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Kyler Wells
Legal Counsel, Corporate Finance
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8

Anne-Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria,
C.P. 246, 22^e Étage
Montréal, Québec H4Z 1G3

Sent via e-mail

Dear Sir and Madame,

The Ontario Teachers' Pension Plan is an independent corporation responsible for investing over \$96 billion in assets and administering the pensions of Ontario's 163,000 elementary and secondary school teachers and 101,000 retired teachers. On behalf of our members, we thank you for the opportunity to comment on the proposed amendments to National Policy 41-201 Income Trusts and Other Indirect Offerings. We hope that you find our comments thoughtful and relevant.

We are aware of the work done by the Canadian Performance Reporting Board ("CPRB") of the Canadian Institute of Chartered Accountants ("CICA") in defining distributable cash. We feel that the work of this group is significant and ought to be incorporated into the work done by the CSA. It is critical for investors to be able to rely on a definition of distributable cash so as to make meaningful comparisons across income trusts and within sectors.

It is equally important that the work of the CSA concerning income trusts be made into a rule. Consistency and clarity in reporting among trusts is an advantage to trusts in terms of attracting long-term, stable investors.

Our specific comments on NP 41-201 follow.

Part 2 – Distributable Cash

2.1 What is distributable cash?

Distributable cash and distributable income should not be used interchangeably as income and cash have different meanings. A clear definition of distributable cash would eliminate this problem.

2.3 How do the distribution policies of the income trust and the operating entity affect an investor's rate of return?

We fully support that distribution policies ought to be fully disclosed.

2.5 What disclosure do we expect about non-GAAP financial measures such as distributable cash?

The CPRB of the CICA has developed a definition of distributable cash which incorporates a reconciliation starting with cash flows from operations. This work ought to be leveraged in the CSA's guidance concerning this issue.

2.7 What disclosure do we expect about the adjustments and assumptions underlying distributable cash?

We make the same point here as we did in 2.5 above.

Part 3 – Other Disclosure Issues

A. Material debt

We support the disclosures recommended in this part and believe that discussion about debt would be enhanced by including how much of the debt is secured and what assets have been pledged as security, and what entity level the debt is being issued at. On an ongoing basis, we want to know specific information concerning covenants and how the trust is performing relative to each measure. Disclosure of covenant breaches cannot be left to management or trustee discretion. Having said this, it may be difficult to ask for a higher standard of disclosure practices concerning financial obligations and compliance with covenants than is currently required for audited financial statements and footnotes.

Finally, we fully support the filing of material debt contracts on SEDAR and wish to add that a separate category be included on SEDAR such that these contracts may be readily identifiable.

B. Stability ratings

We agree that those stability ratings requested by income trusts ought to be disclosed. We would add that even those ratings provided on an unsolicited basis be disclosed as well as the fact that they were unsolicited. Disclosing the source of the ratings may also be helpful.

C. Executive compensation

From an investor point of view, it is irrelevant which level the executive functions at, be it at the operating level or fund level. The compensation of the five top paid named executive officers ought to be disclosed in accordance with the rules on this issue. We also support the filing of material management contracts on SEDAR.

Part 5 – Sales and Marketing Materials

We feel that use of the term “yield” in reference to distributions is inappropriate and misleading. We believe appropriate terminology to be “return on capital” and “return of capital”.

Part 6 – Continuous Disclosure-specific Issues

We are in favour of presenting information in a tabular format as proposed in part 6.5.2 Distributable Cash. We would further breakdown actual cash distributions into “return on capital” and “return of capital”.

Thank you for the opportunity to provide our feedback. Should you wish to discuss this further, please feel free to contact me at your convenience.

Yours truly,

“Brian Gibson”
Senior Vice President, Public Equities