

NOTICE OF NATIONAL POLICY 41-201
INCOME TRUSTS AND OTHER INDIRECT OFFERINGS

December 3, 2004.

Notice of Policy

The Saskatchewan Financial Services Commission (the Commission), together with other members of the Canadian Securities Administrators (the CSA or we), has adopted National Policy 41-201 Income Trusts and Other Indirect Offerings (the Policy).

The Policy will be adopted on December 3, 2004.

Background

On October 24, 2003, the CSA published a proposed version of the Policy for comment (the Draft Policy). During the comment period, which ended on December 23, 2003, 21 comment letters were received. A further 3 comment letters were received after the expiry of the comment period.

Substance and purpose of the Policy

The Policy provides guidance and clarification to market participants about income trusts and other indirect offering structures. The CSA wants to ensure that everyone investing in income trust offerings has access to sufficient information to make an informed investment decision. We believe that it is beneficial to express our view about how the existing regulatory framework applies to non-corporate issuers (such as income trusts) and to indirect offerings, in order to minimize inconsistent interpretations and better ensure that the intent of the regulatory requirements is preserved.

We note that legislative changes in Alberta relating to the concepts of insider and control, as well as unitholder liability, clarify the framework for income trusts in Alberta. Similar legislation is being considered in Ontario and British Columbia.

Summary of changes to the Draft Policy

After considering the comments received, we have made changes to the Draft Policy. As these changes are not material, we are not republishing the Policy for a further comment period. The CSA plans to revisit the Policy in approximately two years.

This section describes changes made to the Draft Policy. We have considered the comments received and thank all the commenters. The names of the commenters and a summary of their comments, together with our responses, are contained in Appendices A and B to this notice.

Introduction

We have revised section 1.1 of the Policy to clarify the reasons for drafting a policy rather than a rule.

Definition of income trust

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 of the net cash flows generated by an operating entity.

We have added language to clarify that the Policy is not intended to apply to issuers of asset-backed securities or capital trust securities.

Description of direct and indirect offerings

We have made several drafting changes to make the distinction between direct and indirect offerings clearer.

Risk factors

We have added a section relating to risk factors, in which we remind issuers to disclose relevant risk factors in the prospectus.

We have added a recommendation about the risk factor relating to the potential inapplicability of insolvency and restructuring legislation in the trust context.

Distributable cash

We have replaced the term “non-taxable” with “tax-deferred”.

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.

Non-GAAP measures

Since publication of the Draft Policy on October 24, 2003, the CSA published CSA Staff Notice 52-306 – *Non-GAAP Financial Measures*. We have revised section 2.5 of the Policy accordingly.

Material debt

We have revised the Policy to ensure that all material debt, regardless of term, is captured. We also clarify that only material credit agreements need to be filed.

We have revised the Policy to capture debt incurred by an entity other than the operating entity.

Stability ratings

We have removed the recommendation for issuers to include disclosure about the absence of a stability rating, and the reasons for not obtaining one.

Determination of unit offering price

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.

Continuous disclosure

As a result of recent amendments to OSC Rule 61-501 and Autorité des marchés financiers' (AMF) regulation entitled Policy Statement Q-27, we have removed the reference to OSC Rule 61-501 and AMF's regulation entitled Policy Statement Q-27.

Management's Discussion and Analysis (MD&A)

We have added a section to the Policy relating to MD&A, specifically about our recommendations relating to MD&A disclosure about risks and uncertainties, and about distributed cash.

Comparative financial information

Section 3.2 of the Policy was revised to take into account the issuance on March 19, 2004 by the Canadian Institute of Chartered Accountants' Emerging Issues Committee (EIC) of EIC Abstract 145 - Basis of Accounting for Assets Acquired Upon the Formation of an Income Trust (the Abstract), applicable for transactions initiated on or after January 1, 2004.

Prospectus liability

We have clarified that we are not amending the legislative definition of promoter through the Policy. We have also elaborated upon concerns relating to the use of contractual representations and warranties in scenarios where active vendors that would be akin to selling security holders in a direct offering have not signed a prospectus certificate.

Sales and marketing materials

We have removed the exclusion of “return of capital” from the definition of “yield”.

Corporate Governance

We have added a section entitled “Corporate governance” to deal specifically with governance issues in the income trust context.

Questions

Please refer your questions about the Policy to any of:

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