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For distribution to relevant parties within your firm

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Industry Relations and Representation Loans of Income Trust Units: Income Tax Technical Amendments

The Department of Finance released an Income Tax Technical Amendments Bill on February 27, 2004. It includes provisions to facilitate loans of publicly traded income trust units. The proposed amendments are generally consistent with the draft amendments prepared and submitted to the Department of Finance last spring by an *ad hoc* committee of the IDA. The Bill also contains a new rule designed to prevent income account holders of trust units from receiving the benefit of tax-free distributions from income trusts. It was anticipated that such a rule might be proposed. In very general terms, the proposed amendments provide as follows:

- (a) Loans of income trust units will not result in a disposition by the lender for tax purposes
- (b) The proposed amendments will deem compensation payments received by lenders of income trust units from borrowers to have the same characteristics, source and purpose as the related actual payments by the income trust.
- (c) When a dealer borrows income trust units, the proposed amendments will generally allow a full deduction for any compensation payments made by the dealer, other than compensation payments in respect of dividends which will continue to be only two thirds deductible.
- (d) Where an income account holder of trust units receives certain tax-free receipts and subsequently revalues or sells the trust units, there is currently no rule which negates the benefit of the tax-free receipt. The proposed amendments propose such a rule. In very general terms, the rule requires an income inclusion upon revaluation or sale equal to the amount of the tax-free receipt.

- (e) The proposed amendments will generally apply to all loans of income trust units after 2001. The proposed income adjustment rule described in paragraph (d) above appears to apply with respect to tax-free amounts received at any time in the past. This appears to be an unexpected and inappropriate retroactive result. The IDA intends to bring this fact to the attention of the Department of Finance in the near future. If members have any other issues which they believe should be brought to the attention of the Department, they should contact Ian Russell (416-865-3036).

The proposed amendments are highly technical in nature. Thus, it will be necessary to analyze the consequences of any specific transaction having regard to the precise wording of the proposed amendments.

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Association Secretary