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Dear Sirs/Mesdames:

Re: Canadian Securities Administrators ("CSA") Proposed National Instrument 81-107 - *Independent Review Committee for Mutual Funds* ("NI 81-107")

Canadian Imperial Bank of Commerce ("CIBC") is the manager of the CIBC Mutual Funds, CIBC Managed Portfolios and the Imperial Pools. CIBC Asset Management Inc., a wholly owned subsidiary of CIBC, is the manager and trustee of the Talvest Funds, the Renaissance Mutual Funds and the Frontiers Pools. As at January 31, 2004, CIBC's families of mutual funds comprised 163 mutual funds with approximately $40 billion of assets under management.

CIBC believes strongly in meaningful dialogue between industry participants and regulators and thus we welcome the opportunity to provide comments to the Canadian Securities Administrators regarding NI 81-107.

CIBC supports the comments expressed by the Investment Funds Institute of Canada ("IFIC") on behalf of IFIC members in its letter dated April 8, 2004. In addition, we wish to take this opportunity to provide additional comments on the following specific aspects of NI 81-107:

- The application of NI 81-107

- Independence, appointment and compensation of members of the independent review committee (the "IRC")
- Liability
- Conflicts of interest

Application of NI 81-107

Section 1.2 expressly excludes labour-sponsored funds, mutual funds listed and traded on an exchange (i.e. ETFs) and non-National Instrument 81-102 ("NI 81-102") mutual funds (i.e. pooled funds sold on an exempt basis) from the application of NI 81-107. In addition, although not a mutual fund and, accordingly, beyond the purview of NI 81-107, individual variable insurance contracts or segregated funds issued by life insurance companies are also excluded from the application of NI 81-107.

The reality is that each of the investment products listed above competes for the same investor dollars. As detailed in IFIC's submission, the introduction of an IRC will lead to significant additional costs which ultimately will be borne by mutual fund unitholders. Imposing the obligation to establish an IRC and its attendant costs solely on conventional mutual funds will result in an unlevel playing field between these competing investment products.

The imposition of an IRC will also further widen the regulatory disparity between conventional mutual funds and segregated funds. As you know, conventional mutual funds are required to prepare a simplified prospectus and annual information form and comply with the continuous disclosure requirements under Canadian securities legislation, including filing interim and annual audited financial statements, press releases, material change reports and meeting materials. Segregated funds do not have nearly the same level of continuous disclosure obligations. Further, NI 81-107 would impose additional regulatory obligations on conventional mutual funds.

Finally, we note that the fundamental role of the IRC as detailed in NI 81-107 is to address potential conflicts of interest. Our view is that the other mutual funds excluded from the application of NI 81-107 or segregated funds are subject to the same degree of potential conflicts of interest. As a result, it would seem somewhat arbitrary to require only conventional mutual funds to comply with NI 81-107.

We believe that either NI 81-107 should apply more broadly or equivalent requirements be established by those regulators or self-regulatory organizations responsible for regulating such products.

Independence, Compensation and Appointment of IRC

Independence

A. Requirement that all members of the IRC be independent

Section 2.4 of NI 81-107 requires that all members of the IRC be independent. As you may know, under the *Investment Company Act of 1940*, only 40% of the board of directors of a mutual fund is required to be independent. In November 2003, the U.S. House of Representatives approved the *Mutual Funds Integrity and Fee Transparency Act of 2003* that, among other things, increased the required percentage of independent directors to two-thirds and introduced the requirement that the chairman of the board be independent.

In view of US requirements and concerns that we discuss below regarding the ability of the IRC to fill vacancies on the IRC (subsection 2.3(3) of NI 81-107) and set its own compensation (subsection 2.7(1)(b)), we recommend that the requirement that every member of the IRC be independent be revisited to permit the inclusion of at least one third non-independent members.

B. Definition of independence

Under NI 81-107, a member is not independent if the member has a direct or indirect material relationship with the manager, the mutual fund or an entity related to the manager. A "material relationship" is defined as any relationship that a reasonable person would consider might interfere with the exercise of the member's independent judgment regarding conflicts of interest facing the manager.

The Commentary to NI 81-107 identifies ownership, commercial, charitable, industrial, banking, consulting, legal, accounting or financial relationships as potential material relationships that might, in the view of a reasonable person, interfere with the exercise of a member's independent judgment.

We agree with IFIC that the pool of potential IRC members is relatively shallow in Canada and that the test of independence may, intentionally or otherwise, further limit the range of potential candidates. In particular, we are concerned that a candidate may be disqualified if he or she held a large number of units in a fund or if they were a brokerage client of an affiliate of a manager on the theory that they may have a material relationship with the manager, the mutual fund or an entity related to the manager. We suggest the introduction of a monetary threshold below which one would be considered independent.

In addition, members of an existing independent review committee or governance agency of a fund established in accordance with the terms of exemptive relief granted by the Canadian Securities Administrators should not be disqualified from serving as a member of the IRC solely because they accepted a "consulting, advisory or other compensatory fee from the manager, the mutual fund or an entity related to the manager".

We suggest, therefore, that members of an existing IRC established in accordance with previously obtained exemptive relief who meet the definition of independence in NI 81-107 but for the receipt of a fee from the funds, not be disqualified solely because of such service. In addition, we also suggest that a materiality threshold be introduced such that immaterial fees do not disqualify otherwise qualified candidates.

Appointment and Compensation of IRC Members

We feel that vacancies in the IRC should be filled by the manager as contemplated in subsection 2.2 (1) of NI 81-107 in respect of initial appointments. Although subsection 2.10(2) of NI 81-107 contemplates the ability of a majority of unitholders at a special meeting called by the manager to remove a member of the IRC, the time and expense associated with this type of procedural remedy would be unnecessary if the manager filled vacancies. Managers have just as great an interest as unitholders in ensuring that an IRC for its funds is comprised of qualified, competent people who work cohesively together. Clearly, by permitting managers to select the initial members of the IRC, the CSA has acknowledged this fact. It seems arbitrary to deny the manager any say in filling vacancies in the IRC.

Similarly, we have concerns regarding the ability of the IRC to set and pay its compensation from the assets of the mutual funds. The manager needs to ensure that fiscal discipline is imposed on the fees and expenses connected with the IRC. We submit that allowing the IRC to set its own fees with the only recourse for the manager being the calling of a unitholder meeting is not in the best interest of unitholders. We suggest that the manager be responsible for setting IRC compensation.

Liability

The first comment we have regarding section 2.8 of NI 81-107 is to express our concern that an issue as significant as the potential liability of members of the IRC should form part of NI 81-107 itself and not be comprised entirely of non-binding Commentary. As discussed by IFIC, fund managers and prospective members of the IRC should know with certainty what is required of them. In the interest of clarity, therefore, section 2.8 should form part of NI 81-107.

Secondly, we have significant concerns regarding Commentary 2 to section 2.8 which states that the Canadian Securities regulatory authorities expect that any insurance coverage for members of the IRC would not cover any liability resulting from members of the IRC not fulfilling their responsibilities and meeting their standard of care.

As you know, the standard of care imposed on members of the IRC in subsection 2.6(1)(c) is to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. As noted by IFIC in its submission, by excluding insurance coverage for breaches of the prudent person standard of care, negligence by a member of the IRC could leave members exposed to potential liability. Directors of a bank governed by the *Bank Act* (Canada) or a corporation governed by the *Canada Business Corporations Act* may receive the benefit of insurance coverage provided that they have acted honestly and in good faith with a view to the best interests of the bank or corporation, respectively. Neither statute imposes a prudent person standard of care requirement as a condition of such insurance coverage.

We see no reason for members of the IRC to be treated any differently in this regard than a director of a bank or corporation. In our view, the imposition of this requirement will deter prospective members from joining an IRC.

The other likely outcome of subjecting members of the IRC to unlimited liability is a much greater use of and reliance upon professional advisors by the IRC as a means of insulating themselves from potential liability. This would, of course, increase the costs of the IRC to unitholders.

In addition, we are concerned with the practical implications of Commentary 2 to section 2.8 of a mutual fund indemnifying members of the IRC. Any reliance by members on such an indemnity would have a potentially significant impact on the mutual fund's net asset value and may well prove difficult for the mutual fund to quantify.

For all of the foregoing reasons, therefore, we suggest that this issue be reconsidered and that whatever steps are necessary be taken to limit the potential liability of IRC members.

Conflicts of Interest

A. Repeal of Existing Legislation

As is so aptly demonstrated in the *Mutual Fund Governance Cost Benefit Analysis Final Report* prepared for the Ontario Securities Commission, the replacement of the 60-Day Rule contained in section 4.1(1) of NI 81-102 and the prohibitions against inter-fund trading contained in provincial securities legislation with the requirement to obtain IRC approval, will result in directly quantifiable financial benefits to the mutual fund industry as a whole and will also level the playing field for both dealer and non-dealer related mutual funds.

In order to recognize these benefits, therefore, it is imperative that existing self-dealing and conflict of interest provisions contained in NI 81-102 and provincial securities legislation be repealed contemporaneously with the coming into force of the final version of NI 81-107. We applaud the commitment to do so contained in the CSA's discussion of the purpose of NI 81-107 contained in the Introduction to the Request for Comments. As a practical matter, the co-existence of self-dealing prohibitions such as section 111 of the *Securities Act* (Ontario) or section 4.1 (1) of NI 81-102 and section 3.1 of NI 81-107 would result in conflicting requirements and uncertainty for fund managers and mutual funds.

To ensure that all possible conflicts between existing legal requirements imposed on fund managers and mutual funds and the requirements of the final version of NI 81-107 are eliminated, we would welcome the opportunity to assist the CSA in identifying all such restrictions.

B. Scope of Conflicts

Pursuant to section 3.1 of NI 81-107, a fund manager must refer matters to the IRC if a reasonable person would question whether it has a conflict of interest related to its management of a mutual fund. A manager is considered to have a conflict of interest if it or a related entity "has an interest that is different from, or conflicts with, the best interests of the mutual fund." Guidance is provided in Commentary 4 and 5 to section 3.1 of NI 81-107 in the form of a non-exhaustive list of examples of situations when a manager might experience such a conflict of interest. This list is much broader than the existing related party and self-dealing arrangements currently prohibited or restricted in existing legislation.

The inclusion of a prescriptive list of potential conflicts of interest appears inconsistent with the principles based approach that permeates the bulk of NI 81-107. We believe that setting out a prescriptive list of potential conflicts, even if it is meant to be non-exhaustive and as part of the non-legally binding Commentary will, in practice, lead to more uncertainty as to what constitutes a conflict of interest rather than less.

We agree with IFIC's recommendation that the determination of what constitutes a conflict of interest should be left to the IRC to define in the IRC's written charter as required by subsection 2.5(3) of NI 81-107. Enabling the IRC to take into account a mutual fund family's structure and existing business relationships, would permit the IRC to establish a list of actual conflicts of interest that are particular to each fund family. The current list of potential business conflicts is very difficult to apply to each fund family's particular circumstances and will give rise to uncertainty on the part of fund managers and IRC members.

Conclusion

NI 81-107 will have a significant impact on not just CIBC's families of mutual funds, but also the mutual fund industry as a whole. We support the establishment of an IRC as contemplated by NI 81-107 but only if the concerns we outlined in our comment letter are addressed. In particular, we wish to highlight the concerns we have regarding the availability of qualified members of an IRC in the absence of a reasonable limitation of liability. Finally, we would ask the CSA to reconsider the establishment of a prescriptive list of potential business conflicts of interest and instead, leave the determination of such conflicts to the discretion of each IRC.

We look forward to providing continued input regarding NI 81-107. If you have any questions regarding any of our submissions, please do not hesitate to contact me.

Yours truly,

"Peter Moulson"

Peter J. Moulson