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Headnote

Mutual fund dealer exempted from the requirement to file an application to become a member of the Mutual Fund Dealers Association of Canada and to become a member of the MFDA, subject to certain terms and conditions of registration.

Exemption Order

Citibank Canada Investment Funds Limited

Section 48 of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 Citibank Canada Investment Funds Limited applied for an exemption, under section 48 of the Act, from the requirement in sections 6(2)(c)(ii)A and 6(4) of the *Securities Rules*, B.C. Reg. 194/97, as varied by B.C. Instrument 33-503 (the MFDA Application Requirements), to be a member of the Mutual Fund Dealers Association of Canada (the MFDA) on and after July 2, 2002 and to apply for membership in the MFDA by May 23, 2001.

Representations

- ¶ 2 CCIFL represents that:
1. it is registered under the Act as an adviser in the categories of investment counsel and portfolio manager and as a dealer in the category of mutual fund dealer;
 2. it is also registered in Ontario as a mutual fund dealer, a limited market dealer and as an investment counsel and portfolio manager;
 3. it is a wholly-owned subsidiary of Citibank Canada, a Canadian chartered bank, which is in turn an indirect subsidiary of Citigroup, Inc. (together with its affiliated companies, Citigroup);
 4. it sells securities of mutual funds and pooled funds to institutional and high net worth individual clients of Citibank Canada, principally through accounts managed by it under by the terms of an investment management agreement;
 5. certain of the mutual funds and pooled funds which would be traded for accounts of clients of CCIFL would be mutual funds and pooled funds managed by either CCIFL or a Citigroup affiliate (Citigroup Funds);

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6. it does not solicit direct sales of the Citigroup Funds to the public and only accepts purchase, redemption and switch orders for units of the Citigroup Funds from high net worth individuals;
7. its trading activities as a mutual fund dealer currently represent and will continue to represent activities that are incidental to its principal business activities;
8. it has agreed to the imposition of the terms and conditions on its registration as a mutual fund dealer set out in the attached Schedule "A", which outlines the activities CCIFL has agreed to adhere to in connection with its application for this order;
9. any person or company that is not currently a client of CCIFL on the effective date of this order will, before they are accepted as a client of CCIFL, receive prominent written notice from CCIFL that:

CCIFL is not currently a member, and does not intend to become a member of the Mutual Fund Dealers Association; consequently, clients of CCIFL will not have available to them investor protection benefits that would otherwise derive from membership of CCIFL in the MFDA, including coverage under any investor protection plan for clients of members of the MFDA;

10. upon the next general mailing to its account holders and in any event before July 2, 2002, CCIFL shall provide, to any client that was a client of CCIFL on the effective date of this order, the prominent written notice referred to in paragraph 9 above.

Order

- ¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders that under section 48 of the Act, CCIFL is exempt from the MFDA Application Requirements provided that CCIFL complies with the terms and conditions on its registration under the Act as a mutual fund dealer set out in the attached Schedule "A".

- ¶ 4 June 25, 2002

L.E. Evans, C.A
Director, Capital Markets Regulation

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Schedule “A”

TERMS AND CONDITIONS OF REGISTRATION OF CITIBANK CANADA INVESTMENT FUNDS LIMITED AS A MUTUAL FUND DEALER

Definitions

1. For the purposes hereof, unless the context otherwise requires:
 - (a) “Act” means the *Securities Act*, R.S.B.C. 1996, c. 418, as amended;
 - (b) “Adviser” means an adviser as defined in subsection 1(1) of the Act;
 - (c) “Client Name Trade” means, for the Registrant, a trade to, or on behalf of, a person, in securities of a mutual fund, that is managed by the Registrant or an affiliated entity of the Registrant, where, immediately before the trade, the person is shown on the records of the mutual fund or of another mutual fund managed by the Registrant or an affiliate of the Registrant as the holder of securities of such mutual fund, and the trade consists of:
 - (A) a purchase, by the person, through the Registrant, of securities of the mutual fund; or
 - (B) a redemption, by the person, through the Registrant, of securities of the mutual fund;and where, the person is either a client of the Registrant that was not solicited by the Registrant or was an existing client of the Registrant on the Effective Date;
 - (d) “Commission” means the British Columbia Securities Commission;
 - (e) “Effective Date” means May 23, 2001;
 - (f) “Employee”, for the Registrant, means:
 - (A) an employee of the Registrant;

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- (B) an employee of an affiliated entity of the Registrant; or
 - (C) an individual that is engaged to provide, on a *bona fide* basis, consulting, technical, management or other services to the Registrant or to an affiliated entity of the Registrant, under a written contract between the Registrant or the affiliated entity and the individual or a consultant company or consultant partnership of the individual, and, in the reasonable opinion of the Registrant, the individual spends or will spend a significant amount of time and attention on the affairs and business of the Registrant or an affiliated entity of the Registrant;
- (g) “Employee”, for a Service Provider, means an employee of the Service Provider or an affiliated entity of the Service Provider, provided that, at the relevant time, in the reasonable opinion of the Registrant, the employee spends or will spend, a significant amount of time and attention on the affairs and business of:
- (A) the Registrant or an affiliated entity of the Registrant; or
 - (B) a mutual fund managed by the Registrant or an affiliated entity of the Registrant;
- (h) “Employee Rule” means British Columbia Securities Commission Instrument 45-507 Trades To Employees, Executives and Consultants;
- (i) “Executive”, for the Registrant, means a director, officer or partner of the Registrant or of an affiliated entity of the Registrant;
- (j) “Executive”, for a Service Provider, means a director, officer or partner of the Service Provider or of an affiliated entity of the Service Provider;
- (k) “Exempt Trade”, for the Registrant, means:
- (i) a trade in securities of a mutual fund that is made between a person and an underwriter acting as purchaser or between or among underwriters; or
 - (ii) any other trade for which the Registrant would have available to it an exemption from the registration requirements of the Act;

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(l) “Fund-on-Fund Trade”, for the Registrant, means a trade that consists of:

- (i) a purchase, through the Registrant, of securities of a mutual fund that is made by another mutual fund;
- (ii) a purchase, through the Registrant, of securities of a mutual fund that is made by a counterparty, an affiliated entity of the counterparty or an other person, pursuant to an agreement to purchase the securities to effect a hedge of a liability relating to a contract for a specified derivative or swap made between the counterparty and another mutual fund; or
- (iii) a sale, through the Registrant, of securities of a mutual fund that is made by another mutual fund where the party purchasing the securities is:
 - (A) a mutual fund managed by the Registrant or an affiliated entity of the Registrant; or
 - (B) a counterparty, affiliated entity or other person that acquired the securities pursuant to an agreement to purchase the securities to effect a hedge of a liability relating to a contract for a specified derivative or swap made between the counterparty and another mutual fund; and

where, in each case, at least one of the referenced mutual funds is a mutual fund that is managed by either the Registrant or an affiliated entity of the Registrant;

(m) “In Furtherance Trade” means, for the Registrant, a trade by the Registrant that consists of any act, advertisement, or solicitation, directly or indirectly in furtherance of an other trade in securities of a mutual fund, where the other trade consists of:

- (i) a purchase or sale of securities of a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant; or
- (ii) a purchase or sale of securities of a mutual fund where the Registrant acts as the principal distributor of the mutual fund; and

where, in each case, the purchase or sale is made by or through an other registered dealer if the Registrant is not otherwise permitted to make the purchase or sale pursuant to these terms and conditions;

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- (n) “Managed Account” means, for the Registrant, an investment portfolio account of a client under which the Registrant, pursuant to a written agreement made between the Registrant and the client, makes investment decisions for the account and has full discretionary authority to trade in securities for the account without obtaining the client’s specific consent to the trade;
- (o) “Managed Account Trade” means, for the Registrant, a trade to, or on behalf of a Managed Account of the Registrant, where the trade consists of a purchase or redemption, through the Registrant of securities of a mutual fund, that is made on behalf of the Managed Account;

where, in each case,

- (i) the Registrant is the portfolio adviser to the mutual fund;
 - (ii) the mutual fund is managed by the Registrant or an affiliate of the Registrant; and
 - (iii) either of:
 - (A) the mutual fund is prospectus-qualified in British Columbia; or
 - (B) the trade is not subject to sections 34 and 61 of the Act;
- (p) “Mutual Fund Instrument” means National Instrument 81-102 Mutual Funds, as amended;
 - (q) “Permitted Client”, for the Registrant, means a person that is a client of the Registrant, and that is, or was at the time the person became a client of the Registrant:
 - (i) an Executive or Employee of the Registrant;
 - (ii) a Related Party of an Executive or Employee of the Registrant;
 - (iii) a Service Provider of the Registrant or an affiliated entity of a Service Provider of the Registrant;
 - (iv) an Executive or Employee of a Service Provider of the Registrant;
or

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- (v) a Related Party of an Executive or Employee of a Service Provider of the Registrant;
- (r) “Permitted Client Trade” means, for the Registrant, a trade to a person who is a Permitted Client or who represents to the Registrant that he or she is a person included in the definition of Permitted Client, in securities of a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant, and the trade consists of:
 - (i) a purchase, by the person, through the Registrant, of securities of the mutual fund; or
 - (ii) a redemption, by the person, through the Registrant, of securities of the mutual fund;
- (s) “Pooled Fund Rule” means, for the Registrant, a rule or other regulation that relates, in whole or in part, to the distribution of securities of a mutual fund and/or non-redeemable investment fund, other than pursuant to a prospectus for which a receipt has been obtained from the Director, made by the Registrant on or on behalf of a Managed Account, but does not include trades under Multi-lateral Instrument 45-103 Capital Raising Exemptions or British Columbia Securities Commission Instrument 45-519 Retention of Current Exemptions for Six Months;
- (t) “Registered Plan” means a registered pension plan, deferred profit sharing plan, registered retirement savings plan, registered retirement income fund, registered education savings plan or other deferred income plan registered under the Income Tax Act (Canada);
- (u) “Registrant” means Citibank Canada Investment Funds Limited;
- (v) “Related Party”, for a person, means an other person who is:
 - (i) the spouse of the person;
 - (ii) the issue of:
 - (A) the person,
 - (B) the spouse of the person, or

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- (C) the spouse of any person that is the issue of a person referred to in subparagraphs (A) or (B) above;
 - (iii) the parent, grandparent or sibling of the person, or the spouse of any of them;
 - (iv) the issue of any person referred to in paragraph (iii) above; or
 - (v) a Registered Plan established by, or for the exclusive benefit of, one, some or all of the foregoing;
 - (vi) a trust where one or more of the trustees is a person referred to above and the beneficiaries of the trust are restricted to one, some, or all of the foregoing;
 - (vii) a corporation where all the issued and outstanding shares of the corporation are owned by one, some, or all of the foregoing;
 - (w) “securities”, for a mutual fund, means shares or units of the mutual fund;
 - (x) “Seed Capital Trade” means a trade in securities of a mutual fund made to a persons or company referred to in any of subparagraphs 3.1(1)(a)(i) to 3.1(1)(a)(iii) of the Mutual Fund Instrument;
 - (y) “Service Provider”, for the Registrant, means:
 - (i) a person that provides or has provided professional, consulting, technical, management or other services to the Registrant or an affiliated entity of the Registrant;
 - (ii) an Adviser to a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant; or
 - (iii) a person that provides or has provided professional, consulting, technical, management or other services to a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant.
2. For the purposes hereof, a person is considered to be an “affiliated entity” of another person if the person would be an affiliated entity of that other person for the purposes of the Employee Rule.
3. For the purposes hereof:

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- (a) “issue”, “niece”, “nephew” and “sibling” includes any person having such relationship through adoption, whether legally or in fact;
- (b) “parent” and “grandparent” includes a parent or grandparent through adoption, whether legally or in fact;
- (c) “registered dealer” means a person that is registered under the Act as a dealer in a category that permits the person to act as dealer for the subject trade; and
- (d) “spouse”, for an Employee or Executive, means a person who, at the relevant time, is the spouse of the Employee or Executive.

4. Any terms that are not specifically defined above shall, unless the context otherwise requires, have the meaning:

- (a) specifically ascribed to such term in the Mutual Fund Instrument; or
- (b) if no meaning is specifically ascribed to such term in the Mutual Fund Instrument, the same meaning the term would have for the purposes of the Act.

Restricted Registration

Permitted Activities

5. The registration of the Registrant as a mutual fund dealer under the Act shall be for the purposes only of trading by the Registrant in securities of a mutual fund where the trade consists of:

- (a) a Client Name Trade;
- (b) an Exempt Trade;
- (c) a Fund-on-Fund Trade;
- (d) an In Furtherance Trade;
- (e) a Managed Account Trade, provided that, at the time of the trade, the Registrant is registered under the Act as an adviser in the categories of “investment counsel” or “portfolio manager”;
- (f) a Permitted Client Trade; or

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(g) a Seed Capital Trade;

provided that, in the case of all trades that are only referred to in clauses (a) or (f), the trades are limited and incidental to the principal business of the Registrant, and provided also that paragraph (e) will cease to be in effect one year after the coming into force, subsequent to the date of this Decision, of any Pooled Fund Rule.