

Appendix C

Proposed Amendments to National Policy 41-201 *Income Trusts and Other Indirect Offerings*

1. *National Policy 41-201 Income Trusts and Other Indirect Offerings is amended.*
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
- term sheets or road show materials prepared in accordance with National Instrument 41-101 *General Prospectus Requirements*.

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 terms sheets and road show materials must comply with the conditions in National Instrument 41-101 *General Prospectus Requirements*.

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 sales and 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, term sheets and road show materials to contain?

We are concerned that use of the term “yield” in these 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 the disclosure about distributable cash in the green sheets is set out in section 6.5.2 of this policy.

Under National Instrument 41-101, all information in term sheets or road show materials must be disclosed in 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 amended*

- (a) *by adding in the title “, term sheets and road show 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, term sheets and road show materials must be filed before use..

5. ***Section 6.5.2 is amended 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 marketing materials such as:
 - green sheets, and
 - term sheets and road show materials prepared in accordance with National Instrument 41-101 *General Prospectus Requirements*.

See also Part 5 of this policy..

6. ***These amendments become effective on ●.***