

## REITs and Income Funds

MAY 23, 2003

### **Introduction of Ontario Limited Liability Legislation for Income Trusts**

On May 22, 2003, the Ontario Government introduced Bill 41. Schedule L of Bill 41 is the *Trust Beneficiaries' Liability Act, 2003*, which will protect unitholders of publicly traded trusts by affording them the same protection against personal liability as shareholders of a corporation.

Partners of Goodmans LLP worked closely with the Canadian Institute of Public and Private Real Estate Companies ("CIPPREC") over recent months to spearhead this initiative and assist in drafting this legislation to confirm that unitholders of real estate investment trusts ("REITs") and other income trusts are not personally liable for the activities or obligations of the trusts or their trustees.

The adoption of this legislation will ensure that the exposure of unitholders to claims against trusts will be limited to the amount of their investment in the trust, removing any uncertainty for business trust investors. With this concern addressed, it is expected that publicly traded trusts will soon be included in the S&P/TSX Composite Index. This is expected to enhance demand and liquidity for REITs and other income trust units.

The *Trust Beneficiaries' Liability Act, 2003* will apply to any trust that is a "reporting issuer" within the meaning of the *Securities Act* (Ontario) and whose trust instrument is governed by Ontario law. As the legislation is drafted, protection for beneficiaries will extend to acts or defaults that arise after the date that the Act comes into force. The legislation will come into force on the day that *The Right Choices Act (Budget Measures), 2003* receives Royal Assent.

Goodmans has been a pioneer in the REIT and income trust sector, playing a key role in structuring and implementing numerous income trusts, including Canada's first REIT IPO, Canada's first REIT to own an operating business and Canada's first cross-border REITs and income trusts. CIPPREC recently appointed Goodmans as the exclusive author of *The Canadian REIT Handbook*.

If you would like to discuss the impact of the legislation on possible transactions, we invite you to contact Stephen Pincus at (416) 597-4104 / [spincus@goodmans.ca](mailto:spincus@goodmans.ca) or Allan Goodman at (416) 597-4243 / [agoodman@goodmans.ca](mailto:agoodman@goodmans.ca) or any other member of the Goodmans REITs and Income Funds Group listed on the next page.

# THE UPDATE

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## Corporate/Securities

**Justin Beber** 416.597.4252  
jbeber@goodmans.ca

**Sheldon Freeman** 416.597.6256  
sfreeman@goodmans.ca

**Allan Goodman** 416.597.4243  
agoodman@goodmans.ca

**Bill Gorman** 416.597.4118  
wgorman@goodmans.ca

**Stephen Halperin** 416.597.4115  
shalperin@goodmans.ca

**David Matlow** 416.597.4147  
dmatlow@goodmans.ca

**Neill May** 416.597.4187  
nmay@goodmans.ca

**Stephen Pincus** 416.597.4104  
spincus@goodmans.ca

**William Rosenfeld** 416.597.4145  
wrosenfeld@goodmans.ca

**Meredith Roth** 416.597.6260  
meroth@goodmans.ca

**Michelle Roth** 416.597.6261  
miroth@goodmans.ca

**Neil Sheehy** 416.597.4229  
nsheehy@goodmans.ca

**Jeffrey Singer** 416.597.4283  
jsinger@goodmans.ca

**Robert Vaux** 416.597.6265  
rvaux@goodmans.ca

**David Weinberger** 416.597.6250  
dweinberger@goodmans.ca

## Tax

**Maureen Berry** 416.597.4287  
mberry@goodmans.ca

**Alan Bowman** 416.597.4209  
abowman@goodmans.ca

**Jon Northup** 416.597.4228  
jnorthup@goodmans.ca

**Mitchell Sherman** 416.597.4189  
msherman@goodmans.ca

**Carrie Smit** 416.597.4230  
csmit@goodmans.ca

## Real Estate

**Ira Barkin** 416.597.4112  
ibarkin@goodmans.ca

**David Ehrlich** 416.597.4277  
dehrlich@goodmans.ca

**Ken Herlin** 416.597.4168  
kherlin@goodmans.ca

**Kenneth Karp** 416.597.4122  
kkarp@goodmans.ca

**Perry Katz** 416.597.6268  
pkatz@goodmans.ca

**Juli Morrow** 416.597.4135  
jmorrow@goodmans.ca

**Andrew Wiseman** 416.597.4126  
awiseman@goodmans.ca

## Senior Business Advisor

**Seymour Temkin** 416.597.4120  
stemkin@goodmans.ca

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