



British Columbia Securities Commission

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### **Headnote**

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions

1996 Securities Act s. 48 – Exemption order by commission or executive director - exemption from s. 34(a) requirement to be registered as a dealer to trade securities – a registered adviser requires relief from the dealer registration requirement so that it can directly trade securities for registered dealers’ clients - the client agrees that the dealer can retain the adviser to invest the client’s money as described in a model portfolio designed by the adviser, including re-balancing from time to time so that the client’s portfolio stays true to the pre-established parameters of the model portfolio - the pre-established parameters cannot be changed without notice to the client - the dealer conducts know-your client reviews and provides suitability advice - the dealer will at all times be ultimately responsible to the client for the rebalancing activities undertaken by the adviser - the trades carried out by the adviser will be reflected in the dealer’s records and subject to oversight by the Mutual Fund Dealers Association (MFDA) or Investment Industry Regulatory Organization of Canada (IIROC) - the MFDA Investor Protection Corporation (IPC) coverage will apply to the investments held in the client’s account with the dealer on the same terms as other mutual fund investments – CIPF coverage for the IIROC dealer’s client will not differ on material terms

### **Applicable Legislative Provisions**

1996 Securities Act s. 48 – Exemption order by commission or executive director  
1996 Securities Act s. 34(a) – Dealer registration requirement

In the Matter of  
the Securities Legislation of  
British Columbia (the **Jurisdiction**)

and

In the Matter of  
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of  
CIBC Trust Corporation (the **Filer**)

Decision



### **Background**

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption relieving the Filer from the dealer registration requirement (the **Exemption Sought**) in respect of any trades in securities of the Imperial Pools or CIBC Index Mutual Funds (together, the **Funds**) in accordance with the investment decisions made by the Filer in its Rebalancing Activities (as defined below) and Strategic and Tactical Rebalancing Activities (as defined below) in connection with the Product (as defined and described below) distributed by CIBC Securities Inc. (**CIBC SI**) and CIBC Investor Services Inc. (**CIBC ISI**) (the **Dealers**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Nunavut, Northwest Territories and Yukon.

### **Interpretation**

- ¶ 2 Defined terms contained in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning in this decision, unless otherwise defined.

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. The Filer is a trust company organized under the laws of Canada and has its head office in Toronto, Ontario. It is qualified to carry on the trust business in all the provinces and territories of Canada. The Filer is registered as an adviser, in the category of portfolio manager under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, in each of the provinces and territories other than Ontario and Newfoundland and Labrador. The Filer is not in default of securities legislation in any jurisdiction.
  2. Outside of Ontario and Newfoundland and Labrador, British Columbia is the jurisdiction where the Filer has the most significant connection in accordance with National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*.



3. CIBC SI is registered as a dealer in each of the provinces and territories in the category of mutual fund dealer (other than Quebec) and is a member of the Mutual Fund Dealers Association of Canada (**MFDA**).
4. CIBC ISI is registered in each of the provinces and territories as a dealer in the category of investment dealer and is a member of Investment Industry Regulatory Organization of Canada (**IIROC**).
5. The Dealers and the Filer are each a subsidiary of the Canadian Imperial Bank of Commerce (**CIBC**), and as such, are all affiliated entities under the Legislation.
6. The Filer has been offering fully discretionary managed accounts to its clients, including those for which only the Funds are available. The Filer is working with the Dealers to transition existing managed accounts from the Filer to the facilities of the Dealers. All new managed accounts will be opened through the facilities of the Dealers, and the Filer will continue to develop and rebalance model portfolios which align substantively with the approach the Filer has taken previously for clients with managed accounts for which only the Funds are available. This service is referred to as the CIBC Personal Portfolio Services (the **Product**).
7. The Filer wishes to have the dealing representatives of the Dealers more involved with the clients. The Dealers intend to offer the Product and act as the ongoing financial advisor to their clients.
8. The Product consists of a number of model portfolios, which together occupy successive portions of the investing spectrum with respect to the investment objective of the client, from secure income to aggressive growth. Each model portfolio is comprised of either the Imperial Pools or the CIBC Index Mutual Funds, each a family of mutual funds managed by an affiliate of the Filer, suitable to the objective of that portfolio.
9. Each of the Funds is or will be an open-ended mutual fund trust established under the laws of the Province of Ontario. Either CIBC, or a wholly-owned subsidiary of CIBC, is or will be the investment fund manager of the Funds. CIBC Asset Management Inc. (**CAMI**), an affiliate of CIBC, and of the Filer and the Dealers, is the portfolio manager of the Funds. The Filer is the trustee and CIBC Mellon Trust Company is the custodian of the Funds.
10. If a client of a Dealer is interested in the Product, the client completes an application form, which includes all of the relevant know-your-client and suitability information. The client discusses the model portfolios with the dealing representative of the Dealer and, based on the client's responses, the dealing representative of the Dealer recommends which model portfolio will be



suitable for the client; however, the client ultimately selects the model portfolio. Any of the Funds that are used in connection with the Product are or will be qualified under a simplified prospectus that has been or will be filed in the provinces and territories of Canada.

11. The client receives a description of the model portfolio selected by the client (the **Selected Model Portfolio**); the description provides information on the Selected Model Portfolio's Asset Classes (as defined below) and Permitted Ranges (as defined below).
12. The client is also provided with a simplified prospectus or fund facts document required by securities legislation for the Funds prior to investing in the Funds that may be used to comprise the Selected Model Portfolio.
13. The client will then enter into an agreement with one of the Dealers (the **Account Agreement**). The Account Agreement must be approved by the Branch Manager of the applicable Dealer before the account is opened.
14. The Account Agreement includes express disclosure that the Filer will be providing discretionary investment management services in connection with the Rebalancing Activities and Strategic and Tactical Rebalancing Activities. The Account Agreement also includes provisions whereby the Filer is retained to provide the rebalancing services for the model portfolios.
15. Under the Account Agreement, the client agrees to pay the fees set forth in the fee schedule for the model portfolios using the Imperial Pools or the fee schedule for the CIBC Index Mutual Funds, as the case may be, which amount is used to pay for the services of the relevant Dealer and the Filer. Fees may be changed from time to time on 60 days' prior written notice to the client. Prospective clients of the Dealers will receive the same fee schedules and CIBC Personal Portfolio Benchmarks and Investment Managers Brochure and any brochure required by the MFDA or IIROC.
16. CIBC, as manager of the Funds, continues to be responsible for the fees of CAMI for its services as portfolio adviser to the Funds. Each of the Funds may pay CIBC, as manager of the Funds, an annual management fee of up to 0.25% of the net asset value of the specific Fund. Each of the Funds will also pay its own operating expenses.
17. There is no change to the amount of fees payable by any of the Filer's existing clients as a result of the transition of existing managed accounts from the Filer to the facilities of the Dealer(s) and any future change to fees will be made on 60 days' prior written notice as stated in paragraph 15.



18. To the extent that there are investors in the Funds who acquire units of the Funds outside the Product, such investors will not bear expenses attributable to the Product.
19. After investing in the Selected Model Portfolio, the client is provided with details of the Funds held in their account with the relevant Dealer in the account statements (the **Account Statements**) as required by IIROC or the MFDA, as the case may be; the account statement will also include information about how a client can obtain a copy of the current simplified prospectus required by securities legislation for the Funds if the client wishes to obtain further details.
20. The Filer undertakes to develop and manage the model portfolios on a discretionary basis. Each model portfolio is comprised of different asset classes (the **Asset Classes**) which are determined by the Filer in its sole discretion. The Filer allocates each Asset Class a permitted range (**Permitted Range**), being a minimum and maximum percentage of the model portfolio that can be allocated to investments of a particular Asset Class. The Filer can change the Permitted Range or the Asset Classes of a model portfolio, including adding a new Asset Class, or both, if the client is provided at least 60 days' advance written notice, providing full, true and plain disclosure of the change. The Filer's actions will be carried out with a view to ensuring that the model portfolio continues to abide by the stated investment objectives.
21. The Filer also uses its discretion in choosing which of the Funds will be used for each Asset Class, provided the investment objective and strategies of any Fund are consistent with the Asset Class. The Filer's actions will be carried out with a view to ensuring that the Selected Model Portfolio continues to abide by the stated investment objectives.
22. The Dealers' client's account will be periodically rebalanced through a series of purchase and redemption trades effected by the Filer. If the percentage weighting of at least one of the Asset Classes in the Selected Model Portfolio exceeds or falls below the rebalancing threshold, the Filer will effect trades on behalf of all applicable Dealers' clients' accounts invested in the Selected Model Portfolio to bring the Asset Classes of the Selected Model Portfolio within its target range. Additionally, a Dealer's client account may be rebalanced by the Filer if the percentage weighting of at least one Fund in a Dealer's client account exceeds or falls below the rebalancing threshold. The Filer will effect trades on behalf of that Dealer's client account to bring the Funds in the Dealer's client account back to their target range (and within the Permitted Range for the Asset Class). These trades are referred to herein as the Rebalancing Activities.



23. In addition to the Rebalancing Activities described above that are effected by the Filer, the Filer will review all of the model portfolios on a periodic basis, currently at least annually, to ensure the model portfolios are consistent with their stated investment objectives, the Funds, and their weight in the model portfolios. The Filer may also change the weightings of the Funds within the model portfolios to take advantage of market conditions and trends. All changes effected by the Filer as described above will be done on a fully discretionary basis and in a manner consistent with the stated investment objectives of the model portfolios. In connection with its responsibilities under the Product, the Filer will carry out the trades in the Funds that are necessary and incidental in connection with modifying the model portfolios. These activities are referred to herein as the Strategic and Tactical Rebalancing Activities.
24. The Filer engages in the portfolio management business in addition to the Rebalancing Activities and Strategic and Tactical Rebalancing Activities in respect of the Product. There are no separate fees charged on Rebalancing Activities and Strategic and Tactical Rebalancing Activities.
25. The relevant Dealer is at all times ultimately responsible to its client for the Rebalancing Activities and Strategic and Tactical Rebalancing Activities undertaken by the Filer in regards to the model portfolios.
26. The relevant Dealer will carry out the initial trades in units of the Funds for its client in connection with the investment of monies (an **Investment**) by the clients in the Funds comprising the Selected Model Portfolio at the time of Investment; the Filer will carry out trades in units of the Funds for a client that are necessary and incidental to its Rebalancing Activities and Strategic and Tactical Rebalancing Activities, other than trades relating to an Investment; all trades will be reflected in the client's account on the day following the trade, and will also be reflected in the trade blotter to be shared by the Filer and the relevant Dealer in connection with the Product.
27. The trades carried out by the Filer will be reflected in the records of CIBC SI or CIBC ISI, as applicable, and subject to oversight by the MFDA or IIROC, respectively.
28. MFDA Investor Protection Coverage ("**MFDA PC**") will apply to CIBC SI's clients' investments in the Funds, held in such clients' accounts with CIBC SI on the same term as other mutual fund investments, and the Canadian Investor Protection Fund will apply to CIBC ISI's clients' investments in the Funds, held in such clients' accounts with CIBC ISI on the same term as other mutual fund investments, which as at the date hereof, are substantively similar to the MFDA PC.



29. In the absence of the Exemption Sought, the Filer would have to be registered under the Legislation as a dealer in the category of "mutual fund dealer" or "investment dealer" in order to carry out the trading activities permitted by the Exemption Sought.
30. In order to obtain registration under the Legislation as a mutual fund dealer, the Filer would be required to be a member of the MFDA, except in Québec.
31. The MFDA takes the position that the Product must be offered by the Dealers and existing managed accounts must be transitioned from the Filer to the facilities of the Dealers. The MFDA has rules that govern its membership which would have the effect of precluding the Filer from being a member of the MFDA if it continues to conduct its principal business of acting as a portfolio manager.

#### **Decision**

- ¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

- (a) the Filer is, at the time of any trade, registered under all applicable local jurisdictions as an adviser, in the category of portfolio manager;
- (b) the Rebalancing Activities and the Strategic and Tactical Rebalancing Activities will be made in accordance with the terms of the Selected Model Portfolios;
- (c) the Dealers will only offer the Product to individuals with household investable assets of \$100,000 or above;
- (d) any new fund created within the Imperial Pools or CIBC Index Mutual Funds will not alter any of the Filer's representations made above;
- (e) the account opening materials provided to a client will clearly and expressly, in bolded letters, state that the Dealer will be at all times ultimately responsible to its client for the Rebalancing Activities and Strategic and Tactical Rebalancing Activities undertaken by the Filer in regards to the model portfolios;



- (f) no sales charges or commissions will be payable by the Dealer's client in respect of any Rebalancing Activities or Strategic and Tactical Rebalancing Activities;
- (g) there will be no duplication of any fees between the Filer and the relevant Dealer;
- (h) there will be no change to the amount of fees payable by any of the Filer's existing clients as a result of the transition of existing managed accounts from the Filer to the facilities of the Dealer(s);
- (i) none of the Funds pay an investment management fee;
- (j) the Dealers will comply with the requirements of IIROC or MFDA, as applicable, with respect to their obligations in regards to the Account Statements and to the extent that future exemptive relief is granted by the IIROC or MFDA to dealers, including the Dealers, will comply with such exemptive relief;
- (k) IIROC or MFDA, do not object to applicable Dealer offering the Product;
- (l) MFDA PC will apply to CIBC SI's clients' investments in the Funds, held in such clients' accounts with CIBC SI on the same term as other mutual fund investments, and the Canadian Investor Protection Fund will apply to CIBC ISI's clients' investments in the Funds, held in such clients' accounts with CIBC ISI on the same term as other mutual fund investments; and
- (m) CIBC ISI will not offer the Product unless it complies with Rules 1300.7 to 1300.21 (inclusive) of the IIROC Dealer Member Rules, as amended from time to time.

Sandra Jakab  
Director, Capital Markets Regulation  
British Columbia