

2003 BCSECCOM 419

Headnote

Mutual Reliance Review System for Exemptive Relief Application – relief from the requirement that a mutual fund manager file reports on each purchase and sale effected through a related person, subject to conditions

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 126(c), 130(b)

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH
COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, QUEBEC,
NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR**

AND

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

AND

**IN THE MATTER OF CANADIAN IMPERIAL BANK OF COMMERCE
CIBC ASSET MANAGEMENT INC.**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application (the “Application”) from Canadian Imperial Bank of Commerce (“CIBC”) and CIBC Asset Management Inc. (“CIBC AMI”) (collectively, the “Filer”, and collectively, with their affiliates, the “CIBC Group of Companies”) for a decision (the “Decision”) pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that the provisions of the Legislation requiring a management company, or in British Columbia a mutual fund manager, to file a report, within thirty days after each month end and in respect of each mutual fund to which it provides services, relating to every purchase or sale effected by such mutual fund through any related person or company with respect to which the related person or company received a fee either from the mutual fund or from the other party to the transaction or both (the “Reporting Requirement”) shall not apply to purchases and sales effected by the Funds (as defined below) through CIBC World Markets Inc. (“CWMI”), CIBC World Markets Corp. (“CWMC”), CIBC or any other Related Company (as defined below);

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AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this Application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 – Definitions;

AND WHEREAS it has been represented by the Filer to the Decision Makers that:

1. CIBC is a bank listed in Schedule I to the *Bank Act* (Canada), S.C. 1991, c. 46, as amended, with its head office currently in Toronto, Ontario. CIBC AMI is a corporation established under the laws of Canada with its head office currently in Montreal, Quebec. CIBC AMI is registered under the Act as a mutual fund dealer and an adviser in the categories of investment counsel and portfolio manager, and under the *Commodity Futures Act* (Ontario), R.S.O. 1990, c. C.20, as amended, in the category of commodity trading manager;
2. CIBC and CIBC AMI act as managers of the groups of mutual funds that currently consist of the funds set out in Schedule “A” hereto (such funds, together with such other funds managed by a member of the CIBC Group of Companies from time to time, being herein referred to as the “Funds”);
3. CWMI is a registered dealer in each of the provinces of Canada. CWMC is registered as an international dealer with the Ontario Securities Commission;
4. The Funds are open-ended investment trusts or mutual fund trusts established under the laws of the Province of Ontario. Each Fund is a reporting issuer in each of the provinces and territories of Canada where units (the “Units”) of the Fund are sold pursuant to a prospectus accepted by the decision maker in such jurisdictions;
5. Each of CIBC AMI, CWMI and CWMC are subsidiaries of CIBC. CWMI and CWMC are issuers in which CIBC (which is also a substantial securityholder of CIBC AMI) has a significant interest, such that the Funds are prohibited from making an investment in CWMI and CWMC under the Legislation. Therefore, CWMI and CWMC are “related persons” to the Funds under the Legislation;
6. As disclosed in the annual information forms or prospectuses of the Funds, the portfolio advisers or sub-advisers of the Funds appointed by CIBC or CIBC AMI (such portfolio advisers or sub-advisers “Portfolio Advisers”) may allocate brokerage business of the Funds to CWMI and CWMC or other

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related brokers or dealers that are members of the CIBC Group of Companies (together with CWMI and CWMC, "Related Companies"), provided such transactions are made on terms and conditions comparable to those offered by unrelated brokers and dealers;

7. The Portfolio Advisers of the Funds have discretion to allocate brokerage business in any manner that they believe to be in a Fund's best interests. The purchase or sale of securities effected through CWMI, CWMC or another Related Company represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Funds. In allocating brokerage, consideration is given to commission rates and to research, execution and other services offered;
8. It is disclosed and will continue to be disclosed in the Funds' interim and annual financial statements the amount of brokerage commissions paid by each Fund on trades with Related Companies;
9. In the absence of this Decision the Legislation requires that reports must be filed on a monthly basis in respect of every purchase or sale of securities effected through a Related Company stating the issuer of the securities purchased or sold, the class or designation of the securities, the amount or number of securities, the consideration, the name of the Related Company receiving the fee, the name of the person or company that paid the fee to the Related Company and the amount of the fee received by the Related Company;
10. It would be costly and time consuming to continue to provide the information required by the Legislation on a monthly and segregated basis;

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

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;

THE DECISION of the Decision Makers under the Legislation is that effective as of the date of this Decision, the Reporting Requirement shall not apply to any purchase or sale of securities by the Funds which is effected through CWMI, CWMC, CIBC or any other Related Company and with respect to which the Related Company received a fee either from the Fund or from the other party to the transaction or both;

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PROVIDED THAT the Decision shall only apply if the statement of portfolio transactions prepared and filed for each Fund in accordance with the Legislation discloses, in respect of every class or designation of securities of an issuer bought or sold during the period to which the statement of portfolio transactions relates:

- (a) the name of each Related Company;
- (b) the amount of fees paid to each Related Company; and
- (c) the person or company that paid the fees.

DATED May 27, 2003.

H. Lorne Morphy

Mary Theresa McLeod