2005 BCSECCOM 683

October 28, 2005

Headnote
Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 114(2) Issuer Bids - Exemption from the formal issuer bid requirements in Part 13 of the Act - An issuer requires an exemption from all issuer bid requirements in connection with a repurchase of its preferred shares - The price offered exceeds the fair market value of the preferred shares; all holders of the preferred shares will be treated equally; as the issuer cannot contact the holders directly, the issuer will instead publish an advertisement in a national Canadian newspaper before it commences the offer

Applicable British Columbia Provisions
Securities Act, R.S.B.C. 1996, c. 418, s. 114(2)

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

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" or the "Filer")

<u>MRRS Decision Document</u>

Background
The local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the "Legislation") that, in connection with the proposed purchase by the Filer of all of its outstanding Non-cumulative Class A Preferred Shares Series 28 (the "Series 28 Shares") by way of an issuer bid (the "Offer"), the Filer be exempt from the requirements in the Legislation, including sections 95 to 100 of the *Securities Act* (Ontario) (the "Act") and the related provisions set out in the regulations to the Act and the equivalent provisions of the securities legislation of each of the other Jurisdictions, relating to, among other things, commencement and delivery of an issuer bid circular and any notices of change or variation thereto, minimum

deposit periods and withdrawal rights, take-up of and payment for securities tendered to an issuer bid, disclosure, restrictions upon purchases of securities, identical consideration and collateral benefits (collectively, the "Issuer Bid Requirements").

Under the Mutual Reliance Review System (the "MRRS") for Exemptive Relief Applications

(a) the Ontario Securities Commission is the principal regulator for this application, and

(b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts presented by the Filer:

1. CIBC is a Schedule I Bank under the *Bank Act* (Canada). CIBC's head office is located in Toronto, Ontario.

2. CIBC is a reporting issuer, or the equivalent, in each of the provinces and territories of Canada.

3. CIBC is not, to its knowledge, in default of any applicable reporting obligations under the relevant Canadian securities laws.

4. The issued and outstanding capital of CIBC as of May 31, 2005 consists of (a) 338,126,410 Common Shares, (b) 12,000,000 Non-cumulative Class A Preferred Shares Series 18, (c) 8,000,000 Non-cumulative Class A Preferred Shares Series 19, (d) 4,000,000 Non-cumulative Class A Preferred Shares Series 20, (e) 8,000,000 Non-cumulative Class A Preferred Shares Series 21, (f) 4,000,000 Non-cumulative Class A Preferred Shares Series 22, (g) 16,000,000 Non-cumulative Class A Preferred Shares Series 23, (h) 16,000,000 Non-cumulative Class A Preferred Shares Series 24, (i) 16,000,000 Non-cumulative Class A Preferred Shares Series 25, (j) 10,000,000 Non-cumulative Class A Preferred Shares Series 26, (k) 12,000,000 Non-cumulative Class A Preferred Shares Series 27, (l) 17,658 Series 28 Shares, (m) 13,232,342 Non-cumulative Class A Preferred Shares Series 29 (the "Series 29 Shares") and (n) 16,000,000 Non-cumulative Class A Preferred Shares Series 30 (collectively, the "Preferred Shares").

5. CIBC's issued and outstanding Common Shares are listed on the Toronto Stock Exchange (the "TSX") and the New York Stock Exchange. Other than the Series 28 Shares, the Preferred Shares are listed on the TSX.

6. On June 17, 2004, CIBC completed a public offering of 13,250,000 Preferred Share Units (the "Units"), each Unit consisting of one Series 28 Share and one Non-cumulative Class A Preferred Share Series 29 Purchase Warrant (a "Warrant"), at $10.00 per Unit (the "Offering").

7. On June 17, 2004, the Units were listed on the TSX.

8. Each holder of a Series 28 Share had the right, to convert on each of November 1, 2004, February 1, 2005 or May 1, 2005, such Series 28 Share into 0.4 of a fully-paid and freely-tradeable Series 29 Share of CIBC, provided such holder concurrently exercised one Warrant. The concurrent exercise of one Warrant together with payment of the exercise price of $15.00 per Warrant entitled the holder to acquire 0.6 of a fully-paid and freely-tradeable Series 29 Share. A Series 28 Share could not be converted without the concurrent exercise of a Warrant and a Warrant could not be exercised without the concurrent conversion of a Series 28 Share. The Warrant was not separable from the related Series 28 Share forming the Unit. Consequently, the conversion of one Series 28 Share, the concurrent exercise of one Warrant and a payment of $15.00 entitled the holder of a Unit to receive one fully-paid and freely-tradeable Series 29 Share.

9. On November 1, 2004, February 1, 2005 and May 1, 2005, respectively, CIBC issued 11,731,227, 1,073,680 and 427,435, Series 29 Shares upon the conversion of an equal number of Series 28 Shares and exercise of an equal number of Warrants, respectively. As at May 1, 2005 greater than 99.8% of the Series 28 Shares had been converted, with the exercise of Warrants, into Series 29 Shares.

10. All conversion rights of the holders of Series 28 Shares that had not been exercised by 5:00 p.m. (Toronto time) on May 1, 2005 (the ''Expiry Time'') terminated and all Warrants that had not been exercised for any reason by the Expiry Time were void and of no effect.

11. CIBC disclosed the Expiry Time in the prospectus and made significant efforts to contact holders in advance of conversion dates by way of news releases, news paper advertisements and, at its own expense in connection with the final conversion event, through the use of a third-party solicitation firm.

12. As at May 1, 2005, 17,658 Series 28 Shares remained unconverted and issued and outstanding.

13. CDS & Co. is the registered holder of the Series 28 Shares. The identities of the beneficial holders of the Series 28 Shares are not, and have not generally been known to CIBC.

14. The Units were de-listed from trading on the TSX effective at the close of the TSX on April 29, 2005 and the Series 28 Shares that remained issued and outstanding did not qualify for, and were not listed on the TSX.

15. The holders of the Series 29 Shares are entitled to receive fixed non-cumulative preferential cash dividends payable quarterly, as and when declared by the board of directors of CIBC (the ‘‘Board of Directors’’) payable at a rate of $1.35 per Series 29 Share per annum (or 5.40% per $25.00 dollar initial share price). Since November 1, 2004, the holders of the Series 28 Shares have received fixed non-cumulative preferential cash dividends payable at a rate of $0.08 per Series 28 Share per annum (or 0.80% per $10.00 dollar initial share price). Prior to November 1, 2004, dividends were payable at a rate of $0.54 per Series 28 Share per annum (or 5.40% per $10.00 dollar initial share price).

16. Given the economics of the dividend rate change, and that the Units were trading above their par value of $10.00 per Unit immediately prior to the last conversion date, it would have been in the interest of the holders of Units to either exercise their conversion rights and Warrants or sell their Units in the market prior to the last conversion date. It can be presumed that there are extenuating circumstances resulting in the small number of remaining holders of Units (now holders of Series 28 Shares) failure to exercise their conversion rights or sell their Units.

17. Certain holders of Series 28 Shares have approached CIBC to request the conversion of their Series 28 Shares after the Expiry Time.

18. Subject to the provisions of the *Bank Act* (Canada), including, if required, the prior consent of the Superintendent of Financial Institutions (the "Superintendent"), on and after June 17, 2009, CIBC may, but is under no obligation to, redeem the Series 28 Shares in whole or in part by the payment in cash of a sum equal to the issue price per share, together with declared and unpaid dividends to the date fixed for redemption.

19. On June 2, 2005, the Board of Directors of CIBC authorized, subject to satisfying regulatory requirements, the purchase or redemption from time to

time of some or all of the outstanding Series 28 Shares by paying a cash amount equal to $10.00 for each Series 28 Share plus all declared and unpaid dividends to and including the date of purchase or redemption. Any Series 28 Shares purchased by CIBC are to be immediately cancelled.

20. On June 22, 2005, the Superintendent approved the repurchase for cancellation of the Series 28 Shares prior to June 17, 2009.

21. The repurchase for cancellation of the Series 28 Shares will constitute an "issuer bid" under the Legislation. The exemptions from the Issuer Bid Requirements contained in the Legislation are not available in respect of the Offer.

22. Prior to making the Offer, CIBC will issue a public announcement, in French and English, in a national Canadian newspaper detailing the terms of the Offer (the "Public Announcement").

Decision

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 the Offer is exempt from the Issuer Bid Requirements provided that the Filer issues the Public Announcement prior to making the Offer and not less than annually thereafter while the Offer remains outstanding.

Suresh Thakrar
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