may suggest that a vendor is “involved” in the offering process.

We believe that it would be helpful if the proposed policy made it clear that where there is a *bona fide* arm’s length negotiation between the issuer and a vendor and the vendor is not involved in the offering process and does not have the ability to materially affect control of the issuer (other than to the extent that it is receiving a portion of the offering proceeds as the balance due on closing of its sale), the principles set out in Part 4 of the proposed policy are not applicable. Otherwise, any uncertainty with

respect to this matter may place a REIT at a competitive disadvantage with other potential purchasers in the context of acquiring a new business or material assets because the vendor may be concerned that the securities regulators may impose additional liability on the vendor (or, if the vendor refuses to accept such liability, that the issuer will not be able to finance the acquisition).

* * *

We hope that you will find the foregoing comments of assistance in your review of the proposed policy. Please contact the undersigned should you require further information, or require clarification on any of the above, at 416.642.2700 ext 25.

Yours very truly,

S. Michael Brooks
Executive Director

SCHEDULE "A"

CIPPREC MEMBER REITS

Alexis Nihon REIT
Allied Properties REIT
Borealis Retail REIT
Calloway REIT
CAP REIT (Canadian Apartment Properties)
CHIP REIT (Canadian Hotel Income Properties)
CREIT (Canadian Real Estate Investment Trust)
Dundee REIT
H & R REIT
InnVest REIT
Legacy Hotels REIT
Morguard REIT
Northern Property REIT
O&Y REIT
Residential Equities REIT
Retirement Residences REIT
RioCan REIT
Summit REIT
TGS North American REIT

Canadian Association of Income Funds

CAIF ACFR

Attention Business/Financial Editors:

The Canadian Association of Income Funds announces comments and support for National Instrument 41-201 issued on October 24th by the Canadian Securities Administrators

Toronto, Nov. 27 / CNW/ - Yesterday, the Canadian Association of Income Funds (CAIF) provided a written submission to the Canadian Securities Administrators (CSA), in response to CSA's proposed National Instrument 41-201 (Income Trusts and Other Indirect Offerings), issued for comment by CSA on October 24, 2003.

CAIF is a national association of Canadian public income funds, publicly-listed partnerships, income trusts and royalty trusts that own active businesses, more commonly referred to as Income Funds. The Income Fund sector reflects a significant portion of all listings on the Toronto Stock Exchange, with a combined market capitalization of more than $75 billion. From its beginning less than a year ago, CAIF currently represents the interests of more than 33 members, from coast to coast. CAIF's web site is located at www.caif.ca

CAIF believes that the CSA's proposed set of recommendations will encourage the long-term development of Income Funds by enhancing the quality and nature of prospectus and continuous disclosures of Income Funds.

However, through discussion with many of its members, CAIF identified a number of issues that the various securities regulators within CSA may wish to consider prior to finalizing the proposed instrument. These detailed comments are set out below on the following pages of this press release.

CAIF has also offered to provide the CSA with additional assistance in the ongoing development of the proposed instrument.

For further Information

Stephen Probyn, Chairman of CAIF, at 416-777-2800.
Margaret Lefebvre, Executive Director of CAIF, at 514-935-4131.
Steve Rotz, Vice President Ontario of CAIF, at 416-696-7700, extension 5278.
Sean McMaster, Vice President Western Canada, at 403-920-2118.
George Kesteven, Vice President Western Canada, at 403-699-7367.

Detailed Comments

Selected quotes from CAIF's detailed comments on the proposed national instrument "NI 41-201" are set out below. This summary refers to the Part numbers and paragraph titles set out in the proposed instrument which is available on CAIF's web site www.caif.ca.

"**Part 2.2 (Does an income trust's distributable cash provide an investor with a consistent rate of return?)**: We support your view that investing in an Income Fund is more like an investment in an equity security. Some market participants refer to Income Funds as "high-yielding equities." However, within Part 2.2, you make several references to *"non-taxable"* returns of capital and these references may be misleading. We would prefer that you change such references throughout the instrument (see also Parts 2.4 and 5.2) to "tax deferred" returns of capital. The portion of distributions that are allocated to "return of capital" merely mean that the adjusted cost base of the investor's ownership is reduced, thereby leading to an increase in the investor's taxable gain on sale of the securities; that is, a deferral of tax until the date of sale, rather than during the investor's holding period. We think you should consider extending the last sentence of Part 2.2, and the second last sentence of Part 2.4, to make this clear. You may also wish to point out that, under current tax law, the effective tax rate on capital gains is more favourable than is applicable to ordinary income and that the general consequence of distributions that include returns of capital will be to "convert" taxable income into taxable capital gains.

Part 2.4 (What cover page disclosure do we expect about distributable cash?): Under the proposed instrument, issuers will be required to set out the following on the face of the prospectus: *"The estimated portion of your investment that will be taxed as a return on capital is - and the estimated portion that will be taxed as a return of capital is -."* We do not believe it is appropriate to assume that this information will be available consistently for every issuer. We are concerned that in order to estimate and insert the amounts expected to be applicable to each category of taxable portions, issuers will effectively need to develop detailed forecasts of their expected financial information which would need to be supported by a formal forecast included in the prospectus. If so, this will add significantly to the cost of the prospectus filing and increase the length of time needed for the offering process. We ask that you delete the requirement of providing the actual expected dollar amounts under each category of tax. Issuers that are in a position to provide this information can still do so without it being a requirement.

Part 2.7 (What disclosure do we expect about short-term debt?): We would like to point out that Income Funds generally operate with modest financial leverage. In addition, their management teams are typically more risk averse and thus often make greater use of interest-rate hedging and/or refinancing-risk mitigating strategies.

Part 2.8 (Are agreements relating to the operating entity's short term debt material contracts of the income trust?): We agree that the debt arrangements are significant items that require proper disclosure. However, designating such credit agreements as a "material contract" (thus requiring issuers to file the full agreements on SEDAR) is not appropriate. The emphasis should be on ensuring adequate disclosure of the risks to investors as you have proposed within Part 2.9. If these requirements are not sufficient to

address your concerns, you should expand the disclosure requirements rather than insist that the credit agreements be filed on SEDAR.

Parts 2.10 to 2.13 (stability ratings et al): Many of our members believe that stability ratings merely perpetuate a myth that Income Funds are similar to bonds and further confuse retail investors. Stability ratings are issued by bond rating agencies. Many of our members are of the view that the management time and operating expense associated with obtaining a rating is not helpful for their investors or in the investors' best economic interests. In our view, while the proposed policy does not force Income Funds to obtain a stability rating, the disclosure requirements for Income Funds that do obtain a rating, or for describing why an Income Fund does not have one, appears to provide indirect support and endorsement by you for such ratings. This may have unintended consequences of investors believing that they are investing in a fixed income security. The direct answer to your question (within Part 2D of your request for comments), is that the most effective method of comparing income trusts is via rigorous, fundamental equity research, just as it is for comparing regular share corporations. We recognize that stability ratings may be helpful for certain sub-sectors within the Income Fund sector, but suggest that your proposed requirements for stability ratings be withdrawn.

Part 3.2 (Comparative financial information): This section of the proposed instrument deals primarily with instances where there has not been a change of control at the IPO and thus, the original carrying values of the assets are continued to be reported subsequent to the IPO. We note that preparing comparative information for periods prior to the IPO date can be problematic and perhaps not entirely helpful when presented together with information from the post IPO period(s). Often it is not simply a matter of the operating business (in which the Income Fund acquires interests) having operated in a different form (the proposed policy cites the "corporate" form as an example); for example, the operating business may have been operated as a division of a larger enterprise, or perhaps the operating business itself consisted of assets and businesses previously owned and conducted in whole or in part by a variety of legal entities. The pre-IPO period will likely differ as it relates to many items including arms length interest expense, public company expenses, debt levels, capital taxes as well as income tax expense and other balance sheet tax accounts. To provide a full set of financial statements of the prior period will add to the complexity of information presented and render some financial statements almost incomprehensible. To make such financial statements more comparable would often require several, material pro-forma entries. We recommend that the requirement to provide comparable information be limited to the line items from "revenue" down to and including "EBITDA," with adequate disclosure, to the effect, that the prior period excludes public company expenses and capital taxes that the entity will be required to absorb subsequent to the IPO. We also believe that the proposed required disclosures should only be made within the MD&A, rather than on the face of the financial statements. This will avoid confusion for the readers.

Part 5.1 (What are our concerns about sales and marketing materials?): Your definition of "Yield" states that it includes *"the return (other than a return of capital)."* We do not understand what this means. In our experience, the term "return" is usually used to mean the total amount to be distributed by an issuer divided by the market price of the particular share or unit, expressed as a percent. It is not at all clear to us why returns on

capital should be excluded from Yield, or for that matter why any distinction need be made between the streams of distributed cash paid to unitholders.