



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen ouest
Toronto ON M5H 3S8

**IN THE MATTER OF
THE *SECURITIES ACT*, RSO 1990, c S.5**

- AND -

**IN THE MATTER OF
CIBC WORLD MARKETS INC., CIBC INVESTOR SERVICES INC.
and CIBC SECURITIES INC.**

**REASONS AND DECISION
(Subsections 127(1) and 127(2) of the *Securities Act*)**

Hearing: October 28, 2016

Decision: October 28, 2016

Panel: Alan Lenczner, Q.C. - Chair of the Panel and Commissioner
Christopher Portner - Commissioner
AnneMarie Ryan - Commissioner

Appearances: Michelle Vaillancourt - For Staff of the Commission
Yvonne Chisholm

James C. Tory - For CIBC World Markets Inc., CIBC Investor Services Inc. and CIBC Securities Inc.

REASONS AND DECISION

1. CIBC World Markets Inc. (“**CIBC WMI**”)¹ and CIBC Investor Services Inc. (“**CIBC ISI**”)² are each registered with the Ontario Securities Commission (the “**Commission**”) as investment dealers. CIBC Securities Inc. is registered with the Commission as a mutual fund dealer. Each of CIBC World Markets Inc., CIBC Investor Services Inc. and CIBC Securities Inc. (collectively, the “**CIBC Dealers**”) are subsidiaries of the Canadian Imperial Bank of Commerce (“**CIBC**”).
2. Commencing in March 2015, the CIBC Dealers self-reported to Staff of the Commission (“**Staff**”) inadequacies in their systems of controls and supervision which formed part of their compliance systems (the “**Control and Supervision Inadequacies**”). The Control and Supervision Inadequacies resulted in certain clients paying, directly or indirectly, excess fees that were not detected or corrected by the CIBC Dealers in a timely manner.
3. In the summary of the Control and Supervision Inadequacies set out in Staff’s Statement of Allegations dated October 25, 2016, Staff allege that:
 - (a) For some CIBC WMI clients with fee-based accounts, certain non-exchange traded mutual funds and structured notes with embedded trailer fees held in fee-based accounts were incorrectly included in account fee calculations, resulting in some clients paying excess fees during the period (i) January 1, 2002 to January 31, 2016, for mutual funds; and (ii) January 1, 2006 to January 31, 2016, for structured notes;
 - (b) For some CIBC WMI clients with fee-based accounts, assets held in their fee-based accounts included certain exchange traded funds with embedded trailer fees, resulting in some clients paying excess fees because CIBC WMI received trailer fees during the period January 1, 2006 to January 31, 2016 in addition to the account fee;
 - (c) For some CIBC WMI clients with fee-based accounts, assets held in their fee-based accounts included certain closed-end funds with embedded trailer fees, resulting in some clients paying excess fees because CIBC WMI received trailer fees during the period January 1, 2006 to January 31, 2016 in addition to the account fee; and
 - (d) Beginning in August 2006, some clients of the CIBC Dealers were not advised that they qualified for a lower management expense ratio (“**MER**”) class of an MER differential fund and indirectly paid excess fees when they invested in the higher MER class of the same mutual fund.

¹ References to CIBC WMI in these Reasons are restricted to its retail brokerage division, CIBC Wood Gundy.

² References to CIBC ISI in these Reasons are restricted to accounts related to its advisory brokerage division, CIBC Imperial Investor Services.

4. Staff allege that, in respect of the Control and Supervision Inadequacies, the CIBC Dealers failed to establish, maintain and apply procedures to establish controls and supervision:
 - (a) Sufficient to provide reasonable assurance that the CIBC Dealers, and each individual acting on behalf of the CIBC Dealers, complied with securities legislation, including the requirement to deal fairly with clients with regard to fees;
 - (b) That were reasonably likely to identify the non-compliance described in paragraph 4(a) above at an early stage and that would have allowed the CIBC Dealers to correct the non-compliant conduct in a timely manner; and

as a result, the Control and Supervision Inadequacies, constituted a breach of section 11.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and the failures in the CIBC Dealers' systems of controls and supervision associated with the Control and Supervision Inadequacies were contrary to the public interest.

5. Staff and the CIBC Dealers entered into a settlement agreement dated October 24, 2016 (the "**Settlement Agreement**"), which is before us today. The CIBC Dealers neither admit nor deny the accuracy of the facts alleged by, or the conclusions of, Staff, which are summarized in the Settlement Agreement.
6. The Panel must determine whether it would be in the public interest to approve the Settlement Agreement, which is intended to resolve and dispose of the current proceeding. In doing so, the Panel must take into account the mandate of the Commission set out in section 1 of the *Securities Act*, RSO 1990, c S.5 (the "**Act**"), which is to protect investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in those markets.
7. In determining whether it would be in the public interest to approve the Settlement Agreement, the Panel held a confidential settlement conference with Staff and the CIBC Dealers for the purpose of assessing (i) the assertion of Staff in the Settlement Agreement that the CIBC Dealers have implemented changes to their systems of internal controls and supervision to address the Control and Supervision Inadequacies; and (ii) the terms of the draft compensation plan submitted by the CIBC Dealers (the "**Compensation Plan**").
8. The Compensation Plan provides for:
 - (a) Payment to the current and former clients who were harmed by the Control and Supervision Inadequacies (the "**Affected Clients**") of (i) the excess fees they paid, subject to a *de minimus* exception of \$25, which will not be paid; and (ii) an amount representing the forgone opportunity cost in respect of the excess fees based, in most cases, on a simple interest rate of 5% per annum, calculated monthly;
 - (b) All amounts due to Affected Clients who cannot be located to be held in a trust account while efforts to locate them continue and for the payment of the balance of the trust account to United Way financial literacy programs if unclaimed by December 31, 2018;

- (c) The payment of the aggregate *de minimus* amounts, estimated to be approximately \$124,697, to United Way financial literacy programs; and
 - (d) The delivery to the Commission by the CIBC Dealers of regular progress reports relating to the implementation of the Compensation Plan.
9. The Panel has considered OSC Staff Notice 15-702 *Revised Credit for Cooperation Program*, (2014) 37 OSCB 2583. The Notice identifies the circumstances in which Staff may conclude that it is appropriate to recommend that an enforcement matter be resolved on the basis of a settlement agreement in which the respondent makes no admissions relating to the facts alleged by Staff or that it contravened Ontario securities law or acted contrary to the public interest. The Panel also reviewed the Reasons of the Commission issued in connection with other matters in which Staff recommended and Panels approved settlements with no admissions of fact or liability.
10. Having considered the terms of the Settlement Agreement and the Compensation Plan and the submissions of the parties, the Panel takes note, in particular, of the following:
- (a) The CIBC Dealers promptly self-reported the matter to Staff;
 - (b) The CIBC Dealers provided prompt, detailed and candid co-operation to Staff during Staff's investigation of the alleged Control and Supervision Inadequacies, and to the Panel during the confidential settlement conference;
 - (c) The compensation in an estimated amount of \$73,260,104 to Affected Clients and the steps that the CIBC Dealers will undertake to locate Affected Clients, in both cases in accordance with the terms of the Compensation Plan;
 - (d) The undertaking of the CIBC Dealers to make a voluntary payment to the Commission in the amount of \$3,000,000, to be designated for allocation or use by the Commission in accordance with sub-paragraphs (b)(i) or (ii) of subsection 3.4(2) of the Act, and to make a further voluntary payment of \$50,000 to reimburse the Commission for the costs incurred or to be incurred by the Commission, in accordance with paragraph (a) of subsection 3.4(2) of the Act;
 - (e) Staff is not aware of any other instance of Control and Supervision Inadequacies and the CIBC Dealers have developed and are implementing additional controls and monitoring systems designed to address and prevent their recurrence, which will be subject to further review by the Commission's Compliance and Registrant Regulation Branch; and
 - (f) Staff does not allege and has found no evidence of dishonest or intentional misconduct by the CIBC Dealers.
11. Although the Compensation Plan was not filed by the parties with their application for approval of the Settlement Agreement, both Staff and the Panel have reviewed the Compensation Plan. We are satisfied with the terms of the Compensation Plan and the process and methodology that have been employed to identify the Affected Clients and to calculate the amounts due to them. There may be circumstances in the future that would warrant the inclusion of a compensation plan with a settlement agreement submitted to the Commission for approval; however, we do not consider it essential in this matter.

12. For the foregoing reasons, we have concluded that it would be in the public interest for us to approve the Settlement Agreement, which we will do by issuing the order in the form attached to the Settlement Agreement filed by the parties.

Dated at Toronto this 28th day of October, 2016.

“Alan Lenczner”

Alan Lenczner, Q.C.

“Christopher Portner”

Christopher Portner

“AnneMarie Ryan”

AnneMarie Ryan