

5.1.3 Changes to NP 41-201 Income Trusts and Other Indirect Offerings

**CHANGES TO
NATIONAL POLICY 41-201 INCOME TRUSTS AND OTHER INDIRECT OFFERINGS**

1. The changes to National Policy 41-201 Income Trusts and Other Indirect Offerings are set out in this Schedule.

2. Section 5.1 is replaced with the following:

5.1 What are our concerns about sales and marketing materials?

Registrants often solicit interest from potential investors during the “waiting period” between the issuance of a receipt for a preliminary prospectus and the issuance of a receipt for the prospectus, and in the period following the receipt for the prospectus until the primary distribution is completed. Along with the distribution of the preliminary prospectus (or prospectus, if then available) to potential investors, that process often involves the preparation and distribution of materials such as:

- green sheets, for the benefit of registered salespersons and banking group members; or
- standard term sheets or marketing materials prepared in accordance with National Instrument 41-101 *General Prospectus Requirements* and other prospectus rules.

The information included in green sheets is typically a simplified summary version of the disclosure in the prospectus, and should be limited to information included in, or directly derivable from, the prospectus (the exceptions are information about the basic terms of comparable offerings and general market information not specific to the issuer).

The information included in standard term sheets and marketing materials must comply with the conditions in National Instrument 41-101 *General Prospectus Requirements* and other prospectus rules.

Green sheets and marketing materials used in the context of income trust offerings often include prominent reference to “yield”. We are concerned that expressions of “yield” in these marketing materials may not be clearly understood, both because the term itself may have connotations or common usages that are not consistent with the attributes of income trust units and because the relationship between the “yield” described in the marketing materials and the information in the prospectus may not be clear.

“Yield” is generally used in the context of income trust offerings to refer to the return that would be generated over a one-year period, as a percentage of the offering price of the units, if the amounts intended to be distributed by the income trust according to its distribution policy are so distributed. In connection with their ongoing approach to disclosure, issuers should carefully consider yield expectations previously communicated to investors through marketing materials or otherwise. Whether and to what extent those yield expectations are met are important aspects of overall disclosure of performance. Issuers should include in their interim and annual MD&A, where applicable, a comparison between the expected yield figure previously communicated and the actual yield..

3. Section 5.2 is replaced with the following:

5.2 What information do we expect green sheets and marketing materials to contain?

We are concerned that use of the term “yield” in green sheets and marketing materials may imply that the entitlement of unitholders to distributions is fixed. We expect expressions of yield to be accompanied by disclosure that, unlike fixed-income securities, there is no obligation of the income trust to distribute to unitholders any fixed amount, and reductions in, or suspensions of, cash distributions may occur that would reduce yield based on the offering price.

A related concern is that disclosure of a yield in green sheets may cause confusion because yield is not typically disclosed in the prospectus. If a green sheet contains an expression of yield, we expect the statement to be tied to the disclosure in the prospectus on which the marketing is based (including, in particular, the pro forma presentation of distributable cash in the prospectus). Specifically, expressions of yield in green sheets for income trust offerings should be accompanied by disclosure indicating the proportion of the pro forma distributable cash (as set out in the prospectus) that the stated yield would represent. Guidance for disclosure about distributable cash in green sheets is set out in section 6.5.2 of this policy.

Under National Instrument 41-101 *General Prospectus Requirements* and other prospectus rules, all information in marketing materials must generally be disclosed in, or derived from, the prospectus on which the marketing is based.

In addition, if reference is made to tax efficiencies that may be realized on distributions (such as returns of capital to investors), we expect that disclosure to be clear and, to the extent practical, quantified. For example, the estimated tax-deferred portion of distributions for the foreseeable period, and the tax implications, should be clearly stated or cross-referenced..

4. Section 5.3 is changed

- (a) **by adding in the title “and marketing materials” after “green sheets”,**
- (b) **by striking out “Yes.” at the beginning of the first paragraph, and**
- (c) **by adding the following as a new paragraph after the first paragraph:**

Under National Instrument 41-101 *General Prospectus Requirements* and other prospectus rules, a template version of marketing materials must be filed on or before the day that the marketing materials are first provided..

5. Section 6.5.2 is changed by replacing the last paragraph in section 6.5.2 with the following:

In order to meet the requirements for MD&A, disclosure of an issuer’s distributable cash for a period should be accompanied by the information referred to in sections 2.5, 2.6, 2.7 and 2.8, as applicable, as well as the above table and accompanying narrative. Issuers should also refer to the guidance in sections 2.5, 2.6, 2.7, 2.8 and 6.5.2 of this policy when considering how to present disclosure of an issuer’s distributable cash, including disclosure contained in:

- annual and interim MD&A,
- news releases, and
- sales and other materials such as:
 - green sheets, and
 - marketing materials prepared in accordance with National Instrument 41-101 *General Prospectus Requirements* and other prospectus rules.

See also Part 5 of this policy..

6. These changes become effective on August 13, 2013.