

**CSA NOTICE OF AMENDMENTS TO
NATIONAL POLICY 41-201 *INCOME TRUSTS AND OTHER INDIRECT OFFERINGS***

Introduction

We, the Canadian Securities Administrators (the CSA or we), are implementing amendments to National Policy 41-201 *Income Trusts and Other Indirect Offerings* (NP 41-201).

This notice forms part of a series of notices which address changes to securities legislation arising from the upcoming changeover to International Financial Reporting Standards (IFRS).

Background

NP 41-201 provides guidance about how our securities regulatory framework applies to income trusts and other indirect offering structures.

NP 41-201 refers to and relies on references to Canadian generally accepted accounting principles (Canadian GAAP), which are established by the Canadian Accounting Standards Board (AcSB). In February 2006, the AcSB published a strategic plan to transition, over a period of five years, Canadian GAAP for public enterprises to IFRS, as adopted by the International Accounting Standards Board (IASB). In March 2008, the timing of the transition was confirmed. IFRS will apply to most Canadian publicly accountable enterprises for financial years beginning on or after January 1, 2011.

The AcSB has incorporated IFRS into the Handbook of the Canadian Institute of Chartered Accountants (the Handbook) as Canadian GAAP for most publicly accountable enterprises. As a result, the Handbook contains two sets of standards for public companies:

- Part I of the Handbook – Canadian GAAP for publicly accountable enterprises that applies for financial years beginning on or after January 1, 2011, and
- Part V of the Handbook - Canadian GAAP for public enterprises that is the pre-changeover accounting standards (current Canadian GAAP).

Consistent with these changes, the CSA repealed and replaced National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (to be renamed *Acceptable Accounting Principles and Auditing Standards*) (NI 52-107). The new version of NI 52-107 will require domestic issuers to comply with IFRS for financial years beginning on or after January 1, 2011 and will set out the accounting principles and auditing standards that apply to financial statements filed in a jurisdiction. The implementation of the new version of NI 52-107 was described in a separate notice published on October 1, 2010 and is subject to Ministerial approval requirements described in Appendix J of that notice.

The amendments do not reflect the impact of exposure drafts or discussion papers from the IASB prior to their adoption into IFRS. The CSA is implementing amendments to National Instrument 14-101 *Definitions* to include a definition of IFRS that incorporates amendments made to IFRS from time to time.

NP 41-201 provides guidance on measures of cash available for distribution. This guidance is updated to reflect changes to CSA Staff Notice 52-306 *Non-GAAP Financial Measures and Additional GAAP Measures* (Staff Notice 52-306). Staff Notice 52-306 is being published concurrently with this publication.

Substance and Purpose of the Amendments

The primary purpose of the amendments to NP 41-201 is to accommodate the transition to IFRS and the new version of NI 52-107 and to reflect changes to Staff Notice 52-306. The amendments replace current Canadian GAAP terms and phrases with IFRS terms and phrases and reflect changes to Staff Notice 52-306.

Implementation

The amendments will come into effect on January 1, 2011, but only apply for periods relating to financial years beginning on or after January 1, 2011.

Questions

Please refer your questions to any of:

Sylvie Anctil-Bavas
Chef comptable
Autorité des marchés financiers
Phone : (514) 395-0337 ext. 4291
E-mail : sylvie.anctil-bavas@lautorite.qc.ca

Louis Auger
Analyste en valeurs mobilières
Autorité des marchés financiers
Phone : (514) 395-0337 ext. 4383
E-mail : louis.auger@lautorite.qc.ca

Nicole Parent
Analyste en valeurs mobilières
Autorité des marchés financiers
Phone: (514) 395-0337 ext. 4455
E-mail: nicole.parent@lautorite.qc.ca

Cameron McInnis
Chief Accountant
Ontario Securities Commission
Phone : (416) 593-3675
E-mail : cmcinnis@osc.gov.on.ca

Marion Kirsh
Associate Chief Accountant
Ontario Securities Commission
Phone : (416) 593-8282
E-mail : mkirsh@osc.gov.on.ca

Mark Pinch
Senior Accountant
Ontario Securities Commission
Phone : (416) 593-8057
E-mail: mpinch@osc.gov.on.ca

Lara Gaede
Chief Accountant
Alberta Securities Commission
Phone : (403) 297-4223
E-mail : lara.gaede@asc.ca

Brian Banderk
Associate Chief Accountant
Alberta Securities Commission
Phone: (403) 355-9044
E-mail: brian.banderk@asc.ca

Carla-Marie Hait
Chief Accountant
British Columbia Securities Commission
Phone : (604) 899-6726
E-mail : chait@bcsc.bc.ca

Manuele Albrino
Associate Chief Accountant
British Columbia Securities Commission
Phone: (604) 899-6641
E-mail: malbrino@bcsc.bc.ca

Kevin Hoyt
Director, Regulatory Affairs and Chief Financial Officer
New Brunswick Securities Commission
Phone: (506) 643-7691
E-mail: kevin.hoyt@nbsc-cvmnb.ca

November 9, 2010

Appendix A

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 by this Instrument.*

2. *The first paragraph of section 2.1 is amended*

- (a) *by deleting “non-GAAP” wherever it occurs,*
- (b) *by replacing “measure that generally refers” with “term used to refer”,*
- (c) *by deleting “this” before “net cash”,*
- (d) *by deleting “the guidance about”, and*
- (e) *by replacing “also applies to” with “includes all”.*

3. *Section 2.5 is amended*

(a) *in the title, by replacing “do we expect about non-GAAP financial measures such as” with “should be provided for”,*

(b) *by replacing the first and the second paragraphs with the following:*

“As required by the accounting principles an issuer uses to prepare its financial statements (the issuer's GAAP), an income trust must disclose the cash distributed to unitholders in its financial statements. Income trusts may also disclose distributable cash. Income trusts generally include disclosure about historical distributable cash in continuous disclosure documents and estimated distributable cash in their prospectuses. We have concluded that distributable cash is a cash flow measure, not an income measure. To ensure readers understand the composition and relevance of distributable cash, income trusts should reconcile distributable cash to cash flows from operating activities. In determining cash flows from operating activities, income trusts should include borrowing costs and changes during the period in non-cash working capital balances.”,

(c) *in the third paragraph,*

- (i) *by replacing “Issuers should define any non-GAAP financial measure and explain its relevance to ensure it does not mislead investors. Issuers presenting non-GAAP financial measures should present those measures on a consistent basis from period to period. Specifically, in respect of distributable cash” with “Specifically”,*

- (ii) *in subparagraph (i), by adding “the issuer’s” before “GAAP”, and*
- (iii) *in subparagraph (iv), by adding “, or in the case of content on a website, in a manner that meets this objective (for example, by providing a link to the reconciliation) ” after “document”.*

4. Section 2.6 is amended

- (a) *by replacing the title with the following:*

“What format of distributable cash reconciliation should be used?”

- (b) *in the first paragraph,*

- (i) *by adding “to cash flows from operating activities” after “cash”,*

- (ii) *by replacing “the use of non-GAAP income measures in the reconciliation of distributable cash. For example, it is inappropriate to include non-GAAP measures such as EBITDA, Adjusted EBITDA, and Pro Forma Net Income in the distributable cash reconciliation” with “reconciling cash flows from operating activities to a subtotal that is not a minimum line item in the financial statements required by the issuer’s GAAP (for example, profit or loss is a minimum line item).”*

- (c) *in the second paragraph,*

- (i) *in subparagraph (b), by replacing “charge” with “loss”, and*

- (ii) *in subparagraph (c), by replacing “asset retirement obligations” with “decommissioning, restoration and similar liabilities”.*

5. Section 2.8 is amended

- (a) *by replacing the first paragraph with the following:*

“When estimated distributable cash information contained in a prospectus includes forward-looking adjustments that are based on significant assumptions and those adjustments materially affect estimated distributable cash, the quantitative reconciliation discussed in section 2.5 should begin with cash flows from operating activities derived from future-oriented financial information (FOFI) that complies with sections 4A and 4B of National Instrument 51-102 *Continuous Disclosure Obligations*. The FOFI should reflect these forward-looking adjustments and the FOFI should be included in the prospectus.”

- (b) *in the second paragraph,*

- (i) *by replacing* “A S.4250 forecast” *with* “FOFI”,
- (ii) *in subparagraph (i), by*
 - (A) *replacing* “to incorporate these” *with* “include financial information from the acquired entity’s”, *and*
 - (B) *replacing* “into pro forma financial statements of the issuer” *with* “in the issuer’s pro forma financial statements”.

6. *Section 3.1 is amended by replacing* “charges” *with* “expense”.

7. *Section 6.1 is amended*

- (a) *in the first paragraph, by adding* “financial reports” *after* “interim”, *and*
- (b) *in clause (A) of the third paragraph, by replacing* “interim financial statements” *with* “interim financial reports”.

8. *Section 6.2 is amended*

- (a) *in the second paragraph,*
 - (i) *by replacing* “purchase” *with* “acquisition”,
 - (ii) *in the first bullet, by replacing* “revenues/sales” *with* “revenue”,
 - (iii) *in the fifth bullet, by replacing* “net income” *with* “profit or loss”, *and*
- (b) *in the third paragraph, by replacing* “complete financial statements with comparative figures that also reflect” *with* “comparative information for”.

9. *Section 6.3 is replaced with the following:*

“6.3 Recognition of intangible assets

An issuer’s GAAP requires the appropriate recognition of intangible assets acquired in business combinations. In addition, an issuer’s GAAP generally requires that intangible assets acquired be measured at their acquisition date fair value. To assist investors in understanding the valuation process of the intangible assets, income trusts should provide in the offering document a description of the method(s) used to value the intangible assets.”.

10. *Section 6.5.2 is amended*

- (a) *in the first paragraph,*

- (i) **by replacing** “non-operating cash flows” **wherever it occurs with** “sources other than cash flows from operating activities”,
 - (ii) **by adding** “In determining cash flows from operating activities, the issuer should include borrowing costs.” **at the end of the paragraph,**
- (b) **in the table in the second paragraph,**
 - (i) **in row B., by replacing** “Net Income (loss)” **with** “Profit or loss”,
 - (ii) **in row E., by replacing** “net income” **with** “profit or loss”,
- (c) **in footnote* of the table in the second paragraph, by adding** “and includes borrowing cost” **after** “balances”,
- (d) **in the third paragraph, by replacing** “net income (loss)” **with** “profit or loss”,
- (e) **in the fourth paragraph,**
 - (i) **by replacing** “net income (loss)” **with** “profit or loss”,
 - (ii) **by replacing** “results of operations” **with** “financial performance”,
 - (iii) **in subparagraph (v),**
 - (A) **by replacing** “net income” **with** “profit or loss”,
 - (B) **by replacing** “operations” **with** “operating activities”,
 - (iv) **by adding the following after subparagraph (vi):**
“In determining cash flows from operating activities, the issuer should include borrowing costs.”, **and**
- (f) **in the fifth paragraph, by replacing** “cash flow statement” **with** “statement of cash flows”.

11. ***This Instrument only applies to periods relating to financial years beginning on or after January 1, 2011.***

12. ***This Instrument becomes effective on January 1, 2011.***