



CANADIAN ASSOCIATION  
OF INCOME FUNDS

L'ASSOCIATION CANADIENNE  
DES FONDS DE REVENU

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Via Fax (416-593-8229) and E-Mail ([kwells@osc.gov.on.ca](mailto:kwells@osc.gov.on.ca))

Ontario Securities Commission  
Alberta Securities Commission  
British Columbia Securities Commission  
Autorité des marchés financiers  
Saskatchewan Financial Services Commission  
The Manitoba Securities Commission  
Nova Scotia Securities Commission

c/o Kyler Wells, Legal Counsel, Corporate Finance  
Ontario Securities Commission  
20 Queen Street West  
Suite 1900, Box 55  
Toronto, Ontario  
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Dear Sirs/Mesdames:

**RE: Response of the Canadian Association of Income Funds (“CAIF”) to the Request for Comment concerning the Proposed Amendments to National Policy 41-201 (the “Policy”)**

We would like to take this opportunity to thank the Canadian Securities Administrators (the “CSA”) for publishing the proposed amendments to the Policy and inviting interested parties to review and provide comments.

CAIF is the representative organization for income trusts across Canada. Over 50% of all income trust issuers are currently members of CAIF and these issuers represent over 70% of the market capitalization of all publicly listed income trusts. CAIF members are active in all industry sectors, from oil and gas to consumer services and restaurants to waste management. Interested readers can review the membership of CAIF at [www.caif.ca](http://www.caif.ca).

As the representative organizations for income trusts across the country and across all industrial sectors in which income trusts are active, CAIF has worked closely and collaboratively with regulators and governments (both provincial and federal) to address numerous issues of interest and importance to income trusts.

In the fall of 2005, CAIF struck a committee to address issues related to the reporting of Distributable Cash. The committee met throughout the fall of 2005 and 2006 with the objective of developing recommendations in connection with the calculation of distributable cash and its related disclosure in order to enhance the accuracy, comparability and transparency of this measure within the income trust sector.

Finding a common methodology and language for the reporting of Distributable Cash and of Productive Capacity clearly emerged as the key areas in need of standardization. Much of the work of the committee was incorporated in the recommendations of the CICA and, since that time, many issuers have embraced elements of the recommendations and CAIF expects that such elements will be included in the MD&A reporting of first quarter results.

There are, however, certain issues that came forward in discussions after the release of the CSA request for consultation of January 5<sup>th</sup>, 2007.

CAIF would like to take this opportunity to deliver comments to the CSA on the following three subjects:

1. Appropriate Disclosure Standard for Income Trusts;
2. Maintenance of Productive Capacity for Income Trusts; and
3. Proposed Definitions of Productive Capacity by Canadian Institute of Chartered Accountants (the “CICA”) and the CSA.

Naturally, there are other subjects which CAIF would be pleased to discuss with the CSA. However, for the purposes of the Policy and this request for comment, CAIF will limit its comments to the aforementioned three subjects.

### **1. Appropriate Disclosure Standard for Income Trusts**

It is CAIF’s unequivocal position that it is inappropriate to hold income funds, or any other publicly traded issuer that is also a flow-through entity (collectively, “Income Trusts”), to a different standard than the standard adopted for share issuing corporations. CAIF has argued for this treatment in the past on matters such as corporate governance and submits that, in the case of disclosure, it is of critical importance that Income Trusts and share issuing corporations be held to the same standard. Naturally CAIF supports transparency in the public markets and high standards of useful and accurate disclosure. However, such standards must be applied universally and equitably to all publicly-traded entities.

In the case of distributable cash and disclosure, CAIF submits that the most appropriate means of disclosure available to the management of income trusts is in the MD&A statements.

### **2. Maintenance of Productive Capacity for Income Trusts**

The primary issue for consideration in addressing the question of the maintenance of productive capacity centers around the difference in the business reality of natural resource based Income Trusts and those that are conventional business trusts. In the case of the former, the primary economic factor in making investment decisions is the cyclical nature of commodity prices. The fluctuations in market prices inherent in the natural resource sector is not found in the case of business trusts and any approach to the maintenance of productive capacity, whether it be the definition or disclosure of same, which does not take into account this difference will result in a disclosure regime that does not meet the need of all Income Trusts and will not result in meaningful disclosure to investors.

### **3. Proposed Definitions of Productive Capacity CICA and the CSA**

As it currently stands there is no standard definition for productive capacity. This lack of direction from a regulatory body could potentially cause problems in consistency across the trust sector; therefore it is important to establish an accepted definition of productive capacity when computing distributable cash. There are two approaches to the development of a definition of productive capacity. The first is the use of a separate or distinct definition based on the industry the Income Trust falls under. The second is to develop a broad definition of productive capacity that will provide a solid template for all Income Trusts to follow when providing their interpretation of productive capacity as stated in their annual report. This definition should take into account the needs and concerns of Income Trusts, the CICA as well as the CSA. It is imperative that the CSA and CICA combine efforts when developing a definition for productive capacity, in order to prevent any confusion by the industry and to provide uniformity across all regulatory bodies.

The CICA proposal has included the various components that need to be addressed or considered when measuring productive capacity. This methodology should either be implemented by the CSA or modified in a fashion that satisfies all interested parties. It is important to include what regulators' expectations are with respect to the disclosure of productive capacity issues and as above, this issue should be uniform across security regulators and the accounting standards board.

Additionally, the CSA should not adopt a standard that would impose on Income Trusts any obligation to make forward-looking statements with respect to any aspect of its operations.

The issues raised in the Policy are of paramount importance to Income Trusts. As evidenced by the work of CAIF and its members in studying these matters, and the work of the committee mentioned above, we have a concern that the standardization and comparability or reporting be improved in order to provide useful and easily comparable information investors. We are, however, concerned that in an attempt to achieve this goal, an overly restrictive a regulatory regime may result in less rather than more information being provided because of the uncertainties involved in future oriented statements. We therefore urge the CSA to work in conjunction with the CICA to avoid a situation that would effectively encourage issuers to report only on historical data.

CAIF would be very pleased to engage in further discussion or clarification of these issues and thanks the CSA for the opportunity to comment on the Policy.

With best regards,

Margaret M. Lefebvre  
Executive Director