



Pension Investment Association of Canada

Association Canadienne des gestionnaires de fonds de retraite

December 13, 2004

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice,
Government of the Northwest Territories
Registrar of Securities, Legal Registries Division,
Department of Justice, Government of Nunavut

c/o Mr. John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, ON M5H 3S8

Via e-mail to: jstevenson@osc.gov.on.ca

**Re: Proposed National Policy 58-201 – Corporate Governance Guidelines
and Proposed National Instrument 58-101 – Disclosure of Corporate
Governance Practices, Form 58-101F1 and Form 58-101F2**

Dear Sirs/Mesdames,

This letter is submitted by the Pension Investment Association of Canada (PIAC) in response to the request for comment published October 29, 2004 on Proposed National Policy 58-201 – Corporate Governance Guidelines (the “Proposed Policy”) and Proposed National Instrument 58-101 – Disclosure of Corporate Governance Practices (the “Proposed Instrument”).

PIAC is the representative organization for pension funds in Canada in matters relating to investment. The Association presently represents 135 Canadian pension funds that manage over \$595 billion in assets for the benefit of more than six million Canadian beneficiaries. PIAC's mission statement is *"to promote the financial security of pension fund beneficiaries through sound investment policy and practices"*. This mission is the focus of all PIAC activities and is pursued by Members through its many programs and committee activities.

In our response to comments on proposed multilateral policy 58-201 and proposed multilateral instrument 58-101 dated June 15, 2004 (our "original response") we raised our concern that it was not clear whether MP 58-201 applied to the governance of income trusts. We are pleased to note that it is now clear that the Proposed Instrument and the Proposed Policy will apply to income trusts. As noted in our original response, PIAC believes that income trusts, which are becoming a larger and larger part of the securities marketplace, deserve particular attention when it comes to corporate governance.

As stated in our original response, income trusts can be extremely complicated structures governed by a combination of dozens of unique, complex documents the governance of which must be evaluated individually. Also, since the income trust unitholder owns securities which may be several layers removed from the corporation conducting the actual business of the trust, it is not enough for the Proposed Policy or the Proposed Instrument to apply only to the issuer level. Most corporate governance concerns are unlikely to surface at this level.

We are pleased that the Proposed Policy and the Proposed Instrument provide some guidance with respect to their application to income trusts. However, the only guidance with respect to income trusts in the Proposed Instrument is found in the Instructions to Form 58-101F1 and Form 58-101F2 which provides: "This Form applies to both corporate and non-corporate entities. Reference to a particular corporate characteristic, such as a board, includes any equivalent characteristic of a non-corporate entity. Income trust issuers should provide disclosure in a manner which recognizes that certain functions of a corporate issuer, its board and its management may be performed by any or all of the trustees, the board and management of a subsidiary of the trust, or the board, management or employees of a management company. In the case of an income trust, references to "the issuer" refer to both the trust and any underlying entities, including the operating entity."

We feel that this guidance is not sufficiently clear, we assume that it is intended that the statement "in the case of an income trust, references to "the issuer" refer to both the trust and any underlying entities, including the operating entity" applies to the entire Proposed Instrument (in particular section 2.1 of the Proposed Instrument) and not just to references to "the issuer" in the particular Form. It is necessary to clarify this point in order to ensure that the Proposed

Policy and the Proposed Instrument apply not just to the reporting issuer but to the underlying entities as well.

PIAC urges the securities regulators to facilitate investors' understanding of the complete picture of corporate governance practices at income trusts by ensuring that at a minimum, that the Proposed Policy and the Proposed Instrument apply specifically to the underlying business corporation in income trust structures, whether wholly-owned or not.

Respectfully submitted on behalf of the Members of the Pension Investment Association of Canada,

"J. R. Abbott"

**J. Richard Abbott
Chairman
Pension Investment Association of Canada**