

Goodmans^{LLP} Update

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Income Funds

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New Guidance for Income Trust Issuers on Special Year-End Distributions

The Toronto Stock Exchange has issued a timely staff notice providing guidance to income trust issuers on special year-end distributions.

Many income trust issuers make special distributions at or prior to year end. These special distributions, which are often required by the terms of the income trust's governing documents, are intended to ensure that the trust distributes to its unitholders all taxable income and capital gains received during the year. These distributions can be paid in cash, but may also be paid in units. In general, where the distribution is paid in units, it is followed by a consolidation of all outstanding trust units, such that unitholders of the income trust hold the exact same number of trust units after the distribution as they held immediately prior to it.

The unique element of these special distributions is that, since the income trust must announce the distribution in advance of its year end, the issuer is often required to estimate the amount of the distribution. This requirement arises because of uncertainty, at the time of announcement, as to the actual amount of income that the issuer will generate for the entire year, which is not yet complete.

The Toronto Stock Exchange rules govern the notice requirements that apply to distributions. The essence of the notice (in addition to reminding issuers that the normal notice requirements apply to special distributions just as they do to regular distributions) is to communicate that, where the precise amount of the distribution is unknown, issuers should provide their best estimate at the time of announcement, with follow-up notices to be provided when the precise amount of the distribution is determined.

For further information on compliance with these guidelines, please contact the Chair of Goodmans' Income Funds Group, Stephen Pincus at 416.597.4104 or spincus@goodmans.ca.