Appendix B
to Notice

National Policy 41- 201 Income Trusts and Other Indirect Offerings (the Policy)
Comments received during 60-day comment period commencing
October 24, 2003 and ending December 23, 2003

No.	Theme	Comment	Response
1.	General support for initiative (Part 1 - General)	The majority of the commenters express general support for the initiative and the format of the Policy.	The CSA acknowledges the support of the commenters.
2.	Format of Policy (Part 1 - General)	One commenter suggests adding a summary of the core guidance, in order to allow market participants to quickly access the "required elements" without reading the entire document. Several commenters note that the separation of the descriptive portion of the Policy from other sections of the Policy might be beneficial to investors. However, the majority of commenters encourage the CSA to retain the current format of the Policy, noting that the Policy is easy to follow in its current format.	We have decided to retain the current format of the Policy because the majority of commenters support the format.
3.	Scope of Policy – acceptable and suggestion to expand (Part 1 - General)	A number of commenters express support and agreement with respect to the scope of the Policy, while a few commenters suggest expanding the scope of the Policy to include governance issues. In particular, one commenter recommends that the Policy be expanded to clarify how the existing rules regarding audit Committees and CEO/CFO certifications under Multilateral Instrument *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109) and Multilateral Instrument 52-110 *Audit Committees* (MI 52-110) apply to trusts.	We appreciate the expressions of support for the scope of the Policy. We have added a section to the Policy to deal specifically with governance issues. In particular, we have added the following recommendations: 1. that issuers provide prospectus disclosure about how they intend to comply with MI 52-109, MI 52-110, proposed Multilateral Policy 58-201 *Effective Corporate Governance* (MP 58-201) and proposed Multilateral Instrument 58-101 *Disclosure of Corporate Governance Practices* (MI 58-101), where those instruments are applicable, and 2. that issuers disclose whether a unitholder has substantially the same protections, rights and remedies as a shareholder and if not, explain how those protections, rights and remedies differ.
4.	Scope of Policy - too broad (Part 1 - General)	One commenter notes that the stated scope of the Policy is overly broad because market participants may be uncertain about how the Policy may apply to a particular transaction. The same commenter recommends that specific examples be provided about what is meant by "structures in other contexts".	Section 1.1 of the Policy specifically refers to the reorganization of a corporate entity into a trust as one example of the income trust structure "in other contexts". As noted in section 1.1 of the Policy, we expect issuers to apply the principles described in the Policy to the income trust structure in other contexts such as reorganizations.
5.	Scope of Policy - policy versus rule (Part 1 - General)	A number of commenters express a concern that the Policy is framed as a policy rather than as a rule. One commenter points to specific sections within the Policy that contain "prescriptive" language. One commenter suggests that the CSA explain within the Policy that it has been implemented as a policy	We have revised section 1.1 of the Policy to clarify the reasons for drafting a policy rather than a rule. We explain that the existing regulatory framework applies to income trusts and other indirect offering structures, and that the Policy has been drafted to guide issuers and their counsel in applying this framework.

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		rather than a rule because the CSA believes that the existing regulatory framework captures the issues relating to income trusts and other indirect offerings. One commenter suggests that more prescriptive language be used in the Policy (ie, "require" rather than "expect" or "encourage', as lead-in language).	We intentionally use language that provides guidance and recommendations since we have drafted a policy rather than a rule. The purpose of a policy is to provide guidance and recommendations, based on existing legislative requirements, whereas the purpose of a rule is to provide mandatory requirements. Since we have drafted a policy rather than a rule, and based on existing case law (such as *Ainsley Financial Corp.* v. *Ontario (Securities Commission)* (1994), 21 O.R. (3d) 104), we do not consider it appropriate to make the language in the Policy more prescriptive.
6.	Republication of Policy (Part 1 - General)	One commenter suggests that the Policy be revisited after the resolution of the "unlimited liability issue" and/or the inclusion of income trusts in the S&P/TSX Composite Index.	We believe that this guidance is important to market participants at this time due to the large number of income trust offering structures in the current market. This does not preclude us from revisiting issues relating to income trusts in the future. We will continue to monitor legislative initiatives and will update the Policy to make necessary changes. We welcome commenters' continued input in this regard. We also note that legislation relating to unitholder liability has been passed in Alberta, and similar legislation relating to unitholder liability is being considered in Ontario and in British Columbia. In Québec, provisions relating to unitholder liability were enacted in 1994 and are provided for in the Civil Code of Québec.
7.	Scope of Policy - reorganizations (Section 1.1)	One commenter notes that the Policy should not apply to reorganizations of a trust and its subsidiaries unless there is an issuance to the public of securities.	In a reorganization, security holders are asked to make a decision about a proposed transaction that will affect their security holdings in the issuer. The information circular that describes the reorganization is required to contain prospectus-level disclosure. The Policy explains what information should be considered so that this standard is met.
8.	Purpose of Policy (Section 1.1)	One commenter suggests that the CSA add language to the Policy to clarify when and how issuers using a direct offering structure should follow the guidance described in the Policy.	The legislative framework applies in the context of both direct and indirect offering structures, but the Policy is intended to specifically provide guidance within the existing framework for income trusts and other indirect offering structures. Rather than adding clarifying language, and to avoid potential confusion, we have deleted the sentence that refers to direct offering structures.
9.	Definition of income trust (Section 1.2)	One commenter suggests stating that the entitlement to substantially all of the cash flow from the operating entity may be in the form of a royalty payment, interest payments, or dividends. We have also received suggestions from several advisory committees to delete the reference to "substantially all" in section 1.2 of the Policy.	We have decided to retain the current language. Our intention is to have a flexible definition of distributable cash that captures different forms of cash flow. We have deleted the reference to "substantially all" in section 1.2 to reflect situations where a unitholder is entitled to less than substantially all

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			of the net cash flows generated by an operating entity.
10.	Definition of "operating entity" (Section 1.3)	One commenter notes that the definition of "operating entity" is broad enough to capture most special purpose issuers of asset-backed securities, although those issuers distribute debt rather than equity. The commenter suggests that there be an exemption for issuers of asset-backed securities with an approved rating, as such terms are defined in National Instrument 44-101 – *Short Form Prospectus Distributions*.	We have added language to clarify that the Policy is not intended to apply to issuers of asset-backed securities or capital trust securities.
11.	Definition of "operating entity" (Section 1.3)	One commenter suggests that clarifying language be added to the Policy to explain that only the material subsidiaries of operating entities are meant to be captured by the Policy. For example, the commenter notes that if there are subsidiary entities which constitute less than 20 per cent of the overall consolidated operations of a trust, there should not be specific disclosure (such as separate financial statements or detailed disclosure) required in relation to those smaller entities if those smaller entities comprise a different segment of the business.	The Policy does not require information about non-material subsidiaries of the operating entity. We note that section 3.1(i) of the Policy, in the context of the undertaking relating to financial statements (and where consolidation is not permitted), states that as long as the operating entity (including information about any of its significant business interests) represents a significant asset of the income trust, the income trust will provide unitholders with separate financial statements for the operating entity (and any of its significant business interests).
12.	Description of direct and indirect offerings (Section 1.6)	The majority of commenters agree that the description of direct and indirect offerings is clear. However, a number of commenters note that the distinction could be made clearer. One commenter notes that more emphasis should be placed on the broad tenet that indirect offerings, regardless of differences due to legal structures, are not different from direct offerings when it comes to the obligation of reporting requirements for public issuers.	We have made several drafting changes to make the distinction between direct and indirect offerings clearer. In particular, we have noted that although the existing regulatory framework properly captures both direct and indirect offerings, the purpose of the Policy is to provide guidance and clarification to market participants about how we believe the existing regulatory framework should be applied within the context of income trusts and other indirect offerings.
13.	Risk factors (Part 2 - General)	A number of commenters note that current prospectus requirements already provide the necessary guidance about risk factors, except in relation to unique features of income trusts such as the potential for unlimited liability and the fact that income trusts potentially distribute a significant portion of their cash flow. Several commenters agree that it is appropriate to give guidance on operating entity related risk factors. They believe that only limited guidance on particular risk factors is warranted and if given, should emphasize that the guidance is not exhaustive. Several commenters recommend giving greater prominence to the disclosure of risk factors by encouraging the placement of risk factors closer to the front, rather than at the end, of the prospectus.	We agree that it is appropriate to provide only limited guidance on risk factors. We agree that risk factors relating to the operating entity, the non-assured nature of distributable cash, and the fact that income trusts potentially distribute a significant portion of their cash flow are significant. We have decided not to encourage issuers to provide risk factor disclosure closer to the front because we believe that the summary of risk factors in the "Prospectus Summary" section provides sufficient information at the front of the prospectus. We have, however, forwarded this comment to a CSA committee that is currently

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			revisiting the prospectus requirements because we believe that this issue is not unique to income trusts.
14.	Risk factors - insolvency and restructuring legislation (Part 2 - General)	One commenter recommends the inclusion of a specific risk factor regarding the potential inapplicability of insolvency and restructuring legislation in the trust context.	We agree that there is uncertainty about whether insolvency and restructuring legislation is applicable in the trust context. We have added a recommendation about this potential risk factor within the new "Risk Factors" section.
15.	Risk factors - disclosure of all relevant risk factors (Part 2 - General)	One commenter notes that several key documents are filed after the offering has closed and is concerned that issuers may not be providing disclosure about those documents in the prospectus.	We agree that all relevant risks relating to the offering should be disclosed in the prospectus, regardless of when the executed documents are filed.
16.	Distributable cash (Sections 2.1 - 2.4)	A number of commenters suggest that sections 2.2 and 2.4 of the Policy be revised to explain that distributions classified as a return of capital reduce the cost base of the units and should be referred to as "tax-deferred" rather than "non-taxable" returns of capital. In particular, one commenter notes that this point is particularly relevant in the context of REITs because a large portion of the distributions of many REITs constitute "tax-deferred" returns of capital (such as returns sheltered by the application of capital cost allowance to buildings and equipment).	We understand that many commenters prefer the term "tax-deferred" to "non-taxable". Although both terms could be used in this context, we have replaced the term "non-taxable" with "tax-deferred".
17.	Distributable cash - cover page disclosure regarding "return on" and "return of" capital (Section 2.4)	Several commenters agree that more information on the specific breakdown of distributable cash figures is needed and should be highly visible on the cover page. They also note that disclosure of distributions and their origins should be clear and simple to understand, including any pro forma projections of distributions in the prospectus. One commenter suggests that the proposed language may not be appropriate in follow-on offerings by income trusts whose units are publicly traded. One commenter notes that the recommended distinctions are useful in both the prospectus and continuous disclosure contexts. A number of other commenters suggest that face page disclosure relating to the estimated split between taxable and tax-deferred returns of capital be eliminated or alternatively, that the time period for these estimates be limited to 12 months. The commenters note that the face page disclosure recommended in the Policy may be (a) inconsistently available for all income trust issuers, (b) misleading, (c) lacking in meaning or usefulness, (d) subject to change, and (e) time-consuming and costly to prepare. However, those that have the information should be encouraged to provide it. Several commenters express concern that this recommendation would call for the preparation of a forecast, which is time-consuming, costly and results in more complex disclosure for investors. One	We believe that information that describes the distribution as containing both a "return on" and a "return of" capital is useful information to investors, in both the initial and subsequent offerings. However, we have determined that the more specific breakdown between "return on" and "return of" capital is more appropriate in the context of continuous disclosure documents, such as MD&A. In the context of the initial offering document, we recommend that issuers provide the breakdown, if a forecast has been prepared. If no forecast has been prepared, we recommend that issuers provide cover page information which explains to investors that the distribution will contain a breakdown of both a "return on" and "return of" capital.

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		commenter notes that the disclosure suggested in section 2.4 does not contemplate that an income trust might hold income-producing properties rather than an operating business.	
18.	Distributable cash - non-GAAP measures (Section 2.5)	One commenter notes that for many investors, GAAP earnings statements are not well understood and can be manipulated.	It is not within the mandate of the CSA to change GAAP because GAAP is a standard established by the CICA rather than by the securities regulators. With respect to non-GAAP financial measures, as long as the guidance in CSA Staff Notice 52-306 – *Non-GAAP Financial Measures* (Staff Notice 52-306) is followed, the CSA does not object to the use of non-GAAP measures. We note that since the draft policy was published in October, 2003, the CSA published Staff Notice 52-306 (which replaces CSA Staff Notice 52-303), and the Policy has been revised accordingly.
19.	Cover page disclosure - general	One commenter notes that the recommended cover page disclosure may be too broad. The CSA should consider shortening the suggested cover page disclosure.	We believe that the recommended cover page disclosure is important information for investors. We have not revised this section.
20.	Short-term debt - significance of material debt (Part 2C)	Several commenters acknowledge the importance of the potential implications of short-term debt on distributable cash. Some suggest that disclosure be limited to material short-term debt, while others suggest that disclosure be expanded to include all significant debt, whether short or longer term. One commenter suggests this could be accomplished by disclosing overall debt obligations in the prospectus, financial statements or other continuous disclosure documents. One commenter notes that, in appropriate cases, an issuer should be explicitly permitted to provide disclosure regarding its different short-term debt obligations on an aggregated basis. Others express a concern that the emphasis on short-term debt in the Policy may overshadow the existence of other relevant risk factors and suggests citing examples of other relevant risk factors such as whether debt is fixed or floating rate debt, aggregate debt maturities, and the potential inapplicability of insolvency and restructuring legislation to the trust itself.	Our intention is to capture only *material* credit agreements. Since income trust offerings are sold on the basis of distributable cash, we consider all credit agreements that could have a potential impact on the ability of the trust to distribute distributable cash to its unitholders to be material contracts. For example, if a credit agreement contains a term which specifies that if the trust does not maintain specified ratios, it cannot distribute cash to unitholders, that term would be considered material since it could have a direct impact on the ability of the trust to distribute distributable cash. We agree that it is important to focus on all material debt, whether that debt is long- or short-term. We have therefore revised the Policy to clarify that disclosure of the principal terms of material credit agreements should be made. Material terms of a credit agreement would include, for example, information about the interest rate (including whether the rate is fixed or floating).
21.	Short-term debt - SEDAR filing of credit agreements (Part 2C)	Most commenters feel that the test for whether or not a contract is a material contract should be the same for all issuers. Several commenters believe that disclosure about the principal terms of the short-term debt provides adequate information about the financing arrangements of the income trust and the operating entity. They believe that it is unnecessary to file the agreements on SEDAR, and that the SEDAR filing puts them at a competitive disadvantage with other issuers.	Our intention is not to designate all credit agreements as material contracts. In the context of income trusts and other indirect offerings, we note that terms of credit agreements frequently have a potential impact on distributable cash. Whether or not a contract is material is a question of fact for issuers and filing counsel to determine. If issuers and filing counsel determine that a contract is material, that contract should be listed as a material contract and filed on SEDAR.
22.	Short-term debt - REITs	One commenter notes that, in the case of REITs, issuers typically provide an aggregated mortgage	We agree that this type of disclosure is detailed and informative. Generally speaking, the

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	(Part 2C)	chart indicating principal by maturity, by average interest rate and by percentage floating rate versus fixed rate exposure. The commenter believes that this type of consolidated disclosure is sufficient in that context.	aggregated mortgage chart offers useful information to investors. However, we note that for investors to fully understand certain details relating to mortgage agreements that may differ in certain respects from information that is described in the chart, the filing of those credit agreements would offer valuable information.
23.	Short-term debt - characterization of short-term debt (Part 2C)	One commenter suggests referring to debt that has a term of five years or less, rather than to debt obligations that are "renewable" within five years or less. One commenter notes that the definition of "short-term debt" in the Policy differs from the accounting definition of that term, which may lead to confusion.	As noted above (Comment 20.), we have revised the Policy to include all debt (whether short- or long-term) that could have a potential impact on distributable cash.
24.	Short-term debt - debt incurred within overall structure (Part 2C)	One commenter suggests that we recommend disclosure of any short-term debt obligations which are owed within the overall ownership structure of the trust or any debt which would be eliminated upon consolidation, rather than uniquely short-term debt that is incurred by the operating entity. As well, the commenter notes that it is not always the operating entity that incurs the third-party debt.	We agree that the debt can be incurred at a level other than the operating entity. We have revised the Policy to capture debt incurred by an entity other than the operating entity.
25.	Executive compensation - support and suggestion for expansion	There is strong support among commenters for the executive compensation disclosure recommendations. A number of commenters suggest the inclusion of stronger wording and more robust requirements in the area of executive compensation, including specific and detailed disclosure relating to salaries and bonuses paid, options granted and other compensation awarded, as well as the underlying reasons for the payments, as this appears to be the largest area of inconsistent disclosure between income trusts.	We acknowledge the support of the commenters. We believe that the current recommendations in the Policy are sufficiently strong and robust to capture details such as salaries and bonuses paid, options granted and other compensation awarded. Section 2.15 of the Policy recommends that issuers provide information about executive compensation in the prospectus as if the operating entity is a subsidiary of the income trust at the time that a final receipt for the prospectus is issued. Under Form 51-102F6 *Statement of Executive Compensation*, issuers are required to provide detailed disclosure relating to executive compensation in connection with their continuous disclosure filings, along the lines identified by the commenters.
26.	Executive compensation - compensation agreements between employees of the trust and other parties	One commenter recommends that income trust issuers disclose compensation agreements between employees of the trust and any outside parties, including retainers, finders' fees, etc. to ensure that fees are reasonable and do not bias management to the detriment of public unitholders.	Paragraph (f) of the definition of "executive officer" in National Instrument 51-102 Continuous Disclosure Obligations includes "any other individual who performed a policy-making function in respect of the reporting issuer". Therefore, any individual that has performed a policy-making function in respect of the issuer falls within the definition of "executive officer", and will need to be considered for purposes of Form 51-102F6. We believe that this would capture the arrangements described by the commenter.
27.	Executive compensation - distinction between business	One commenter believes that the Policy should distinguish between business management contracts, which should be fully disclosed, and employment contracts with individual officers, for which there	We believe that the material terms of both types of contracts should be disclosed. If terms of either of those contracts could have a material impact on distributable cash, we believe that full disclosure is

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	management contracts and employment contracts with individual officers	should be only summary disclosure.	warranted.
28.	Executive compensation - material changes and filing of plans on SEDAR	One commenter recommends that the final sentence of section 2.17 be rewritten as follows: "which would include any change in executive compensation that constitutes a material change". The same commenter notes that there does not appear to be any policy basis to distinguish between the disclosure of income trust executive compensation plans and those of corporations, nor should there be a distinction in terms of the requirement to file copies of plans on SEDAR. The same commenter expresses a belief that the current prospectus disclosure requirements are sufficient. Accordingly, the commenter disagrees with the requirement that internal management incentive plans be filed on SEDAR.	We agree with the suggested clarification and we have revised the Policy accordingly. If terms of a management contract or management incentive plan could have a material impact on distributable cash, those terms should be disclosed and those contracts should be listed as material contracts and filed on SEDAR. We believe that it is more likely that terms of these contracts may be material in the context of income trusts than for other issuers. Therefore, while the test applied is the same, the results of applying that test may be that a greater number of those contracts are material.
29.	Executive compensation - disclosure about details relating to external management parties	One commenter notes that if management has decided to use an external management party, the justification and benefits of using external management should be clearly disclosed. Any formula used to compensate external management should be laid out in clear terms for investors to analyze.	We have added language to the Policy to explain that all terms relating to the compensation of external management, that could have an impact on distributable cash, should be disclosed. In this scenario, an explanation about why an issuer decided to use an external management company rather than retain an internal management structure can be important information for investors.
30.	Stability ratings (Sections 2.10 - 2.12) - potentially confusing and a possible false sense of security	Many commenters are concerned that our emphasis on disclosure of stability ratings, or the reasons why an issuer did not obtain one, may confuse investors and provide them with a false sense of security. As stability ratings are issued by bond rating agencies, some commenters believe that the ratings perpetuate a myth that income trusts are similar to bonds. Investors may be led to believe that they are investing in a fixed-income security. One commenter notes that the private enterprises that produce stability ratings are not unlike investment management firms. Both analyze income trusts in an attempt to determine whether the distributions are sustainable. The commenter notes that the individuals producing stability ratings are as prone to error as investment managers. The commenters generally believe that the most effective method of comparing income trusts is via rigorous, fundamental equity research, which is similar for comparisons among regular share corporations. Rather than relying on stability ratings, investors should be able to assess an investment in units of an income trust on the same basis as they would assess an investment in the securities of a regular share corporation. Several commenters note that there is no pervasive use of stability ratings to date. Certain income trusts	We acknowledge the comments of the commenters. Although we continue to believe that stability ratings provide investors with a valuable tool for comparing their investments in different income trust issuers, we have removed the recommendation that issuers provide disclosure about the absence of a stability rating. However, we continue to expect issuers to disclose the rating, if one has been obtained, consistent with the prospectus form requirements.

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		may be suitable candidates for stability ratings but many are not due to the volatile and complex nature of their operations. One commenter notes that the capital markets currently effectively require certain types of income trusts to obtain stability ratings. The commenter believes that use of a rating should be governed by the requirements of the markets. Several commenters are concerned that the imposition of mandated stability ratings would add increased costs to issuers, particularly smaller capitalization issuers, without adding equivalent benefit to investors. Management time and operating expense associated with obtaining a rating is not necessarily helpful to investors nor in their best economic interests.	
31.	Stability ratings (Sections 2.10 - 2.12) - recommended disclosure about change in stability rating	One commenter notes that where an income trust has a stability rating and there is a change in that rating, positive or negative, it is important to provide a reminder that such a change would constitute material information that would require immediate disclosure to the public.	We agree that this type of information would be material information that public investors should receive by way of a material change report. We believe that this requirement already exists within our current legislative framework, but we added a reminder to the Policy.
32.	Determination of unit offering price (Section 2.13)	One commenter notes that many REIT declarations of trust require an appraisal for every acquisition of real property throughout the life of the REIT. Asking for this disclosure with respect to every such valuation would result in the disclosure of much sensitive confidential information, and would also represent an unfair burden to REITs compared to traditional share corporations. The commenter believes that this requirement should be deleted.	The Policy does not recommend disclosure of every appraisal of real property throughout the life of a REIT. Our intention is to provide investors with disclosure about how the unit offering price is determined at the time of the initial public offering. This is because many investors are not aware of how that price is determined, since the process differs from the valuations that occur in a more traditional, direct initial public offering. We have clarified the Policy to explain that the valuation section applies in the context of an initial public offering rather than in the context of subsequent offerings and acquisitions.
33.	Continuous disclosure (Part 3)	Several commenters emphasize that income trust issuers must provide a suitable portrayal of the possible risks and potential adverse consequences of owning a narrowly focused business, particularly in the risk section of the prospectus and in the MD&A section of ongoing financial reports. The portrayal should be thorough but comprehensible to the average retail investor.	We agree with this suggestion, and we have added language to the Policy to explain, in particular, our recommendation that relevant disclosure be provided in both the prospectus and in the MD&A.
34.	Continuous disclosure - annual certification	A number of commenters express concern about annual certification of compliance with the undertakings provided under section 3.1 and suggest that the certification be included as an additional requirement of management information circulars, AIFs or annual reports as opposed to being a stand-alone filing.	We have decided not to remove the annual certificate recommendation in section 3.1 of the Policy. We note that we are in the process of adding a separate filing subtype to SEDAR entitled “annual certification”. This will enable issuers and filing counsel to easily file the annual certificate on SEDAR. We have referred the suggestion to incorporate the annual certificate into a continuous disclosure document such as the

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			AIF, to the continuous disclosure working group as a possible amendment to the continuous disclosure rule.
35.	Continuous disclosure - consolidation under GAAP	One commenter notes that financial reporting should be governed by GAAP (as is the case for corporate reporting issuers). The commenter does not believe that special reporting requirements are warranted for income trust issuers.	We agree that financial reporting should generally be governed by GAAP. However, we also believe that, in the case of income trust issuers, investors need financial information about the operating entity in order to have all relevant information about their investment. For this reason, we have determined that it is important for investors to receive separate financial information about the operating entity in situations where GAAP does not require consolidation. We note that we expect to receive the undertaking described in this part even in situations where a prospectus includes consolidated financial results. This will ensure that investors continue to receive necessary information about the operating entity for as long as it remains a significant asset of the income trust, if the income trust ceases to consolidate the operating entity's financial results at some point in the future. We note that we are creating a separate SEDAR filing subtype entitled "operating entity financial statements", under which the separate financial statements can be filed. In cases where consolidation is required, we do not expect that separate financial information be provided.
36.	Continuous disclosure - information about distributed and distributable cash	Several commenters note, in response to a specific request for comment, that a comparison of distributed and distributable cash to expected distributable cash increases accountability and provides investors with readily available analysis. The continuous disclosure policy should consider that a fund's distribution policy changes over time and therefore a comparison to the targets originally outlined in a prospectus may not be appropriate.	We agree with the views expressed by the commenters, and have added language to the Policy to express our expectation that issuers provide a comparison of distributed and distributable cash to expected distributable cash on a continuous basis.
37.	Continuous Disclosure - OSC Rule 61-501 and Q-27 undertaking (Section 3.1)	One commenter submits that the undertaking with respect to Ontario Securities Commission Rule 61-501 *Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions* (Rule 61-501) and the AMF's regulation entitled Policy Statement No. Q-27 *Protection of Minority Securityholders in the Course of Certain Transactions* (Q-27) should only be required to the extent that GAAP prohibits the consolidation of financial statements of the income trust and operating entity.	We have deleted the references to Rule 61-501 and Q-27 in the undertaking due to amendments to Rule 61-501 and Q-27 that address income trusts.
38.	Continuous	One commenter notes that the proposed requirements	Income trusts and regular share corporations are

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	Disclosure - operating entity financial statements (Section 3.1)	for disclosing operating entity financial statements should apply to income trusts in the same manner as they apply to holding companies. The commenter also inquires into what is meant by "significant asset".	treated equally in situations where GAAP requires consolidation. Therefore, we do not expect to see separate financial statements of the operating entity where its financial results are consolidated. However, we view the income trust offering as an indirect offering of the underlying operating entity, and the operating entity is frequently the only significant asset of the income trust. Therefore, in situations where GAAP does not require consolidation of the operating entity financial results into the income trust's financial statements, and the operating entity represents a significant asset of the income trust, we have recommended that separate financial statements of the operating entity be provided. This ensures that investors are provided with meaningful disclosure about their investment. Income trusts and their advisors should determine whether the operating entity is a significant asset of the income trust based upon their particular circumstances.
39.	Comparative financial information (Section 3.2)	One commenter notes that there may be circumstances where comparative information is not available on a basis that is relevant or not available at all, particularly if assets have been purchased from multiple parties. Several commenters note that it may not be appropriate to assume that comparative financial information can be provided. They note that preparing comparative information for periods prior to an income trust's IPO can be problematic and may not be particularly helpful when presented together with information from post-IPO periods. This is because the operating business may not have only operated in a different form but may have been operated as a division of a larger enterprise or the operating business itself may consist of assets and businesses previously owned and conducted in whole or in part by a variety of legal entities.	We agree that there may be unique situations where providing comparative information would not be appropriate. For example, this may occur in situations where the income trust is formed as a result of multiple acquisitions. In these circumstances, we would consider accepting an explanation within the notes to the financial statements or in the MD&A, as applicable.
40.	Definition of insider (Section 3.4)	Several commenters feel that it is inappropriate to amend the definition of insider through undertakings as opposed to the more appropriate mechanism of legislative amendment.	We are not amending the definition of insider under the legislation through the undertaking suggested in the Policy. Securities legislation provides the securities regulatory authority or regulator with the discretion to refuse a receipt for a prospectus where it is in the public interest to do so. One issue that we often face with income trust prospectuses is whether it is in the public interest to issue a receipt when persons who would be insiders if the operating entity went public in a direct offering avoid the insider reporting and trading provisions of securities legislation because of the income trust structure. A practice has developed to address this issue where income trusts provide the undertaking described in the Policy. We wish to make this practice transparent through the Policy so that issuers are aware of our

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			concern and have a suggested approach when planning their offerings. We agree that in the longer term, this concern could be addressed through legislative amendment, which is already occurring in some jurisdictions (see consequential amendments to the *Securities Act* (Alberta), in effect July 1, 2004). In the interim, however, our concern regarding insiders of an operating entity can be addressed through other means such as the undertakings described in the Policy.
41.	Undertaking relating to insiders - "appropriate measures" (Section 3.4)	One commenter notes that the Policy does not define "appropriate measures", and it would appear that one of the only methods to do so would be through employment covenants. This might prove to be impractical, and could lead to undesirable results. Another commenter points out that as insider reporting is the responsibility of the individual and not the entity, it is impractical to expect an income trust to enter into contractual commitments with external persons not covered by the insider rules but who possess material undisclosed information about the trust. The best the income trust could be expected to do would be to notify these individuals, but it should not be held responsible for the actions of persons over which it has no authority.	We acknowledge that income trusts may have to resolve some practical issues in implementing the undertakings suggested in the Policy. We do not intend to define exactly which measures are appropriate. We believe that income trusts and their advisors are in the best position to judge what measures are appropriate based upon their particular circumstances.
42.	Undertaking relating to insiders - third party managers (Section 3.4)	One commenter agrees that insiders of the operating entity should be caught by the ambit of insider trading reporting rules as if the operating entity was the reporting issuer and suggests that a similar policy concern apply to third party managers.	We agree with the commenter. The Policy provides that there may be situations when we will request that additional undertakings be provided. Note that in Alberta, recent legislative amendments deem certain persons to be insiders of an income trust, such as the operating entity and manager of an income trust.
43.	Prospectus liability - support for clarification (Part 4)	One commenter welcomes clarification on the issue of prospectus liability. The commenter notes that it is critical to market integrity that issuers who access Canadian capital markets do so with transparency and full accountability. Vendors or promoters who indirectly access our capital markets through income trusts and other indirect offerings should be held accountable for their actions as they would be in a direct offering.	We acknowledge the support of the commenter.
44.	Prospectus liability - rule versus policy (Part 4)	One commenter notes that certain statements in the Policy (such as staff's view about application of the definition of "promoter") may be an improper modification of legislation.	The Policy is a CSA policy and reflects the views of the securities regulatory authorities across Canada. It is not a CSA staff notice. We are not amending or modifying the definition of "promoter" where it exists under Canadian securities legislation. We provide guidance on how the definition of promoter under securities legislation may apply in the context of income trust offerings. Securities legislation also provides the securities regulatory authority or regulator with the

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			discretion to refuse a receipt for a prospectus where it is in the public interest to do so. An issue we often face with income trust prospectuses is whether it is in the public interest to issue a receipt when persons who would be selling security holders if the operating entity went public in a direct offering, avoid selling security holder provisions of securities legislation because of the income trust structure. A practice has developed to address this issue where selling security holders who are not promoters accept liability similar to that provided under the selling security holder provisions of securities legislation by entering into contractual arrangements with the issuer regarding the disclosure in the prospectus. We wish to make our concerns with this practice transparent through the Policy so that issuers are aware of our concerns and have a suggested approach when planning their offerings. We acknowledge that in the longer term, our concerns with the applicability of selling security holder provisions could be addressed through legislative amendment. In the interim, however, our concerns with vendors who are akin to selling security holders can be addressed through other means as discussed below.
45.	Prospectus liability - definition of promoter (Section 4.3.1)	One commenter states that it is not clear whether the receipt of proceeds in and of itself is contemplated as defining those who should be within the statutory definition of "promoter" in all jurisdictions. However, in most instances the commenter notes that it would expect the regulators to require vendors who receive substantial proceeds to execute a certificate as a promoter on the basis that they have had sufficient involvement in the founding, organizing or reorganizing of the trust.	We do not intend to create the impression that the receipt of proceeds in and of itself is contemplated as defining those who should be within the statutory definition of "promoter". We agree with the commenter that vendors who receive significant proceeds from an offering in consideration of services or property in connection with the founding, organizing or substantial reorganizing of an income trust may be promoters under securities legislation and required to execute a certificate in the prospectus. It is a question of fact whether a vendor is a promoter under securities legislation. We have amended the guidance provided in the Policy regarding promoters.
46.	Prospectus liability and distinction between arm's length and non-arm's length transactions (Part 4)	A number of commenters note that there is no clear distinction between arm's length and non-arm's length transactions in this part of the Policy. In other words, one commenter notes that it would be helpful if the Policy made it clear that where there is a bona fide arm's length negotiation between the issuer and vendor and the vendor is not involved in the offering process and does not have the ability to materially affect control of the issuer, the principles set out in Part 4 do not apply. This concern was specifically highlighted by one commenter in the context of REITs.	We generally agree with the commenters. Our concerns lie primarily with vendors that negotiate the terms of the purchase of the business by the income trust, and are also involved in the negotiation of the terms of the public offering with the underwriter(s). Where the transaction is a bona fide arm's length transaction, these concerns do not generally arise. We have amended the guidance provided in the Policy to address this issue.
47.	Prospectus liability - private equity investors (Part 4)	According to one commenter, in circumstances where the vendor is not acting as principal but, instead, is managing the investment on behalf of others (this is typically the case with private equity investors), the	As discussed above (Comment 45.), it is a question of fact whether a vendor has acted as promoter of an income trust. The presence of a private equity fund's asset manager on the operating entity's

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		fund manager should only have liability for prospectus disclosure if it has acted in a manner analogous to a control person. For example, with private equity investors, it is typical for the asset management company to occupy one or more positions on the board and to have a fairly active involvement with senior management of the company. In these circumstances, it can fairly be concluded that the fund manager possesses a high degree of knowledge regarding the issuer and is in a position to accept liability for prospectus disclosure. The amount of this liability should be no greater than the proceeds realized by the fund manager as a result of the public offering.	board of directors and fairly active involvement with senior management could indicate that a private equity fund has acted as a promoter. If, however, the particular factual circumstances indicate that a private equity fund or vendor did not take the initiative in founding the income trust or is not receiving proceeds in consideration of services or property under the offering in connection with the founding of the income trust, such a vendor may not be a promoter under securities legislation. Such a vendor may be more akin to a selling security holder under securities legislation. If the private equity fund or vendor is more akin to a selling security holder than a promoter, we expect that income trusts and vendors will address the potential loss, due to the income trust structure, of any rights and remedies with which securities legislation provides investors against vendors in a direct offering. We agree with the commenter that a vendor that has acted in a manner analogous to a control person is in a position to accept liability for prospectus disclosure. Public interest concerns regarding the potential loss of statutory rights and remedies could be addressed by a private equity fund or vendor accepting liability by entering into contractual arrangements that provide investors with similar rights and remedies against the vendors to those afforded by securities legislation in a direct offering. The vendor's liability could be subject to a due diligence defence. We expect that the amount of this liability would be commensurate with the proceeds realized by the vendor or the fund manager on behalf of the private equity fund under the public offering.
48.	Meaning of promoter - "significant portion" (Section 4.3.1)	One commenter notes that it should be possible to ultimately receive some amount of the offering proceeds without being considered a promoter.	We agree with the commenter and have amended the guidance provided in the Policy to address this issue.
49.	Description of vendors' representations, warranties, and indemnities (Section 4.4.3)	One commenter disagrees with the requirement to provide a "detailed description of the vendors' representations, warranties and indemnities contained in the acquisition agreement". The commenter expresses skepticism over whether such summary disclosure is possible, without reproducing the entire list of representations.	We believe that an income trust should be able to provide an investor with meaningful disclosure without reproducing the entire list of representations. The purpose of the disclosure is two-fold. The first purpose is to alert investors that they may not have the same statutory remedies against the vendors as they would have in a direct offering. The second purpose is to inform investors what protections have been negotiated between the parties as a meaningful alternative to the remedies that may not be available to investors under securities legislation on account of the income trust structure.
50.	Sales and marketing materials	Several commenters believe that the expectation to file sales and marketing materials should apply to all issuers, not only to income trust issuers. Another	We continue to feel that it is appropriate to expect income trust issuers to file sales and marketing materials with their preliminary prospectuses

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	(Part 5)	commenter states that issuers should not be held responsible for documents like green sheets, which are the responsibility of underwriters and over which the issuer has limited control. Several commenters also note that the definition of yield in section 5.1 is confusing. For example, one commenter notes that the term "yield" is normally used to mean the total amount to be distributed by an issuer, divided by the market price of the particular share or unit, expressed as a percentage. The commenters question the exclusion of return of capital and suggest that it is more appropriate to refer to taxable and tax deferred distributions.	based on the specific concerns that we have with respect to income trusts and other indirect offerings that are marketed primarily on the basis of yield. We may ask other issuers to file their sales and marketing material when similar concerns arise. We have revised the definition of yield in section 5.1 to address the concerns raised.