

# 2006 BCSECCOM 79

February 8, 2006

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Application – Securities Act s. 48 Adviser - Exemption from s.34(1)(c) requirement to be registered as an adviser - A person who resides outside BC wants to advise BC residents - The person is hired under a written agreement with a BC registered dealer or adviser to provide advice to the BC registrant and its BC clients; the person is registered or qualified to provide the advice in the jurisdiction in which they reside; under a written agreement with its BC clients or the person, the BC registrant accepts responsibility for all losses resulting from inappropriate advice provided by the person; the BC client will obtain advice from and give all instructions through the BC registrant.

## **Applicable British Columbia Provisions**

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

**In the Matter of the Securities Legislation of British Columbia, Alberta,  
Manitoba, New Brunswick, Newfoundland and Labrador,  
Northwest Territories, Nunavut, Nova Scotia, Prince Edward Island,  
Saskatchewan and Yukon (the Jurisdictions)**

**and**

**In the Matter of  
the Mutual Reliance Review System for Exemptive Relief Applications**

**and**

**In the Matter of  
CIBC Private Investment Counsel Inc. (the Filer)**

## **MRRS Decision Document**

## **Background**

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer on behalf of certain investment advisers (the Sub-Advisers) for an exemption from the requirements in the legislation of the Jurisdictions (the Legislation) requiring the Sub-Advisers to be registered as advisers; the exemption will allow the Sub-Advisers to provide investment advisory services to the Filer for the benefit of certain clients who are resident in the Jurisdictions in which the Sub-Advisers are not registered (the Registration Relief).

## 2006 BCSECCOM 79

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the British Columbia 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 represented by the Filer:

1. the Filer is a corporation incorporated under the laws of Canada with its head office located in Toronto, Ontario; the Filer is an indirect subsidiary of Canadian Imperial Bank of Commerce (CIBC);
2. the Filer is currently registered as an investment counsel and portfolio manager in British Columbia, Alberta, Saskatchewan, Ontario, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Northwest Territories and Nunavut and as a portfolio manager in Manitoba, as a securities adviser and portfolio manager in Québec; the Filer is also registered as a limited market dealer in Ontario and Newfoundland and Labrador;
3. each Sub-Adviser is, or will be, registered or otherwise qualified under applicable laws in the jurisdiction in which its head office is located to provide investment advisory services;
4. the Filer will enter into written investment management agreements (the IMA) with persons (the Clients) who open accounts with the Filer to be managed by the Filer on a discretionary basis (the Accounts);
5. the IMA will:
  - (a) provide the Filer with complete discretionary authority to purchase and sell securities on behalf of the Client; and
  - (b) authorize the Filer to select and retain Sub-Advisers to provide investment advisory services for the benefit of the Client;

## 2006 BCSECCOM 79

6. the Filer intends to retain Sub-Advisers to provide the Filer with investment advisory services in connection with the Accounts relating to non-Canadian securities with which the Sub-Advisers have experience and expertise for the benefit of its Clients, specifically, the Sub-Advisers will provide model portfolios (the Model Portfolios) in which Accounts will be invested by the Filer's portfolio managers;
7. the Filer will enter into a sub-advisory agreement, either directly or indirectly through a CIBC affiliate, with each Sub-Adviser that sets out the obligations and duties of each party in connection with the investment advisory services provided to the Filer for the benefit of the Clients, and provides that while the Sub-Adviser supplies Model Portfolios to the Filer, the Filer will have discretionary authority to customize such Model Portfolios to meet the specific investment objectives of each Client and will have discretionary trading authority over the Client Accounts;
8. the Filer will complete an investment policy statement that outlines the Client's investment objectives and level of risk tolerance;
9. a representative of the Filer will be responsible for reviewing and approving each trade for the Client Accounts to ensure that each trade meets the investment mandate of that Client;
10. in retaining each Sub-Adviser, the Filer will agree in the IMA to be responsible for any loss that arises out of the failure of a Sub-Adviser:
  - (a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interest of the Filer and the Client(s) for whose benefit the investment advisory services are to be provided, or
  - (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances(collectively, the Assumed Obligations);
11. the Filer will not be relieved by Clients from the Assumed Obligations;
12. if there is any direct contact between a Client and a Sub-Adviser, a representative of the Filer duly registered to provide portfolio management and investment counseling services in the Jurisdiction where the Client is resident, will be present at all times, either in person or by telephone; and

## 2006 BCSECCOM 79

13. the Sub-Advisers who provide investment advisory services with respect to the assets of Clients would be considered to be acting as an “adviser” within the meaning of the Legislation with respect to such Clients, and in the absence of the Registration Relief or an existing exemption, would be required to be registered, or otherwise exempt from registration, as an adviser under the Legislation.

### **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 pursuant to the Legislation is that the Registration Relief is granted provided that:

- (i) the obligations and duties of each Sub-Adviser are set out in a written agreement between the Sub-Adviser and the Filer;
- (ii) the Filer contractually agrees with each Client, on whose behalf the Sub-Adviser will provide investment advisory services, to be responsible for any loss that arises out of the failure of the Sub-Adviser:
  - (A) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Filer and the Client(s) for whose benefit the investment advisory services are to be provided; or
  - (B) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;
- (iii) the Filer is not relieved by its Clients from its responsibility for loss under paragraph (ii) above;
- (iv) each Sub-Adviser that is resident in a province or territory of Canada will be registered as an adviser under the securities legislation of that province or territory;
- (v) each Sub-Adviser that is not resident in Canada will be licensed or otherwise legally permitted to provide investment advisory services under the applicable laws of the jurisdiction in which it resides; and

## **2006 BCSECCOM 79**

- (vi) in Manitoba, the Registration Relief is available only to Sub-Advisers who are not registered in any Canadian jurisdiction.

L.E. Evans, CA  
Director, Capital Markets Regulation  
British Columbia Securities Commission