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British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Services Commission  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
New Brunswick Securities Commission  
Registrar of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Superintendent of Securities, Newfoundland and Labrador  
Registrar of securities, Northwest Territories  
Registrar of Securities, Yukon Territory  
Registrar of Securities, Nunavut

c/o:

John Stevenson, Secretary  
Ontario Securities Commission  
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and to:

Anne-Marie Beaudoin  
Directrice du secretariat  
Autorité des marchés financiers  
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**Re: Proposed NI 81-107**

CIBC has the following comments on proposed NI 81-107.

## **Role of IRC in Making Recommendations**

At the August 4, 2005 industry meeting with Staff of the OSC to discuss proposed NI 81-107, there was considerable discussion about the role of the IRC, in particular whether the role of the IRC was to make business decisions or to “second guess” the manager. We ask that you consider clarifying the role of the IRC, to provide that the IRC should provide guidance to the manager and assess the manager’s processes to address conflicts, but should not make business decisions on behalf of the manager.

## **Consideration of Conflicts that Exist or Have Been Dealt with Prior to Implementation of NI 81-107**

At the industry meeting referred to above, I believe that Staff of the OSC stated that NI 81-107 applies to pre-existing conflicts, not only new conflicts faced by the manager. We would like some guidance on the extent to which a manager is required to refer conflicts to the IRC in respect of which the decision has been made prior to implementation of NI 81-107. We recognize that some of these conflicts are ongoing, and although a decision has been made prior to implementation, the policies and procedures required by NI 81-107 will apply to the ongoing nature of the conflicts. An example of this type of conflict is a decision to use soft dollar commissions. However, there are other types of conflicts where the impact of NI 81-107 is not so clear, an example being a decision to use related party service providers when a fund is formed. Under NI 81-107, will a manager be required to refer to an IRC the conflicts which arose when the fund was formed, so that the IRC considers the process involved in the decision to hire a related party portfolio advisor and other service providers? In this situation, the NI 81-107 policies and procedures will apply to the ongoing aspects of the relationship between the fund and the related parties, but we wonder about the role of the IRC in considering the initial decision making process. The initial decision may have taken place many years previously, at a time when a different entity controlled the manager or may have been made by persons who are no longer employed by the manager. We believe that for these types of conflicts, the IRC should assess the policies and procedures in place for monitoring the conflict, but not assess the initial decision and the process involved in coming to the decision.

## **Conditions on Section 4.1 of NI 81-102 Permitted Purchases**

We ask you to consider the proposed amendments to section 4.1 of NI 81-102 to allow dealer managed funds to purchase securities directly in a public offering, rather than on a stock exchange, or under a private placement if the other conditions in the section have been satisfied, including the approval of the IRC. Under exemption orders which have been granted to dealer managed funds, purchases directly in a public offering, off a stock exchange, are permitted, and some exemptions have allowed purchases under a private placement.

## **Other Comments**

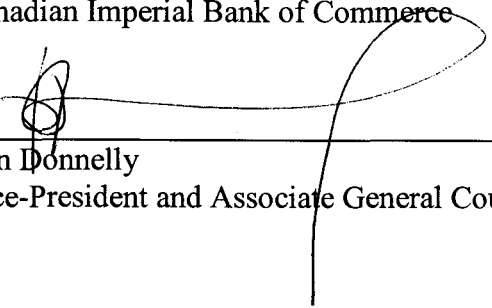
We ask you to consider the following additional comments and suggestions:

- move the governance practices to the Commentary, which is consistent with the recommended best practices approach to governance for other reporting issuers

- remove the requirement for separate charters for each fund family, as it is more likely that there will be greater differences across funds within a fund family rather than across fund families
- permit the shareholder of the manager to provide the indemnity and insurance, in addition to the manager, as this may be the entity with the superior credit quality
- provide greater flexibility for the IRC on the notice which it may require under section 5.3(2) and (3), for example, so that it may reduce the time period if it determines that a notice by press release is sufficient
- remove the requirement for the IRC to deliberate and decide on all matters in absence of the manager, as it is inconsistent with corporate and securities laws approaches to governance practices and should be a matter for the IRC to decide; we raised this issue with the CIBC IRC, and the members agree with the comment – in the past, they have sometimes deliberated and decided without management present, but other times they have been comfortable to make the decision with management present
- replace the requirement for the IRC to have a meeting at least once a year without a representative of the manager present, with a requirement to hold “in camera” sessions at least annually
- clarify the role of the IRC when the manager has breached a condition imposed by the IRC; the IRC is required to report the breach to the securities regulators, however it is not clear whether the IRC also should approve of the steps taken by the manager to address the breach – we suggest that, in this case, the IRC should assess the steps taken by the manager in addressing the breach, and report to the manager on that assessment, but not have an obligation to formally approve of the steps taken or require that additional steps be taken
- clarify that the scope of NI 81-107 as it relates to the “recommendation” category of conflicts of interest for third party portfolio advisors is the conflicts the portfolio advisor has with the manager or its affiliates
- revise section 8.2(3) to make it more clear, perhaps by changing “after the end of the first financial year of the investment fund to which this Instrument applies” to “after the first financial year end of the investment fund to occur after this Instrument comes into force” or “after the first financial year end of the investment fund to occur after the manager of the fund establishes the policies and procedures required by this Instrument”; the latter suggestion anticipates the situation where the fund has not adopted policies and started referring matters to the IRC by the end of the first financial year after NI 81-107 is in force.

Thank you for the opportunity to provide comments on this draft of proposed NI 81-107. Please call me if you have any questions.

Yours Sincerely,  
Canadian Imperial Bank of Commerce



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