

# 2008 BCSECCOM 455

July 8, 2008

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 130 - Relief from certain self-dealing restrictions in Part 15 of the Act - A portfolio manager, mutual fund or responsible person wants relief from s. 127(1)(a) of the Act so that it can invest in an issuer which has a responsible person as an officer or director of the issuer - A mutual fund manager wants relief from s. 127(1)(b) of the Act so that it can sell the securities of an issuer to the account of a responsible person - The purchase or sale is consistent with, or is necessary to meet, the investment objectives of the fund; the IRC of the fund has approved the transaction which involves a perceived or actual conflict of interest for the fund manager; the fund manager and the IRC follow any standing instructions that the IRC provides in connection with the transactions; the fund's continuous disclosure materials provide disclosure to fund investors about the transactions with related parties; the fund keeps the written records required by NI 81-107; if securities are traded from a managed account, the managed account holder must have consented to trades from that account to a fund

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 127(1)(a), 127(1)(b), and 130

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan,  
Ontario, Quebec, New Brunswick, Nova Scotia,  
Newfoundland and Labrador  
(Jurisdictions)

and

In the Matter of  
the Mutual Reliance Review System for Exemptive Relief Applications  
(MRRS)

and

In the Matter of  
CIBC Asset Management Inc. and  
CIBC Global Asset Management Inc.  
(the Filers)

and

## 2008 BCSECCOM 455

In the Matter of  
the Funds Referenced in Schedule A  
(each, an Existing NI 81-102 Fund  
and, collectively, the Existing NI 81-102 Funds)

and

In the Matter of  
the Funds Referenced in Schedule B  
(each, an Existing Pooled Fund  
and, collectively, the Existing Pooled Funds)

### MRRS Decision Document

#### **Background**

The local securities regulatory authority or regulator (Decision Maker) in each of the Jurisdictions received an application (the Application) from the Filers in respect of each Existing NI 81-102 Fund and any future funds (each, a Future NI 81-102 Fund and, collectively, the Future NI 81-102 Funds) managed by a Filer, or an affiliate of a Filer, to which National Instrument 81-102 – *Mutual Funds* (NI 81-102) applies and in respect of each Existing Pooled Fund and any future pooled fund (each, a Future Pooled Fund and, collectively, the Future Pooled Funds) managed by a Filer, or an affiliate of a Filer, to which NI 81-102 does not apply and in respect of each existing or any future fully managed account managed by a Filer, or an affiliate of a Filer (each, a Managed Account and, collectively, the Managed Accounts) for relief (the Requested Relief) from:

- (a) the prohibition (the Trading Prohibition) in the securities legislation of the Jurisdictions (the Legislation) that prohibits a portfolio manager or a mutual fund (depending on the Jurisdiction) from causing a portfolio to purchase or sell securities of any issuer from or to the account of a responsible person, or any associate of a responsible person or the portfolio manager, (collectively, a Related Person), in order to permit the following trades (the Inter-fund Trades):
  - (i) an Existing NI 81-102 Fund or a Future NI 81-102 Fund (each, an NI 81-102 Fund and, collectively, the NI 81-102 Funds) to purchase securities from or sell securities to an Existing Pooled Fund or a Future Pooled Fund (each, a Pooled Fund and, collectively, the Pooled Funds) or a Managed Account;

## **2008 BCSECCOM 455**

- (ii) a Pooled Fund to purchase securities from or sell securities to another Pooled Fund, an NI 81-102 Fund or a Managed Account; and
  - (iii) a Managed Account to purchase securities from or sell securities to a Pooled Fund or an NI 81-102 Fund;
- (b) the Trading Prohibition in order to permit a Pooled Fund and a Managed Account to purchase debt securities of an issuer other than the federal or provincial government (Non-Government Debt Securities) or debt securities issued or fully and unconditionally guaranteed by the federal or a provincial government (Government Debt Securities) from a Related Person that is a principal dealer in the Canadian debt securities markets (a Principal Dealer) in the secondary market (the Principal Dealer Trades);
- (c) the prohibition (the Investment Counsel Prohibition) in the Legislation of the Jurisdictions other than British Columbia or Quebec that prohibits a purchase or sale of a security in which an investment counsel, or any associate of an investment counsel, has a direct or indirect beneficial interest from or to any portfolio managed or supervised by the investment counsel in order to permit the Inter-fund Trades and the Principal Dealer Trades; and
- (d) the prohibition (the Related Person Securities Prohibition) in the Legislation that prohibits a portfolio manager (or a mutual fund depending on the Jurisdiction) from knowingly causing any investment portfolio managed by it to invest in any issuer in which a responsible person or an associate of a responsible person is an officer or director or where his or her own interest might distort his or her judgment (each, a Related Issuer) unless the specific fact is disclosed to the client and the written consent of the client to the investment is obtained before the purchase, in order to permit a Pooled Fund to purchase securities of a Related Issuer in the secondary market (the Related Issuer Trades).

Under the MRRS:

- (i) the principal regulator for the Application is the Ontario Securities Commission (OSC); and
- (ii) this Decision Document represents the decision of each of the Decision Makers.

## 2008 BCSECCOM 455

### **Interpretation**

Defined terms contained in National Instrument 14-101 – *Definitions*, in NI 81-102 and in National Instrument 81-107 – *Independent Review Committee for Investment Funds* (NI 81-107) have the same meaning in this MRRS Decision Document unless they are otherwise defined in this Decision Document.

### **Representations**

This decision is based on the following facts represented by the Filers:

1. Each of the NI 81-102 Funds and Pooled Funds (each, a “Fund” and, collectively, the “Funds”) is, or will be, an open-ended mutual fund trust or mutual fund corporation.
2. A Filer, or an affiliate of a Filer, is, or will be, the manager and/or portfolio adviser of each of the Funds.
3. Each of the NI 81-102 Funds is, or will be, a reporting issuer in each of the Jurisdictions.
4. A Pooled Fund or an NI 81-102 Fund may be an associate of a Filer, or of an affiliate of a Filer, that is a responsible person in respect of another Pooled Fund or an NI 81-102 Fund.
5. A Filer, or an affiliate of a Filer, may be a portfolio manager of a Managed Account.
6. A Pooled Fund or an NI 81-102 Fund may be an associate of a Filer, or of an affiliate of a Filer, that is an investment counsel in respect of a portfolio of another Pooled Fund or an NI 81-102 Fund or a Managed Account.
7. A responsible person, or an associate of a responsible person, of a Filer may be an officer or a director of a Related Issuer.
8. A Related Person of a Pooled Fund or a Managed Account may be a Principal Dealer in Non-Government Debt Securities or Government Debt Securities.
9. There is a limited supply of Non-Government Debt Securities and Government Debt Securities available to the Pooled Funds and the Managed Accounts and frequently the only source of Non-Government Debt Securities and Government Debt Securities for a Pooled Fund or a Managed Account is a Related Person.

## **2008 BCSECCOM 455**

10. The Pooled Funds previously received relief to purchase securities of a Related Issuer.
11. A Filer, or an affiliate of a Filer, has established, or will establish, an independent review committee (“IRC”) in respect of each NI 81-102 Fund in accordance with the requirements of NI 81-107.
12. A Filer, or an affiliate of a Filer, will establish an IRC (which will likely also be the IRC in respect of the NI 81-102 Funds) in respect each Pooled Fund seeking to rely on the Requested Relief.
13. The mandate of the IRC of a Pooled Fund will include: approving purchases and sales of securities between the Pooled Fund and another Pooled Fund, an NI 81-102 Fund, or a Managed Account; approving purchases and sales of Non-Government Debt Securities and Government Debt Securities from or to a Related Person that is a Principal Dealer in the secondary market; and approving purchases by a Pooled Fund of securities of a Related Issuer. The IRC of the Pooled Funds will be composed by a Filer, or an affiliate of a Filer, in accordance with section 3.7 of NI 81-107 and will be expected to comply with the standard of care set out in section 3.9 of NI 81-107. Further, the IRC of the Pooled Funds will not approve purchases and sales between Pooled Funds, between Pooled Funds and NI 81-102 Funds or between Pooled Funds and Managed Accounts, purchases of securities of a Related Issuer or purchases and sales of Non-Government Debt Securities or Government Debt Securities from a Related Person that is a Principal Dealer in the secondary market, unless it has made the determination set out in section 5.2(2) of NI 81-107.
14. Purchases and sales of securities involving NI 81-102 Funds will be referred to the IRC of the NI 81-102 Funds under section 5.2(1) of NI 81-107.
15. The investment management agreement or other documentation in respect of a Managed Account will contain the authorization of the client for the portfolio manager to purchase securities from or sell securities to an NI 81-102 Fund or a Pooled Fund and to purchase and sell Non-Government Debt Securities and Government Debt Securities from a Related Person that is a Principal Dealer in the secondary market.
16. Each of the Filers has determined that it would be in the interests of the NI 81-102 Funds, the Pooled Funds, and the Managed Accounts to receive the Requested Relief.

## 2008 BCSECCOM 455

17. The Filers are unable to rely upon the exemption from the Trading Prohibition and Investment Counsel Prohibition codified under s. 6.1(4) of NI 81-107 in connection with the Inter-Fund Trades with or between the Pooled Funds or the Managed Accounts. Inter-Fund Trades involving only NI 81-102 Funds or other investment funds that are subject to NI 81-107 will be conducted in accordance with the exemption codified under s. 6.1(4) of NI 81-107.
18. The Filers are unable to rely upon the exemption from the Related Person Securities Prohibition under s. 6.2(2) of NI 81-107 in connection with Related Issuer purchases by the Pooled Funds because that exemption does not apply to purchases by the Pooled Funds.

### **Decision**

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the decision has been met.

The decision of the Decision Makers is that the Requested Relief is granted in respect of each Fund and Managed Account on the following conditions:

- (a) the transaction is consistent with, or is necessary to meet, the investment objective of the NI 81-102 Fund, the Pooled Fund or the Managed Account;
- (b) in respect of the Trading Prohibition and the Investment Counsel Prohibition as they apply to an Inter-fund Trade by a NI 81-102 Fund:
  - (i) the IRC of the NI 81-102 Fund has approved the transaction in respect of the NI 81-102 Fund under Section 5.2(2) of NI 81-107;
  - (ii) if the transaction is with a Pooled Fund, the IRC of the Pooled Fund has approved the transaction in respect of the Pooled Fund on the same terms as are required under Section 5.2(2) of NI 81-107;
  - (iii) if the transaction is with a Managed Account, the investment management agreement or other documentation in respect of the Managed Account authorizes the transaction;
  - (iv) the transaction complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107;
- (c) in respect of the Trading Prohibition and the Investment Counsel Prohibition as they apply to a Pooled Fund:

## 2008 BCSECCOM 455

- (i) the IRC of the Pooled Fund has approved the transaction in respect of the Pooled Fund on the same terms as are required under Section 5.2(2) of NI 81-107;
- (ii) if the transaction is an Inter-fund Trade with an NI 81-102 Fund or another Pooled Fund, the IRC of the NI 81-102 Fund or the other Pooled Fund, as the case may be, has approved the transaction in respect of the NI 81-102 Fund or the other Pooled Fund on the same terms as are required under Section 5.2(2) of NI 81-107;
- (iii) if the transaction is an Inter-fund Trade with a Managed Account, the investment management agreement or other documentation in respect of the Managed Account authorizes the transaction;
- (iv) if the transaction is an Inter-fund Trade with another Pooled Fund, an NI 81-102 Fund, or a Managed Account, the transaction complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107;
- (v) if the transaction is a Principal Dealer Trade:
  - (A) the transaction occurs in the secondary market;
  - (B) the bid and ask price of the security is readily available, as provided in commentary 7 to section 6.1 of NI 81-107;
  - (C) a purchase is not executed at a price which is higher than the available ask price and a sale is not executed at a price which is lower than the available bid price;
  - (D) the purchase or sale is subject to applicable “market integrity requirements” as defined in NI 81-107;
  - (E) the Pooled Fund keeps the written records required by Section 6.1(2)(g) of NI 81-107;
- (d) in respect of the Trading Prohibition and the Investment Counsel Prohibition as they apply to a Managed Account:
  - (i) the investment management agreement or other documentation in respect of the Managed Account authorizes the transaction;

## 2008 BCSECCOM 455

- (ii) if the transaction is an Inter-fund Trade with a Pooled Fund or an NI 81-102 Fund, the IRC of the NI 81-102 Fund or the IRC of the Pooled Fund, as the case may be, has approved the transaction in respect of the NI 81-102 Fund or the Pooled Fund on the same terms as are required under section 5.2 of NI 81-107;
- (iii) if the Inter-fund Trade is with a Pooled Fund or an NI 81-102 Fund, the transaction complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107;
- (iv) if the transaction is a Principal Dealer Trade:
  - (A) the transaction occurs in the secondary market;
  - (B) the bid and ask price of the security is readily available, as provided in commentary 7 to section 6.1 of NI 81-107;
  - (C) a purchase is not executed at a price which is higher than the available ask price and a sale is not executed at a price which is lower than the available bid price;
  - (D) the purchase or sale is subject to applicable “market integrity requirements” as defined in NI 81-107;
  - (E) the Managed Account keeps the written records required by Section 6.1(2)(g) of NI 81-107;
- (e) in respect of the Related Person Securities Prohibition as it applies to a Related Issuer Trade:
  - (i) the IRC of the Pooled Fund has approved the transaction in respect of the Pooled Fund on the same terms as are required under section 5.2 of NI 81-107;
  - (ii) if the security is listed and traded the purchase is made on an exchange on which the securities are listed and traded;
  - (iii) if the security is not listed on an exchange:
    - (A) the security is a debt security that has been given, and continues to have, at the time of the purchase, an approved credit rating by an approved credit rating organization, within the meaning of those terms in NI 81-102;



## 2008 BCSECCOM 455

- (B) the price payable for the security is not more than the ask price of the security;
- (C) the ask price of the security is determined as follows:
  - (1) if the purchase occurs on a marketplace, the price payable is determined in accordance with the requirements of that marketplace; or
  - (2) if the purchase does not occur on a marketplace,
    - I. the Pooled Fund may pay the price for the security, at which an independent, arm's length seller is willing to sell the security, or
    - II. if the Pooled Fund does not purchase the security from an independent, arm's length seller, the Pooled Fund must pay the price quoted publicly by an independent marketplace or obtain, immediately before the purchase, at least one quote from an independent, arm's length purchaser or seller and not pay more than that quote;
- (iv) the transaction complies with any applicable market integrity requirements;
- (v) a Filer, or an affiliate of a Filer, files with the OSC particulars of any transactions, annually, on or before the 90th day after the financial year end of the Pooled Fund.
- (f) the reporting obligation in section 4.5 of NI 81-107 applies to the Requested Relief granted in this Decision and the IRC of the Funds relying on the Requested Relief complies with section 4.5 of NI 81-107 in connection with any instance that it becomes aware that the Filers did not comply with any of the conditions of this Decision.

Paulette Kennedy

Paul K. Bates  
Ontario Securities Commission

## **2008 BCSECCOM 455**

### **SCHEDULE A**

CIBC ASIA PACIFIC INDEX FUND  
CIBC BALANCED FUND  
CIBC BALANCED INDEX FUND  
CIBC CANADIAN BOND FUND  
CIBC CANADIAN BOND INDEX FUND  
CIBC CANADIAN EMERGING COMPANIES FUND  
CIBC CANADIAN EQUITY FUND  
CIBC CANADIAN EQUITY VALUE FUND  
CIBC CANADIAN INDEX FUND  
CIBC CANADIAN REAL ESTATE FUND  
CIBC CANADIAN RESOURCES FUND  
CIBC CANADIAN SHORT-TERM BOND INDEX FUND  
CIBC CANADIAN SMALL COMPANIES FUND  
CIBC CANADIAN T-BILL FUND  
CIBC CAPITAL APPRECIATION FUND  
CIBC DISCIPLINED INTERNATIONAL EQUITY FUND  
CIBC DISCIPLINED U.S. EQUITY FUND  
CIBC DIVERSIFIED INCOME FUND  
CIBC DIVIDEND FUND  
CIBC EMERGING ECONOMIES FUND  
CIBC EMERGING MARKETS INDEX FUND  
CIBC ENERGY FUND  
CIBC EUROPEAN EQUITY FUND  
CIBC EUROPEAN INDEX FUND  
CIBC EUROPEAN INDEX RRSP FUND  
CIBC FAR EAST PROSPERITY FUND  
CIBC FINANCIAL COMPANIES FUND  
CIBC GLOBAL BOND FUND  
CIBC GLOBAL BOND INDEX FUND  
CIBC GLOBAL EQUITY FUND  
CIBC GLOBAL MONTHLY INCOME FUND  
CIBC GLOBAL TECHNOLOGY FUND  
CIBC HIGH YIELD CASH FUND  
CIBC INTERNATIONAL INDEX FUND  
CIBC INTERNATIONAL INDEX RRSP FUND  
CIBC INTERNATIONAL SMALL COMPANIES FUND  
CIBC JAPANESE EQUITY FUND  
CIBC JAPANESE INDEX RRSP FUND  
CIBC LATIN AMERICAN FUND  
CIBC MONEY MARKET FUND

## **2008 BCSECCOM 455**

CIBC MONTHLY INCOME FUND  
CIBC MORTGAGE AND SHORT-TERM INCOME FUND  
CIBC NASDAQ INDEX FUND  
CIBC NASDAQ INDEX RRSP FUND  
CIBC NORTH AMERICAN DEMOGRAPHICS FUND  
CIBC PRECIOUS METALS FUND  
CIBC PREMIUM CANADIAN T-BILL FUND  
CIBC U.S. DOLLAR MONEY MARKET FUND  
CIBC U.S. EQUITY INDEX FUND  
CIBC U.S. INDEX RRSP FUND  
CIBC U.S. SMALL COMPANIES FUND  
FRONTIERS CANADIAN EQUITY POOL  
FRONTIERS CANADIAN FIXED INCOME POOL  
FRONTIERS CANADIAN MONTHLY INCOME POOL  
FRONTIERS CANADIAN SHORT TERM INCOME POOL  
FRONTIERS EMERGING MARKETS EQUITY POOL  
FRONTIERS GLOBAL BOND POOL  
FRONTIERS INTERNATIONAL EQUITY POOL  
FRONTIERS U.S. EQUITY POOL  
IMPERIAL CANADIAN BOND POOL  
IMPERIAL CANADIAN DIVIDEND INCOME POOL  
IMPERIAL CANADIAN DIVIDEND POOL  
IMPERIAL CANADIAN EQUITY POOL  
IMPERIAL CANADIAN INCOME TRUST POOL  
IMPERIAL EMERGING ECONOMIES POOL  
IMPERIAL INTERNATIONAL BOND POOL  
IMPERIAL INTERNATIONAL EQUITY POOL  
IMPERIAL MONEY MARKET POOL  
IMPERIAL OVERSEAS EQUITY POOL  
IMPERIAL REGISTERED INTERNATIONAL EQUITY INDEX POOL  
IMPERIAL REGISTERED U.S. EQUITY INDEX POOL  
IMPERIAL SHORT-TERM BOND POOL  
IMPERIAL U.S. EQUITY POOL  
RENAISSANCE CANADIAN BALANCED FUND  
RENAISSANCE CANADIAN BALANCED VALUE FUND  
RENAISSANCE CANADIAN CORE VALUE FUND  
RENAISSANCE CANADIAN DIVIDEND INCOME FUND  
RENAISSANCE CANADIAN GROWTH FUND  
RENAISSANCE CANADIAN HIGH YIELD BOND FUND  
RENAISSANCE CANADIAN MONTHLY INCOME FUND  
RENAISSANCE CANADIAN REAL RETURN BOND FUND  
RENAISSANCE CANADIAN SMALL-CAP FUND  
RENAISSANCE CANADIAN T-BILL FUND

## **2008 BCSECCOM 455**

RENAISSANCE EMERGING MARKETS FUND  
RENAISSANCE DIVERSIFIED INCOME FUND  
RENAISSANCE EUROPEAN FUND  
RENAISSANCE GLOBAL GROWTH FUND  
RENAISSANCE GLOBAL INFRASTRUCTURE FUND  
RENAISSANCE GLOBAL FOCUS FUND  
RENAISSANCE GLOBAL TECHNOLOGY FUND  
RENAISSANCE INTERNATIONAL INDEX FUND  
RENAISSANCE OPTIMAL INCOME PORTFOLIO  
RENAISSANCE U.S. EQUITY GROWTH FUND  
RENAISSANCE U.S. EQUITY VALUE FUND  
RENAISSANCE U.S. INDEX FUND  
RENAISSANCE U.S. MONEY MARKET FUND  
RENAISSANCE ASIAN FUND  
RENAISSANCE CANADIAN BOND FUND  
RENAISSANCE CANADIAN ASSET ALLOCATION FUND  
RENAISSANCE CHINA PLUS FUND  
RENAISSANCE DIVIDEND FUND  
RENAISSANCE GLOBAL ASSET ALLOCATION FUND  
RENAISSANCE GLOBAL BOND FUND  
RENAISSANCE GLOBAL VALUE FUND  
RENAISSANCE GLOBAL HEALTH CARE FUND  
RENAISSANCE GLOBAL MARKETS FUND  
RENAISSANCE GLOBAL MULTI MANAGEMENT FUND  
RENAISSANCE GLOBAL RESOURCE FUND  
RENAISSANCE GLOBAL SCIENCE & TECHNOLOGY FUND  
RENAISSANCE GLOBAL SMALL-CAP FUND  
RENAISSANCE CANADIAN INCOME FUND  
RENAISSANCE INTERNATIONAL EQUITY FUND  
RENAISSANCE MILLENNIUM HIGH INCOME FUND  
RENAISSANCE MILLENNIUM NEXT GENERATION FUND  
RENAISSANCE MONEY MARKET FUND

## **2008 BCSECCOM 455**

### **SCHEDULE B**

CIBC POOLED BALANCED FUND  
CIBC POOLED GLOBAL BALANCED FUND  
CIBC POOLED CANADIAN EQUITY FUND  
CIBC POOLED CANADIAN EQUITY S&P/TSX INDEX FUND  
CIBC POOLED CANADIAN VALUE FUND  
CIBC POOLED FIXED INCOME FUND  
CIBC POOLED CANADIAN BOND INDEX FUND  
CIBC POOLED CANADIAN BOND OVERLAY FUND  
CIBC POOLED LONG TERM BOND INDEX FUND  
CIBC POOLED CANADIAN BOND INDEX PLUS FUND  
CIBC POOLED U.S. EQUITY FUND  
CIBC POOLED U.S. EQUITY S&P 500 ENHANCED INDEX FUND  
CIBC POOLED U.S. EQUITY S&P 500 INDEX FUND  
CIBC POOLED CANADIAN MONEY MARKET FUND  
CIBC POOLED INTERNATIONAL EQUITY INDEX FUND  
CIBC POOLED EAFE EQUITY FUND  
CIBC POOLED BALANCED FUND OF HEDGE FUNDS  
CIBC POOLED COMMODITY FUND  
CENTAUR CANADIAN EQUITY FUND (VALUE)  
CENTAUR CANADIAN EQUITY FUND (GROWTH) - 40%  
CENTAUR CANADIAN EQUITY FUND (GROWTH) - 10%  
CENTAUR CANADIAN EQUITY FUND (GROWTH) - 80%  
CENTAUR CANADIAN EQUITY FUND (GROWTH) - 20%  
CENTAUR BOND FUND  
CENTAUR US EQUITY FUND (INDEX)  
CENTAUR MONEY MARKET FUND  
CENTAUR SMALLER COMPANIES FUND  
CENTAUR INTL EQUITY FUND  
CENTAUR BALANCED FUND (MONEY MKT)  
CENTAUR BALANCED FUND (CNEQ VALUE)  
CENTAUR BALANCED FUND (FOF: US EQUITY)  
CENTAUR BALANCED FUND (BOND)  
CENTAUR BALANCED FUND (INEQ)  
CENTAUR BALANCED FUND (FOF: SM CAP)