

## **2002 BCSECCOM 629**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - registration relief granted to Canadian and non-Canadian sub-advisors of a registrant in connection with a wrap account program operated by a Canadian registrant, trade confirmation relief for clients who receive monthly and quarterly statements, and the revocation of prior authorizing decisions

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34(1)(c), 48, 171

*Securities Rules*, B.C. Reg. 194/97, s. 36

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH  
COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, NEW  
BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND,  
NEWFOUNDLAND AND LABRADOR, THE NORTHWEST  
TERRITORIES  
AND NUNAVUT**

**AND**

**IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM  
FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF CIBC WORLD MARKETS INC.**

**MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in British Columbia, Alberta, Saskatchewan, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories and Nunavut (the “Jurisdictions”) has received an application from CIBC World Markets Inc. (“CIBC Wood Gundy”) for:
  - 1.1 a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in the Legislation to be registered as an adviser (the “Registration Requirements”) do not apply to advisory services provided to CIBC Wood Gundy by CIBC World Markets Corp. (“Oppenheimer”), CM Investment Management Inc. (“CM”) and other affiliated corporations of CIBC Wood Gundy

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(together the “Affiliates”) and by portfolio managers carrying on business in Canada, the United States and elsewhere who act as sub-advisers to CIBC Wood Gundy (the “Advisers”) in providing portfolio management services for the benefit of retail clients of CIBC Wood Gundy (the “Participating Clients”) who participate in a wrap account program designated as the CIBC Wood Gundy Investment Advisory Service (the “IAS Program”) or the CIBC Wood Gundy Investment Consulting Service (the “ICS Program”) (collectively, the “Programs”);

- 1.2 a decision under the Legislation that the requirement (the “Trade Confirmation Requirement”) in the Legislation that registered dealers, who have acted as principal or agent in connection with any trade in a security, promptly send by prepaid mail or deliver to the customer a written confirmation of the trade, setting forth certain information specified in the Legislation, does not apply so as to require that CIBC Wood Gundy send or deliver written confirmations to Participating Clients; and
- 1.3 a decision under the Legislation revoking the following decisions (collectively, the “Prior Decisions”) of certain of the Decision Makers:
  - 1.3.1 the NAS Decision Document dated October 9, 1998, IN THE MATTER OF CIBC WOOD GUNDY SECURITIES INC. (the “1998 Decision”);
  - 1.3.2 the MRRS Decision Document dated June 11, 1999, IN THE MATTER OF CIBC WOOD GUNDY SECURITIES INC. (the “1999 Decision”);
  - 1.3.3 the Exemption Order of the Registrar of Securities for Nunavut dated November 15, 1999, IN THE MATTER OF CIBC WORLD MARKETS INC. (the “1999 NV Order”);
  - 1.3.4 the Exemption Order of the Registrar of Securities for the Northwest Territories dated November 16, 1999, IN THE MATTER OF CIBC WORLD MARKETS INC. (the “1999 NWT Order”);

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- 1.3.5 the MRRS Decision Document dated May 11, 2000, IN THE MATTER OF CIBC WORLD MARKETS INC. (the “2000 Decision”); and
  - 1.3.6 the Ruling and Order of the Nova Scotia Securities Commission dated June 2, 2000, IN THE MATTER OF CIBC WORLD MARKETS INC. (the “2000 NS Order”);
- 2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Alberta Securities Commission is the principal regulator for this application;
- 3. AND WHEREAS CIBC Wood Gundy has represented to the Decision Makers that:
  - 3.1 CIBC Wood Gundy is an investment dealer registered under the Legislation in each province and territory in Canada;
  - 3.2 under exemptions previously granted by the Decision Makers in the Prior Decisions, CIBC Wood Gundy makes available to its retail clients throughout Canada the IAS Program, which is based on the CIBC Oppenheimer Investment Advisory Service provided in the United States by its affiliate, Oppenheimer, and which enables Participating Clients to invest in securities, including U.S. securities;
  - 3.3 Oppenheimer is registered:
    - 3.3.1 in the United States as a broker-dealer under the *Securities Exchange Act of 1934* and as an adviser under the *Investment Advisers Act of 1940* (the “Investment Advisers Act”); and
    - 3.3.2 in Canada as an international adviser in Ontario, a portfolio manager and investment counsel (foreign) in Alberta and a non-resident portfolio manager in British Columbia;
  - 3.4 in December, 2001 CIBC Wood Gundy acquired the Canadian retail brokerage business of Merrill Lynch Canada Inc. (“MLC”), which included the client accounts of Merrill Lynch

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Consults Canada Service (“MLCCS”), a wrap account program operated on a different basis than the IAS Program;

- 3.5 under the MLCCS each participating client selected one or more portfolio strategies from among over forty portfolio strategies provided to MLC by sub-advisers in and outside of Canada pursuant to agreements with MLC and its affiliate, Merrill Lynch Investment Managers Canada Inc. (“MLIMC”) (each a “Strategy”), which Strategy or Strategies were selected with the advice of MLC and were implemented by MLC for their clients in client accounts fully handled by MLC, without any involvement of the sub-advisers beyond providing advice to MLC on investment Strategies in terms of the securities to be purchased for and their proportion of each Strategy;
- 3.6 MLC was assisted in the administration of these accounts by MLIMC, which also acted as a sub-adviser in the MLCCS program;
- 3.7 all of the shares of MLIMC were acquired by CIBC Wood Gundy’s parent corporation, Canadian Imperial Bank of Commerce (“CIBC”), on January 31, 2002, and MLIMC is now an affiliate of CIBC Wood Gundy named CM Investment Management Inc. (“CM”);
- 3.8 CM is registered as an adviser and limited market dealer in Ontario and is applying for registration as an investment counsel and portfolio manager in Manitoba;
- 3.9 CIBC Wood Gundy is currently in the process of integrating the acquired MLC business operations with its own and intends to make the ICS Program, which will be based on the MLCCS and the IAS Program, available to its retail clients throughout Canada;
- 3.10 the ICS Program will enable Participating Clients to invest in securities pursuant to investment Strategies, including U.S. and global Strategies;
- 3.11 the integration of these business operations will be accomplished over a period of time with MLCCS continuing as part of the ICS Program and with new client accounts following

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the approach of the IAS Program or the ICS Program, depending on the Adviser selected for the account;

- 3.12 the IAS Program will continue under its existing designation and the expanded MLCCS will be carried on as the ICS Program until June 28, 2002, when the IAS designation will cease to be used and both Programs will thereafter be carried on under the ICS designation;
- 3.13 in connection with the Programs, CIBC Wood Gundy intends to utilize the services of CM, and other of its Affiliates that are registered or licensed to carry on a securities advisory business in the jurisdiction in which they do so, to perform some or all of the activities performed by Oppenheimer for the IAS Program;

### The Programs

- 3.14 the initial phase of the IAS Program, which was limited to U.S. dollar accounts managed by U.S. Advisers investing primarily in U.S. securities, with a minimum required investment of \$100,000 U.S. for each account, was implemented under:
  - 3.14.1 the 1998 Decision in the Jurisdictions, except the Northwest Territories and Nunavut; and
  - 3.14.2 the 1999 NWT Order and the 1999 NV Order in the Northwest Territories and Nunavut, respectively;
- 3.15 the IAS Program was extended to include Canadian dollar accounts managed by Canadian Advisers investing primarily in Canadian securities, with a minimum required investment of \$150,000 Canadian for each such account, under:
  - 3.15.1 the 2000 Decision in the Jurisdictions, except Nova Scotia; and
  - 3.15.2 the 2000 NS Order in Nova Scotia;
- 3.16 CIBC Wood Gundy intends to extend the Programs to include global accounts, with a minimum required investment equivalent to \$150,000 Canadian, investing primarily in securities from other countries or regions managed by Advisers carrying on business in those countries or regions;

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- 3.17 each account in the Programs will be a fully managed account managed by CIBC Wood Gundy acting as agent for the Participating Client under a program management agreement (a “PMA”) with the Participating Client;
- 3.18 each Participating Client will provide CIBC Wood Gundy with its investment objectives and other information necessary to enable CIBC Wood Gundy, or Oppenheimer, CM or another Affiliate acting on behalf of CIBC Wood Gundy, to prepare a client profile for the Participating Client;
- 3.19 CIBC Wood Gundy will provide each Participating Client with a list of one or more Advisers, prepared by Oppenheimer, CM or another Affiliate, whose investment philosophy or Strategy is appropriate to the Participating Client’s investment objectives;
- 3.20 all Advisers in the United States (the “U.S. Advisers”) will be U.S. portfolio managers registered as advisers in the United States under the Investment Advisers Act who will provide services for U.S. dollar accounts investing primarily in U.S. securities or for U.S., global and international Strategies;
- 3.21 all Advisers in Canada (the “Canadian Advisers”) will be Canadian portfolio managers registered as advisers under the securities legislation of one or more provinces, who will provide services for Canadian dollar accounts investing primarily in Canadian securities or for Canadian Strategies;
- 3.22 all Advisers in jurisdictions other than the United States or Canada (“Other Advisers”) will be portfolio managers registered as advisers or otherwise licensed or legally qualified to provide portfolio management services under applicable legislation in the jurisdiction in which they carry on business and will provide services for accounts investing primarily in securities from that jurisdiction or the region in which it is located or for Strategies emphasizing that jurisdiction or the region in which it is located;
- 3.23 CIBC Wood Gundy will also provide each Participating Client with the information about each U.S. Adviser and Oppenheimer that is required to be given to clients in a written disclosure statement by Rule 204-3 under the Investment Advisers Act and

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with equivalent information about each Canadian Adviser and each Other Adviser;

- 3.24 the Participating Client will, with the assistance of CIBC Wood Gundy, select one or more Strategies or one or more Advisers to manage its account with CIBC Wood Gundy;
- 3.25 if the Participating Client selects one or more Strategies, CIBC Wood Gundy will manage the Participating Client's account on the basis of advice received by it from an Adviser concerning the Strategy;
- 3.26 if the Participating Client selects an Adviser to manage its account with CIBC Wood Gundy, the Adviser selected will manage the Participating Client's account with respect to investments and voting of securities held in the account and will maintain separate accounts and records for each Participating Client;
- 3.27 each Participating Client will agree in the PMA that written confirmations of transactions in the Participating Client's account will not be sent or delivered to the Participating Client;
- 3.28 CIBC Wood Gundy will:
  - 3.28.1 execute all transactions in the Participating Clients' accounts unless better execution can be obtained elsewhere;
  - 3.28.2 provide confirmations of such transactions to the relevant Adviser and send the information contained in them to each relevant Participating Client with the monthly statement referred to in paragraph 3.28.4;
  - 3.28.3 act as custodian for all securities held in its accounts unless the Participating Client directs otherwise; and
  - 3.28.4 send monthly statements and quarterly performance reports prepared by CIBC Wood Gundy, Oppenheimer, CM or another Affiliate for each account to the relevant Participating Client;

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- 3.29 a Participating Client must obtain all advice and information and give all instructions and directions through CIBC Wood Gundy and may meet with an Adviser only if the registered representative of CIBC Wood Gundy responsible for the Participating Client's account is present at all times;
  - 3.30 a single wrap fee will be charged to Participating Clients for investment advisory services in the Programs, which fee will be calculated on the basis of assets under administration in the Participating Client's account, will include all fees payable to Oppenheimer, CM or another Affiliate and the Advisers and will not be based on the transactions effected in the account;
  - 3.31 CIBC Wood Gundy will enter into agreements with Oppenheimer, CM or another Affiliate, and directly or through Oppenheimer, CM or the other Affiliate acting on its own behalf and as agent for CIBC Wood Gundy, with each Adviser, which agreements will set out the obligations and duties of each party in connection with the Program and pursuant to which Oppenheimer, CM or the other Affiliate and the Advisers will agree to act as sub-advisers to CIBC Wood Gundy for the benefit of Participating Clients;
  - 3.32 CIBC Wood Gundy will assume responsibility in the PMA to Participating Clients for all advice received from Oppenheimer, CM or another Affiliate and the Advisers, including responsibility for losses sustained by a Participating Client as a result of the negligence, wilful misconduct, bad faith or wilful neglect, default or failure to comply with applicable laws and regulations by CIBC Wood Gundy, Oppenheimer, CM, another Affiliate or an Adviser, and will not waive this responsibility; and
  - 3.33 the Advisers who are not otherwise registered in Ontario will not be required to register as advisers under the *Securities Act* (Ontario) as the terms of the Programs and their agreements with CIBC Wood Gundy will bring them within the exemption from registration in section 7.3 of Rule 35-502 - Non-Resident Advisers under the *Securities Act* (Ontario);
4. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");



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5. AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;
6. THE DECISION of the Decision Makers under the Legislation is that the Registration Requirements will not apply to Oppenheimer, CM, another Affiliate and the Advisers with respect to their activities in providing portfolio management and other services for the benefit of Participating Clients in connection with the Programs;
7. AND THE FURTHER DECISION of the Decision Makers under the Legislation is that, with respect to any transactions in a Participating Client's account in the Programs in which CIBC Wood Gundy acts as principal or agent in connection with the associated trade, the Trade Confirmation Requirements will not apply to CIBC Wood Gundy;
8. AND THE FURTHER DECISION of the Decision Makers under the Legislation is that the Prior Decisions are revoked.

DATED this 5<sup>th</sup> day of July, 2002.

Stephen P. Sibold, Q.C., Chair

Glenda A. Campbell, Q.C., Vice-Chair