2003 BCSECCOM 764

Headnote
Mutual Reliance Review System for Exemptive Relief Application – application for relief from the insider reporting requirement in connection with certain dispositions of securities made to satisfy a withholding tax obligation arising from the distribution of common shares under various automatic securities purchase plans – relief granted subject to certain conditions

Applicable British Columbia Provisions
Securities Act, R.S.B.C.1996, c. 418, s. 91
National Instrument 55-101 *Exemption from Certain Insider Reporting Requirements*

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

AND

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

AND

IN THE MATTER OF CANADIAN IMPERIAL BANK OF COMMERCE

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Nova Scotia, Ontario, Québec and Saskatchewan (collectively, the "Jurisdictions") has received an application from Canadian Imperial Bank of Commerce ("CIBC") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the requirement contained in the Legislation to file insider reports shall not apply to insiders of CIBC in respect of certain dispositions of securities made to satisfy income tax withholding obligations under certain CIBC equity incentive plans, subject to certain conditions;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS CIBC has represented to the Decision Makers that:

1. CIBC is a Schedule 1 Canadian chartered bank governed by the *Bank Act* (Canada).

2. CIBC is a reporting issuer (or equivalent) in each province and territory of Canada.

3. CIBC is not in default of any requirements under the Legislation.

4. The authorized share capital of CIBC consists of an unlimited number of common shares, without nominal or par value, provided that the maximum aggregate consideration for all outstanding common shares at any time does not exceed $15,000,000,000 (the "Common Shares"); an unlimited number of Class A preferred shares, without nominal or par value, provided that the maximum aggregate consideration for all outstanding Class A preferred shares at any time does not exceed $10,000,000,000; and an unlimited number of Class B preferred shares, without nominal or par value, provided that the maximum aggregate consideration for all outstanding Class B preferred shares at any time does not exceed $10,000,000,000.

5. The Common Shares are listed and posted for trading on the Toronto and New York stock exchanges. As at July 31, 2003, 360,920,799 Common Shares are issued and outstanding.

6. CIBC has established certain equity incentive plans which provide equity incentives to participants. Payout under the plans is in the form of CIBC Common Shares which are acquired and held by a trust in accordance with the plans until distribution to participants. In the future, CIBC may establish similar plans from time to time. These existing and future plans are referred to as the “Plans”.

7. Generally, each of the Plans has the following terms:

   (a) Awards are available to certain employees of CIBC and, for some Plans, certain employees of CIBC affiliates (as defined in the *Bank Act)*. CIBC and its affiliates are referred to as the “CIBC Group”. Employees of the CIBC Group who receive awards under any of the Plans are referred to as “participants”.

   (b) Funding for awards is paid by CIBC to a trust set up for each Plan to purchase CIBC Common Shares in the open market.

   (c) An award is denominated into award units by dividing the value of a participant’s award by the “average cost” paid by the trust for purchasing

Common Shares at the time the participant's award is made. “Average cost” is the average weighted price of the Common Shares purchased in accordance with the Plans.

(d) An award unit represents the right to receive one Common Share on vesting in accordance with the terms of the applicable Plan. Awards are not transferable.

(e) Awards generally vest according to one of two vesting schedules: One third per year, starting on the first anniversary of the end of the fiscal year to which the award relates, or 100% on the third anniversary of the end of the fiscal year to which the award relates. CIBC’s fiscal year ends on October 31.

(f) On October 31 of each year in accordance with the terms of each Plan, the trust automatically distributes to each Plan participant one Common Share for each vested award unit (except in certain Plans where the participant elects, at the time the award is made, to defer receipt of Common Shares until the end of the third year.)

(g) The Income Tax Act places a withholding tax obligation on CIBC at the time Common Shares are distributed from the trust (the “Distribution Date”) except where a specific participant would suffer hardship in which case the withholding tax obligation is waived.

(h) CIBC estimates the withholding tax in respect of a distribution of Common Shares to each Participant in advance of the Distribution Date. Participants are required to elect how to deal with the resulting tax obligation. A participant may

1) provide the trustee of the trust with a cheque for the estimated tax amount,

2) request that the trustee of the trust sell, on the Distribution Date, a sufficient number of the Common Shares being distributed, or

3) advise that the withholding obligation would result in hardship to the participant and that no withholding should occur. This election must be made by a prescribed date well in advance of the Distribution Date.

Elections are generally completed at least six weeks before the Distribution Date. The Plans provide that if the participant does not make an election by the prescribed date, then before distributing Common

Shares to the participant, the trustee must sell a sufficient number of Common Shares on the Distribution Date to deal with the withholding tax obligation.

(i) A participant's election is driven primarily by personal tax planning and cash flow considerations. A participant would require sufficient funds to provide the trustee with a cheque for the estimated withholding tax amount. As a result, in prior years, a majority of participants in the Plans elected to have shares sold. A smaller number have elected to deal with the withholding tax amount by providing a cheque because the sale of shares distributed from the trust could result in a further tax liability to the participant. This further tax liability could arise if the participant already holds other CIBC shares, as the cost base of all such CIBC shares would be averaged in determining whether the participant has realized a gain or loss for tax purposes.

(j) Once the award units vest on October 31, the withholding tax estimates are finalized using the October 31 share value. For employees who elected to have shares sold on October 31, the trustee sells that number of shares that are equal to the number of vested awards units multiplied by the appropriate tax rate for the employee.

(k) Occasionally, awards are made under the Plans to new hires or for retention purposes. The descriptions in section 7 (a)-(j) apply equally to such awards, except that the vesting date and Distribution Date may be a day other than October 31.

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 the requirement contained in the Legislation to file insider reports shall not apply to an insider in respect of a sale of Common Shares if

(a) the sale of Common Shares occurs on or about the Distribution Date and is made to satisfy a withholding tax obligation arising from the distribution of Common Shares for vested awards under the Plans;

(b) either,

(i) the insider elects how the income tax withholding obligation is to be satisfied, communicates such election to CIBC or the Plan trustee not less than 30 days prior to the Distribution Date and such election is irrevocable as of the 30th day before the Distribution Date; or

(ii) the insider does not elect how the income tax withholding obligation is to be satisfied and, in accordance with the terms of the Plan, the Plan trustee is therefore required to sell Common Shares automatically on or about the Distribution Date to satisfy a withholding tax obligation;

(c) the insider files a report, in the form prescribed for insider trading reports under the Legislation, disclosing all sales of Common Shares under the Plans that have not been previously disclosed by or on behalf of the insider,

(i) for any Common Shares under the Plans which have been disposed of or transferred, other than in respect of withholding taxes on the distribution of vested awards, within the time required by the Legislation for reporting the disposition or transfer; and

(ii) for any Common Shares disposed of under the Plans during the calendar year in respect of withholding taxes, within 90 days of the end of the calendar year; and

(d) the insider does not beneficially own, directly or indirectly, voting securities of CIBC, or exercise control or direction over voting securities of CIBC or a combination of both, that carry more than 10% of the voting rights attached to CIBC's outstanding voting securities.

DATED this 21st day of October, 2003.

R.W. Korthals W.S. Wigle