

ALBERTA SECURITIES COMMISSION

NOTICE

PROCLAMATION OF THE INCOME TRUSTS LIABILITY ACT and CONSEQUENTIAL AMENDMENTS TO THE SECURITIES ACT

June 11, 2004

On May 6, 2004, the Minister of Revenue announced that the Alberta Government intended to introduce legislation to limit liability for unit-holders of publicly traded income trusts. Bill 34, the *Income Trusts Liability Act*, received third reading on May 12th and royal assent on May 19th. On June 8, 2004 the Lieutenant Governor in Council issued an order in council proclaiming the *Income Trusts Liability Act* in force on **July 1, 2004**.

The *Income Trusts Liability Act* contains consequential amendments to the *Securities Act*, which also come into force on July 1st. These consequential amendments include:

1. **Section 1(aa)** is amended by striking out “or” at the end of subclause (iv), adding “or” at the end of subclause (v) and adding the following after subclause (v):
 - (vi) a person or company that is designated under section 10 or under the regulations to be an insider;
2. **Section 3** is repealed and the following is substituted:

Control

3 A person or company is considered to control another person or company if the person or company, directly or indirectly, has the power to direct the management and policies of the other person or company by virtue of

- (a) the ownership or direction of voting securities of the other person or company,
 - (b) a written agreement or trust instrument,
 - (c) being the general partner or controlling the general partner of the other person or company, or
 - (d) being the trustee of the other person or company.
3. The following is **added after section 7**:

Deemed insiders of an income trust

7.1(1) In this section,

- (a) “income trust” means an Alberta income trust as defined in the *Income Trusts*

Liability Act;

(b) “operating entity” means a person or company with an underlying business or assets owned in whole or in part by an income trust for the purposes of generating cash flow;

(c) “manager” means a person or company established or contracted to provide management or administrative services.

(2) The following are deemed to be an insider of an income trust:

(a) every operating entity of the income trust;

(b) every manager of the income trust;

(c) if an operating entity or a manager is not a reporting issuer, every person or company who would be an insider of the operating entity or the manager if the operating entity were a reporting issuer.

4. **Section 10** is amended

(a) by adding the following after subsection (2):

(2.1) The Commission may, if the Commission considers that it would be in the public interest to do so, make an order designating a person or company as an insider.

(b) in subsection (3) by striking out “or (2)” and substituting “,(2) or (2.1).

5. **Section 223(t)** is amended by adding the following after subclause (iv):

(v) designating a person or company as an insider;

One additional consequential amendment to the **Securities Act** recently came into force. **Section 19** of the **Securities Act** was amended by the *Financial Administration Amendment Act, 2004* effective May 14, 2004. Clause (e) of section 19(4) was repealed May 14th and now reads as follows:

(e) may be participant under section 40 of the *Financial Administration Act*.

This notice and Bill 38 have been posted on the Commission website at www.albertasecurities.com.