

Statement of Claim (“**Claim**”), attached hereto as **Schedule “A”**, apply to and are incorporated into this order.

2. **THIS COURT ORDERS** that the within action is certified as a class proceeding pursuant to the *CPA* as against the Defendants, subject to the provisions of this order.
3. **THIS COURT ORDERS** that the Class is defined as:

All persons, wherever they may reside or be domiciled, who held or hold units of a CIBC Mutual Fund through a Discount Broker, except for the Excluded Persons*, from September 18, 2003 to the date this Order is issued.

*Excluded Persons means the Defendants; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of each of the Defendants; and the past and present members of the independent review committee of each CIBC Mutual Fund.

4. **THIS COURT ORDERS** that the following issues are certified as common issues for the Class and shall be determined in accordance with the stay order dated August 1, 2023 made in *Woodard v. Canadian Imperial Bank of Commerce et al.*, Court File No. CV-22-690374-00CP:

Breach of Fiduciary Duty

- (a) Did CIBC Trust, as the trustee of the CIBC Mutual Funds, owe a fiduciary duty? If so, to whom was the duty owed?
- (b) Did CIBC, as the manager of the CIBC Mutual Funds, owe a fiduciary duty? If so, to whom was the duty owed?
- (c) If the answer to the first question in (a) and/or (b) is yes, did the relevant Defendant breach its fiduciary duty? If so, when and how?

Breach of Trust

- (d) Did CIBC Trust, as the trustee of the CIBC Mutual Funds, breach the standard of care set out in the Trust Instruments? If so, when and how?
- (e) Is CIBC Trust liable to account to the Class Members?

Breach of Contract

- (f) Did CIBC, as the manager of the CIBC Mutual Funds, breach the Management Agreements? If so, when and how?

Section 23.1 of the Trustee Act

- (g) Should the payment of the Unearned Management Fees by CIBC Trust be disallowed as an expense pursuant to section 23.1 of the *Trustee Act*?

Prospectus Misrepresentation

- (h) Did the Fund Facts Documents, and the Simplified Prospectuses which incorporate the Fund Facts Documents, contain a misrepresentation within the meaning of the *OSA* (and, as applicable, the Other Canadian Securities Legislation)?
- (i) If the answer to (h) is yes, are the Defendants, or either of them, liable to the Class Members pursuant to section 130 of the *OSA* (and, as applicable, the Other Canadian Securities Legislation)?

Remedies

- (j) If the Defendants are found liable on any claims asserted by the Class Members, as set out in (a) to (i) above, what remedies, including damages and/or equitable remedies, are the Class Members entitled to receive?
- (k) How should recoveries under each type of remedy be measured?
- (l) Can the amount of any monetary relief be determined on an aggregate basis? If so, what is the amount and what is the appropriate method or procedure for distributing that amount to the Class Members?

Interest

- (m) Should the Defendants be ordered to pay an equitable rate of interest and/or pre-judgment and post-judgment interest pursuant to the *CJA*? If so, what is the appropriate measure or amount of such interest?

Administration and Distribution

- (n) Should the Defendants pay the costs of administering and distributing the recovery? If so, what amount should the Defendants pay?

5. **THIS COURT ORDERS** that Stephen Pozgaj is appointed as the representative plaintiff for the Class.

6. **THIS COURT ORDERS** that the relief sought by the Class is as set out in paragraph 3 of the Claim.
7. **THIS COURT ORDERS** that the nature of the claims asserted on behalf of the Class are relief arising out of or under: (i) breach of trust; (ii) breach of fiduciary duty; (iii) breach of contract; (iv) section 23.1 of the *Trustee Act*; and (v) section 130 of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation).
8. **THIS COURT ORDERS** that the litigation plan attached hereto as **Schedule “B”** is hereby approved.
9. **THIS COURT ORDERS** that any other class proceeding in Ontario relating to the subject matter of this action is hereby stayed, except for
 - (a) *Frayce et al. v. BMO InvestorLine Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-20-00638868-00CP;
 - (b) *Frayce v. BMO InvestorLine Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-20-00634551-00CP; and
 - (c) *Ciardullo v. 1832 Asset Management L.P. et al.*, Court File No. CV-22-684723-00CP, *Ciardullo et al. v. 1832 Asset Management L.P. et al.*, Court File No. CV-22-685386-00CP, *Yeats v. 1832 Asset Management L.P.*, Court File No. CV-22-690373-00CP, *Woodard v. Canadian Imperial Bank of Commerce et al.*, Court File No. CV-22-690374-00CP, *Yeats v. BMO Investments Inc.*, Court File No. CV-22-690519-00CP, *DeJong v. RBC Global Asset Management Inc. et al.*, Court File No. CV-22-691343-00CP, *Aggarwal v. TD Asset Management Inc.*, Court File No. CV-22-691344-00CP, and *Aizic v. Natcan Trust Company et al.*, Court File No.

CV-23-00697428-00CP (collectively, the “**2022 Actions**”), subject to the temporary stay orders granted by this Court on August 1, 2023 in the 2022 Actions and any further orders subsequently made in the 2022 Actions.

10. **THIS COURT ORDERS** that no other class proceeding relating to the subject matter of this action may be commenced in Ontario without leave of the Court.
11. **THIS COURT ORDERS** that RicePoint is hereby appointed as the notice and opt-out administrator and will perform the duties and responsibilities set out herein, and any other related duty or responsibility.
12. **THIS COURT ORDERS** that the long-form notice, short-form notice and internet banner, substantially in the form attached hereto as **Schedules “C”, “D” and “E”**, respectively, are hereby approved.
13. **THIS COURT ORDERS** that the notices shall be published and disseminated by RicePoint (or Siskinds LLP (“**Class Counsel**”) with respect to paragraphs 13(b)(i) and (ii) below or the Defendants with respect to paragraph 13(a)(v) below) substantially in the following manner:
 - (a) Short-form notice:
 - (i) disseminated as a news release in Canada across Canada NewsWire (in English and French);
 - (ii) published once in the business section of the national weekend edition of *The Globe and Mail*, in English;
 - (iii) published once in the business section of *La Presse*, in French;

- (iv) sent electronically and/or in paper form to Discount Brokers in Canada with a cover letter requesting that they post the notice on their electronic message/news boards;
 - (v) filed by the Defendants as a news release on SEDAR;
- (b) Long-form notice:
- (i) posted by Class Counsel on <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>, in English and French;
 - (ii) provided by Class Counsel to any potential Class Member who has previously contacted Class Counsel for the purposes of receiving notice of developments in the action;
- (c) Internet banner:
- (i) published as a Google banner ad for approximately 700,000 impressions/views across Canada to an investor focused audience, in English and French, over 30 days;
 - (ii) published as a 12-day sponsored news link on Stockhouse.

14. **THIS COURT ORDERS** that the opt-out form (“**Opt-Out Form**”), substantially in the form attached as Appendix “A” to the long-form notice, is hereby approved.

15. **THIS COURT ORDERS** that:

- (a) a person may opt out of this class proceeding by sending (by mail or courier) a fully completed Opt-Out Form in accordance with the instructions set out in the long-

form notice to be postmarked on or before the date that is ninety (90) days after the day on which the short-form notice is first published (“**Opt-Out Deadline**”);

- (b) no person may opt out of this class proceeding after the Opt-Out Deadline; and
- (c) a person who validly opts out of the class proceeding in accordance with this Order shall not be a Class Member on and after the date that such person opts out of the class proceeding.

16. **THIS COURT ORDERS** that the costs of disseminating notice and receiving Opt-Out Forms shall be paid by the Plaintiff.

17. **THIS COURT ORDERS** that there shall be no costs of this motion.



The Honourable Justice Akbarali

ENTERED JAN 26/2024

SCHEDULE "A"
PROPOSED SECOND FRESH AS AMENDED
STATEMENT OF CLAIM

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

STEPHEN POZGAJ

Plaintiff

- and -

CANADIAN IMPERIAL BANK OF COMMERCE
and CIBC TRUST CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

SECOND FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in this statement of claim.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$400.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by

the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date September 18, 2018

Issued by _____
Local registrar

Address of court office 393 University Avenue
10th Floor
Toronto, ON M5G 1E6

TO: Canadian Imperial Bank of Commerce
18 York Street, Suite 1300
Toronto, ON M5J 2T8

AND TO: CIBC Trust Corporation
55 Yonge Street, 10th Floor
Toronto, ON M5E 1J4

CLAIM

CURRENCY AND DEFINITIONS

1. Unless otherwise stated, all dollar amounts stated herein are in Canadian dollars.
2. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following definitions apply:
 - (a) “**Bank Act**” means the *Bank Act*, SC 1991, c 46, as amended;
 - (b) “**CIBC**” means the Defendant, Canadian Imperial Bank of Commerce;
 - (c) “**CIBC Investor’s Edge**” means CIBC Investor’s Edge, a division of **CIBC Investor Services**, or such other discount brokerage business operated, directly or indirectly, by **CIBC** from time to time;
 - (d) “**CIBC Investor Services**” means CIBC Investor Services Inc.;
 - (e) “**CIBC Mutual Funds**” means all mutual fund trusts (including, without limitation, all classes of units thereof) of which **CIBC Trust** is trustee, was trustee or may be trustee at any time prior to the conclusion of the trial of the common issues in this proceeding (but only in respect of the period during which **CIBC Trust** is trustee, was trustee or may be trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been or may be terminated, (ii) those mutual funds that have been or may be merged into other mutual funds, and (iii) those mutual funds that have undergone or may undergo name changes;
 - (f) “**CIBC Trust**” means the Defendant, CIBC Trust Corporation;
 - (g) “**CJA**” means the *Courts of Justice Act*, RSO 1990, c C-43, as amended;
 - (h) “**Class**” and “**Class Members**” means all persons, wherever they may reside or be domiciled, who held or hold units of a **CIBC Mutual Fund** through a **Discount Broker**, except for the **Excluded Persons**, from September 18, 2003 to the date the Certification Order was issued;
 - (i) “**CPA**” means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;
 - (j) “**CSA**” means the Canadian Securities Administrators;
 - (k) “**Current DOT**” means the Amended and Restated Master Declaration of Trust in respect of the **CIBC Mutual Funds**, dated January 14, 2019, as amended and supplemented from time to time;

- (l) “**Current Management Agreement**” means the Amended and Restated Master Management Agreement between the **Defendants** dated July 5, 2017, as amended and supplemented from time to time;
- (m) “**Defendants**” means, together, **CIBC Trust** and **CIBC**;
- (n) “**Discount Brokers**” means entities providing “order-execution only services” as defined in Rule 3200 of the **IIROC Rules** or entities performing a function similar to “order-execution only services” prior to the introduction of that definition in Rule 3200 of the **IIROC Rules**, including (without limitation) **CIBC Investor’s Edge**;
- (o) “**Excluded Persons**” means the **Defendants**; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of each of the **Defendants**; and the past and present members of the independent review committee of each **CIBC Mutual Fund**;
- (p) “**Form 81-101F1**” means Form 81-101F1 – *Contents of Simplified Prospectus*, as amended;
- (q) “**Form 81-101F2**” means Form 81-101F2 – *Contents of Annual Information Form*, as amended;
- (r) “**Form 81-101F3**” means Form 81-101F3 – *Contents of Fund Facts Document*, as amended;
- (s) “**Fund Facts Document**” means a fund facts document as referred to in **NI 81-101** and **Form 81-101F3**;
- (t) “**IIROC**” means the Investment Industry Regulatory Organization of Canada;
- (u) “**IIROC Rules**” means the **IIROC Dealer Member Rules**, as amended;
- (v) “**Management Agreements**” means, collectively, all management agreements pursuant to which **CIBC** acts, has acted or may act as manager of the **CIBC Mutual Funds**, including, without limitation, the **Current Management Agreement**;
- (w) “**NI 81-101**” means National Instrument 81-101 – *Mutual Fund Prospectus Disclosure*, as amended;
- (x) “**NI 81-107**” means National Instrument 81-107 – *Independent Review Committee for Investment Funds*, as amended;
- (y) “**OSA**” means the *Securities Act*, RSO 1990, c S.5, as amended;
- (z) “**Other Canadian Securities Legislation**” means, collectively, the *Securities Act*, RSA 2000, c S-4; the *Securities Act*, RSBC 1996, c 418; *The Securities Act*, CCSM

c S50; the *Securities Act*, SNB 2004, c S-5.5; the *Securities Act*, RSNL 1990, c S-13; the *Securities Act*, SNWT 2008, c 10; the *Securities Act*, RSNS 1989, c 418; the *Securities Act*, S Nu 2008, c 12; the *Securities Act*, RSPEI 1988, c S-3.1; the *Securities Act*, RSQ, c V-1.1; *The Securities Act, 1988*, SS 1988-89, c S-42.2; and the *Securities Act*, SY 2007, c 16, all as amended;

- (aa) “**Plaintiff**” means Stephen Pozgaj;
- (bb) “**Simplified Prospectus**” means a simplified prospectus as referred to in **NI 81-101** and **Form 81-101F1**;
- (cc) “**Trust Instruments**” means, collectively, all declarations of trust or similar trust instruments that govern, have governed or may govern the **CIBC Mutual Funds**, including, without limitation, the **Current DOT**;
- (dd) “*Trustee Act*” means the *Trustee Act*, RSO 1990, c T.23, as amended; and
- (ee) “**Unearned Management Fees**” means, in respect of management fees that have been paid or may be paid out of the assets of the **CIBC Mutual Funds**, the portion of those management fees that has been paid or may be paid to **Discount Brokers** as trailing commissions, and any taxes relating to those trailing commissions.

RELIEF SOUGHT

3. The Plaintiff claims on his own behalf and on behalf of the other Class Members:
 - (a) an order certifying this action as a class proceeding pursuant to the *CPA* and appointing the Plaintiff as the representative plaintiff for the Class;
 - (b) a declaration that the Defendants committed breaches of trust and/or breached their common law fiduciary duties to the Plaintiff and the other Class Members by the acts and omissions pleaded herein;
 - (c) a declaration that CIBC is liable to the Plaintiff and the other Class Members for breach of contract;
 - (d) a declaration that the Defendants made one or more misrepresentations within the meaning of the *OSA* (and, if necessary, the Other Canadian Securities Legislation), and that the Defendants are liable to the Plaintiff and the other Class Members

pursuant to section 130 of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation);

- (e) an order requiring the Defendants to account to the Plaintiff and the other Class Members for the Unearned Management Fees;
- (f) damages and/or equitable compensation in the sum of \$200 million (or such other sum as this Court finds appropriate at the trial of the common issues or at a reference or references) to restore the Plaintiff and the other Class Members to the position they would have been in had the Defendants not paid and/or received the Unearned Management Fees;
- (g) if necessary, an order compelling the Defendants to compensate the Plaintiff and the other Class Members in respect of the Unearned Management Fees by means of litigation trusts to be established pursuant to the *CPA*;
- (h) an order disallowing the payment of the Unearned Management Fees as expenses pursuant to section 23.1 of the *Trustee Act* (and, if necessary, the equivalent provisions of comparable Canadian legislation) and requiring CIBC Trust to repay the expenses to the Plaintiff and the other Class Members or to the CIBC Mutual Funds;
- (i) an interim and permanent order prohibiting the Defendants from seeking or obtaining indemnity or reimbursement from the assets of the CIBC Mutual Funds in respect of monetary relief paid or payable to the Plaintiff and the other Class Members in this action or their costs and expenses of this action;

- (j) an order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- (k) an equitable rate of interest on all sums found due and owing to the Plaintiff and the other Class Members to compensate them for the diminution in the value of their units of the CIBC Mutual Funds resulting from CIBC Trust's payment and CIBC's receipt of the Unearned Management Fees;
- (l) pre-judgment and post-judgment interest pursuant to the *CJA*;
- (m) costs of this action on a substantial indemnity basis or in an amount that provides full indemnity;
- (n) pursuant to section 26(9) of the *CPA*, the costs of notice and of administering the plan of distribution of the recovery in this action plus applicable taxes; and
- (o) such further and other relief as this Honourable Court may deem just.

OVERVIEW

4. This class proceeding arises out of CIBC Trust's payment and CIBC's receipt of excessive, inflated and/or unearned management fees relating to the CIBC Mutual Funds. The management fees are excessive, inflated and/or unearned because unearned trailing commissions are included in, or embedded into, those management fees.
5. CIBC Trust is the trustee of the CIBC Mutual Funds. CIBC is the manager of the CIBC Mutual Funds. CIBC Trust is a wholly-owned subsidiary of CIBC.
6. The Class Members are persons who held or hold units of a CIBC Mutual Fund through a Discount Broker, as distinct from other distribution channels through which CIBC Mutual Funds are sold to investors. Discount Brokers are also commonly referred to as "order

execution only”, “DIY” and “online” brokers. Under the IIROC Rules, Discount Brokers are prohibited from providing investment advice to investors.

7. The CIBC Mutual Funds are trusts governed by the Trust Instruments. The assets of the CIBC Mutual Funds are trust property that the Defendants, as trustees and/or fiduciaries, have undertaken to hold for the exclusive benefit of the beneficiaries, being the Class Members and the other unitholders of the CIBC Mutual Funds. The Defendants have a duty to preserve the trust property and maximize the value of units of the CIBC Mutual Funds.
8. As manager, CIBC receives management fees out of the trust property of the CIBC Mutual Funds. The management fees are excessive, inflated and/or unearned because a portion — described herein as the Unearned Management Fees — is collected by CIBC for the purpose of paying trailing commissions to Discount Brokers. CIBC has paid, and continues to pay, trailing commissions to Discount Brokers through which the Class Members held or hold units of the CIBC Mutual Funds. CIBC Trust paid, and continues to pay, management fees to CIBC knowing that a portion of those fees is earmarked for payment to Discount Brokers in the form of trailing commissions.
9. The purpose of a trailing commission on a mutual fund is to compensate the dealer (through whom the mutual fund is sold) for providing their client with ongoing investment advice about the client’s investment in the mutual fund in respect of which the trailing commission is paid. As Discount Brokers do not and cannot provide investment advice to investors, the payment of trailing commissions to Discount Brokers in respect of the CIBC Mutual Funds is improper, unreasonable and unjustified. Consequently, CIBC Trust’s payment and

CIBC's receipt of the Unearned Management Fees on account of those trailing commissions is improper, unreasonable and unjustified.

10. Since 2011, the Fund Facts Documents that the Defendants have prepared and filed with securities regulators to permit the sale of units of the CIBC Mutual Funds have acknowledged the purpose of trailing commissions as compensation for advice. Those Fund Facts Documents stated that trailing commissions are paid to dealers for the "services and advice" provided by those dealers to their clients.
11. The term "services and advice" refers to a dealer providing ongoing advice to a client with respect to the client's investment in the CIBC Mutual Funds in respect of which the trailing commission is paid, and services that are specifically connected with that advice, namely determining the suitability for the client of the investment in the CIBC Mutual Funds in light of the personal circumstances of the client (including the client's other investment holdings). However, Discount Brokers do not and cannot provide investment advice to clients and they do not provide suitability determinations for their clients. Accordingly, the payment of trailing commissions to Discount Brokers in respect of the CIBC Mutual Funds is improper, unreasonable and unjustified. Consequently, CIBC Trust's payment and CIBC's receipt of the Unearned Management Fees on account of those trailing commissions is improper, unreasonable and unjustified.
12. The reality is that trailing commissions function as sales commissions paid on an ongoing basis by the Defendants to Discount Brokers in consideration for services provided by the Discount Brokers to the Defendants, not services provided by the Discount Brokers to the Class Members. The trailing commissions incentivize the Discount Brokers to offer for sale, or provide "shelf space" for, CIBC Mutual Funds on their trading platforms. This is

to the detriment of the Class Members (who suffer reduced investment returns), while accruing to the benefit of: the Defendants' affiliate, CIBC Investor Services (which operates CIBC Investor's Edge), and other Discount Brokers (which receive the trailing commissions); and CIBC (which receives increased management fees as the assets of the CIBC Mutual Funds grow through new investment capital and which also enjoys the benefits flowing to its subsidiary, CIBC Investor Services). The Defendants misused trust property belonging to the Class Members for the purpose of benefiting themselves, their affiliates and others.

13. Further or in the alternative, the payment of trailing commissions to Discount Brokers cannot be justified on the basis of purported "services" because, among other things:
 - (a) the Defendants do not impose an obligation on Discount Brokers to provide particular services to Class Members in respect of the CIBC Mutual Funds in consideration for the trailing commissions;
 - (b) the Defendants do not conduct any auditing or inquiries, or any adequate auditing or inquiries, into whether Discount Brokers are providing particular services to Class Members in respect of the CIBC Mutual Funds; and
 - (c) the Defendants do not conduct any auditing or inquiries, or any adequate auditing or inquiries, into whether Discount Brokers use or apply the trailing commissions for the purpose of providing particular services to Class Members in respect of the CIBC Mutual Funds.

14. In fact, Discount Brokers do not provide Class Members with any services that are specific to the CIBC Mutual Funds in respect of which the trailing commissions are paid and that

are provided on an ongoing basis. The services provided by Discount Brokers to their clients (such as research and educational tools) are provided regardless of whether the clients hold CIBC Mutual Funds. Those general services available to all Discount Broker clients do not justify the payment of trailing commissions to Discount Brokers in respect of the CIBC Mutual Funds. Accordingly, the payment of trailing commissions to Discount Brokers on account of “services” is improper, unreasonable and unjustified. Consequently, CIBC Trust’s payment and CIBC’s receipt of the Unearned Management Fees on account of those trailing commissions is improper, unreasonable and unjustified.

15. The Unearned Management Fees represent significant sums of money and are paid on a continuous basis. The wasting of the assets of the CIBC Mutual Funds by the payment of the Unearned Management Fees has unjustly enriched CIBC and decreased the value of the units of the CIBC Mutual Funds held by the Class Members. The Class Members have suffered, and continue to suffer, significant loss and damage as a result of the Defendants’ acts and omissions pleaded herein.

THE PARTIES

The Plaintiff

16. The Plaintiff is an individual residing in Mississauga, Ontario.
17. The Plaintiff has held units of the CIBC Energy Fund – Class A (CIB498), a CIBC Mutual Fund, in an account with TD Direct Investing (or TD Waterhouse Discount Brokerage or such other discount brokerage business operated, directly or indirectly, by The Toronto-Dominion Bank from time to time), a Discount Broker, since on or around May 28, 2002.

The Class

18. The proposed Class on whose behalf this proceeding is brought is comprised of all persons, wherever they may reside or be domiciled, who held or hold units of a CIBC Mutual Fund through a Discount Broker, except for the Excluded Persons, from September 18, 2003 to the date the Certification Order was issued.

The Defendants

19. CIBC is a financial institution governed by the *Bank Act*. CIBC is, and was at all material times, the manager of the CIBC Mutual Funds.
20. CIBC Trust is a corporation incorporated under the laws of Canada. CIBC Trust is, and was at all material times, the trustee of the CIBC Mutual Funds.
21. The Defendants' registered offices and headquarters are, and were at all material times, located in Toronto, Ontario.
22. Each of the Defendants is, and was at all material times, an "investment fund manager" as defined in the *OSA*. As an investment fund manager, each of the Defendants is, and was at all material times, subject to the duty under section 116 of the *OSA* and/or section 2.1 of NI 81-107 to (a) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the CIBC Mutual Funds, and (b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

THE CIBC MUTUAL FUNDS

23. Each of the CIBC Mutual Funds is or was a trust governed by the terms of one of the Trust Instruments.

24. Each of the CIBC Mutual Funds is or was an “investment fund” and a “mutual fund” as those terms are defined in the *OSA*.
25. Each of the CIBC Mutual Funds is or was a reporting issuer in Ontario and in all other provinces of Canada.
26. The CIBC Mutual Funds as of September 18, 2018 are listed in **Schedule “A”** hereto.

THE TRUST INSTRUMENTS

27. The CIBC Mutual Funds are currently governed by the Current DOT.
28. Under each of the Trust Instruments, CIBC Trust holds in trust all property of the CIBC Mutual Funds for the benefit of the unitholders of the CIBC Mutual Funds.
29. The Class Members are or were unitholders of the CIBC Mutual Funds.
30. Pursuant to section 9.1 of the Current DOT (and the equivalent provisions of other Trust Instruments applicable at material times), CIBC Trust, as trustee of the CIBC Mutual Funds, is and was at all material times required to exercise its powers and discharge its duties honestly, in good faith and in the best interests of each CIBC Mutual Fund, and to exercise the degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.
31. Annual Information Forms issued by the Defendants to permit the offering of units of the CIBC Mutual Funds state that CIBC Trust has legal responsibility for the CIBC Mutual Funds and “has a fiduciary duty to act in the best interest of the Funds’ unitholders.”
32. Pursuant to section 7.1 of the Current DOT (and the equivalent provisions of other Trust Instruments applicable at material times) and sections 2.1 and 2.2 of the Current Management Agreement (and the equivalent provisions of other Management Agreements

applicable at material times), CIBC Trust has delegated to CIBC full authority and responsibility for the provision of management and administrative services to the CIBC Mutual Funds.

33. Pursuant to section 3.3 of the Current Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), CIBC has undertaken to comply with the Current DOT (and the equivalent provisions of other Trust Instruments applicable at material times) and with all applicable securities legislation and other laws.
34. Pursuant to section 7.2 of the Current DOT (and the equivalent provisions of other Trust Instruments applicable at material times), CIBC, as manager of the CIBC Mutual Funds, is and was at all material times required to exercise its powers and discharge its duties honestly, in good faith and in the best interests of each CIBC Mutual Fund, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. Pursuant to that same provision, CIBC is and was at all material times responsible for any loss that arises out of its failure to exercise its powers or discharge its duties as manager in accordance with that standard of care.
35. Pursuant to section 9.1 of the Current Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), CIBC, as manager of the CIBC Mutual Funds, is and was at all material times required to exercise its rights and discharge its duties and responsibilities as manager honestly, in good faith and in the best interests of the unitholders of the CIBC Mutual Funds, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Section 9.2 of the Current Management Agreement (and the

equivalent provisions of other Management Agreements applicable at material times) makes CIBC responsible for any loss that arises out of its failure to act in accordance with that standard of care.

36. Pursuant to section 8.2 of the Current DOT (and the equivalent provisions of other Trust Instruments applicable at material times), CIBC is entitled to receive a management fee from the property of each CIBC Mutual Fund in an amount governed by the Current Management Agreement (or the other Management Agreements applicable at material times). The Current Management Agreement does not specify the amount of the management fees payable to CIBC in respect of the CIBC Mutual Funds.
37. CIBC receives management fees out of the assets of the CIBC Mutual Funds. The management fees are calculated as a percentage of the net asset value of each class of each CIBC Mutual Fund (which management fees are calculated daily and are payable monthly).
38. As stated in Simplified Prospectuses and Fund Facts Documents issued in respect of the CIBC Mutual Funds, CIBC may waive all or a portion of its management fees. CIBC did waive a portion of its management fees in respect of certain CIBC Mutual Funds during the material time.
39. Section 13.5 of the Current DOT (and the equivalent provisions of other Trust Instruments applicable at material times) provides for CIBC to accept a lower management fee with respect to units of a class of a CIBC Mutual Fund held by a unitholder, and the amount of any reduction in the management fee must be distributed to the unitholder as a "Fee Distribution".

40. The payment of management fees to CIBC out of the assets of the CIBC Mutual Funds reduces the net asset value of the CIBC Mutual Funds, which in turn reduces the value of unitholders' units of the CIBC Mutual Funds. As stated in one or more Simplified Prospectuses disseminated by the Defendants in respect of the CIBC Mutual Funds, management fees are among the fees and expenses that are paid by such CIBC Mutual Funds, "which will indirectly reduce the value of your [the investor's] investment in the Fund." Similarly, as stated in one or more Fund Facts Documents disseminated by the Defendants in respect of the CIBC Mutual Funds, fund expenses, including management fees, "affect you [the investor] because they reduce the fund's returns."
41. Sections 3.2(1)(j), 3.2(1)(k) and 5.4 of the Current DOT (and the equivalent provisions of other Trust Instruments applicable at material times) allow for the redesignation of units of one class of a CIBC Mutual Fund as units of another class of the same CIBC Mutual Fund.

TRAILING COMMISSIONS AND DISCOUNT BROKERS

42. CIBC has paid and continues to pay a portion of the management fees that it receives out of the assets of the CIBC Mutual Funds to dealers, including Discount Brokers, as trailing commissions. The quantum of the trailing commission payable to a dealer is determined as a percentage of the value of the units of the CIBC Mutual Funds held by the dealer's clients (which trailing commission is calculated and accrued daily and is paid monthly, quarterly or annually at the election of the dealer).
43. The payment of management fees, within which the trailing commissions payable to Discount Brokers are embedded, depletes the assets of the CIBC Mutual Funds and reduces the value of the Class Members' units of those CIBC Mutual Funds and thereby diminishes their return on investment in the CIBC Mutual Funds.

44. Among other dealers, the CIBC Mutual Funds are sold through Discount Brokers. Discount Brokers are entities that provide order execution only services to investors. They are regulated by IIROC as “Dealer Members”. Under the IIROC Rules, Discount Brokers apply to IIROC for approval to offer an “order-execution only service”, which is defined as “the acceptance and execution of orders from customers for trades that the Dealer Member has not recommended and for which the Dealer Member takes no responsibility as to the appropriateness or suitability of orders accepted or account positions held.” Such approval provides Discount Brokers with an exemption from compliance with IIROC Rules that impose requirements to assess the suitability of a client’s orders and account positions. Accordingly, as a condition of the approval provided by IIROC to Discount Brokers to operate their discount brokerage businesses, Discount Brokers are prohibited from providing investment recommendations or advice to clients.
45. One of the Discount Brokers through which CIBC Mutual Funds are sold is CIBC Investor’s Edge, which is a division of CIBC Investor Services. CIBC Investor Services is a wholly-owned subsidiary of CIBC. CIBC Trust is also a wholly-owned subsidiary of CIBC. CIBC Investor Services and CIBC Trust are affiliates of each other. Some of the Unearned Management Fees have been paid to CIBC Investor Services, which is to the ultimate benefit of CIBC.
46. The Defendants knew, or ought to have known, that the Unearned Management Fees were being paid to Discount Brokers as trailing commissions, thereby reducing the value of the Class Members’ units, in circumstances where those trailing commissions were not earned by the Discount Brokers because they are not providing services and advice to the Class Members.

47. The Simplified Prospectuses and Fund Facts Documents issued by the Defendants to permit the offering of units of the CIBC Mutual Funds set out the *maximum* annual percentage rates for trailing commissions payable in respect of the CIBC Mutual Funds. Class Members are entitled to expect that the Defendants will comply with their duties to the Class Members and will not pay the maximum rate of trailing commission both to dealers that provide full advisory services to their clients and to Discount Brokers who provide no services or advice to their clients. Yet, in classes of units of the CIBC Mutual Funds other than Class D (or similar discount classes) units, the trailing commissions paid by the Class Members are the same as those paid by investors who hold their units through a full-service account.
48. The Defendants never disclosed to the Plaintiff the dollar amount of the trailing commissions paid to the Plaintiff's Discount Broker in respect of the units of CIBC Mutual Funds held by the Plaintiff.
49. The Defendants continue the practice of paying trailing commissions to Discount Brokers in respect of the CIBC Mutual Funds despite criticism of the practice and the pending prohibition of the practice by regulators.
50. On January 10, 2017, the CSA released CSA Consultation Paper 81-408 – *Consultation on the Option of Discontinuing Embedded Commissions*, which addresses issues relating to mutual fund fees, including the payment of trailing commissions to dealers. In relation to the Canadian mutual fund industry generally, CSA Consultation Paper 81-408 states that, as at December 2015, “data suggests that \$25 billion of the total \$30 billion held in mutual funds in the [discount broker] channel (83%) remains in the full trailing commission paying fund series”. It concludes that “[t]he majority of DIY investors investing in mutual funds

pay full trailing commission despite not receiving advice” and “many DIY mutual fund investors in the online/discount brokerage channel indirectly pay for services they do not receive.”

51. In a press release issued on May 8, 2017 entitled “Limit Series A Sales to Channels that Permit Advice: IFIC”, the Investment Funds Institute of Canada, which styles itself as the “voice of Canada’s investment funds industry”, called on regulators to ensure that mutual funds that carry a trailing commission are not sold through the Discount Broker channel.

The press release stated that:

The Investment Funds Institute of Canada (IFIC) is calling on regulators to establish rules to ensure that mutual funds carrying an embedded advisor fee are sold only in channels where advice is permitted.

“Investors who buy funds directly, for example through a discount broker, should be confident that they are not inadvertently overpaying by selecting a series that includes fees for services that are not available through that platform,” says Paul C. Bourque, Q.C., IFIC’s president and CEO.

Series A mutual funds bundle an advice fee within the product. Most companies already provide other series of funds with no or nominal trailer fees that investors can purchase if they are do-it-yourself investors or want to pay for advice separately. The industry’s proposal would advance the goal of ensuring that low-trailer or no-trailer funds are available to these types of investors in a more uniform and transparent way.

“IFIC members believe that consumers should be able to choose for themselves the products, services and payment methods that best meet their needs and preferences,” Bourque stated. “Today’s proposal would help to achieve a goal that the industry shares with our regulators: to ensure that fees are aligned with the services that investors receive. It reflects the industry’s commitment to provide Canadian consumers with real and meaningful investment choices.”

52. On April 9, 2018, IIROC released its final guidance regarding order-execution only services offered by Discount Brokers. In Notice of Implementation 18-0075 dated April 9, 2018, IIROC stated that Discount Brokers face a conflict of interest by making available on their platforms mutual funds that pay a trailing commission for ongoing advice (e.g. Series A mutual funds). The Notice of Implementation stated:

We acknowledge that funds that pay an ongoing trailing commission to registrants (often described as a payment for advice and services provided to the investor by the registrant), and are made available by OEO firms (e.g., a Series A fund), raise a conflict of interest. Under our rules, a Dealer Member must address conflicts of interest considering the best interests of the client or clients.

In the Guidance, we indicate that OEO firms should consider how they will address any compensation-related conflicts when deciding which series (or series equivalent in the case of a PTF) of a fund to make (or not make) available on their platforms. We recognize that many OEO firms have already implemented practices to address this conflict.

We expect that OEO firms will make available, whenever possible, funds that do not pay a trailing commission for ongoing advice (often referred to as a Series D fund).

When a Series D fund is not available (e.g., because a fund family does not offer that type of series) and an OEO firm makes available another series that pays a trailing commission, we also expect the firm to address the conflict by rebating to the client the portion of the trailing commission for ongoing advice, or taking other similar steps.

A large majority of the publically available funds include a trailing commission. Management of the conflicts of interest relating to trailing commissions by OEO firms allows investors continued access to the widest possible range of investments.

53. On June 21, 2018, the CSA released CSA Staff Notice 81-330 – *Status Report on Consultation on Embedded Commissions and Next Steps*, in which the CSA announced its intention to publish rule changes that will prohibit the payment of trailing commissions to, and the solicitation and acceptance of trailing commissions by, dealers who do not make a suitability determination (e.g. Discount Brokers) in connection with the distribution of prospectus qualified mutual fund securities. The CSA stated in CSA Staff Notice 81-330 that:

In our view, the fees paid by a vast majority of DIY investors in this channel [*i.e.* the discount brokerage channel] do not appear to align with the execution-only nature of the services they receive. We also observe no justifiable rationale for the practice of paying discount brokerage dealers an ongoing trailing commission for the sale of a mutual fund. For example, other securities including most ETFs are commonly purchased and sold by way of an upfront transaction fee. This ongoing payment may therefore be viewed as one that incentivizes the distribution of mutual funds that pay such an ongoing fee over those that do not (*i.e.* a payment for shelf space), giving rise to a conflict of interest. This is especially the case when the discount brokerage receives the same trailing commission as that of full-service dealers (which rate is typically intended to compensate full service dealers for the costs associated with providing investment advice). Moreover, in our view

this fee also limits investor awareness and understanding of the fees associated with the purchase of such products in the discount brokerage channel.

54. Further to the announcement by the CSA on June 21, 2018, on September 13, 2018 the CSA published proposed amendments to securities regulatory instruments that will, when the amendments come into force, prohibit the payment of trailing commission by fund organizations (which includes mutual fund managers) to dealers who do not make a suitability determination, such as order-execution-only dealers (*i.e.* Discount Brokers). The proposed amendments will prohibit the payment of mutual fund trailing commissions to Discount Brokers in any amount. The CSA stated that fund organizations will need to make available to Discount Brokers a class or series of securities of a mutual fund that does not pay a trailing commission, which will result in a corresponding reduction in the rate of the management fee charged on that class or series. Existing holdings of mutual funds will also need to be switched to the class or series of securities of the mutual fund that does not pay a trailing commission. The CSA also commented that the prohibition on the payment of trailing commissions by fund organizations to Discount Brokers will eliminate “a longstanding conflict between IFMs [investment fund managers] (who have been reluctant to offer non trailing commission-paying fund series in this channel), online/discount brokerages (who have been satisfied to accept full trailing commission-paying funds), and DIY investors.”
55. On September 17, 2020, the CSA published for adoption final amendments to applicable securities regulatory instruments to prohibit the payment of trailing commissions (of any amount) by fund managers, including the Defendants, to dealers who do not make a suitability determination, including Discount Brokers. The prohibition on the payment of trailing commissions to Discount Brokers will come into force on June 1, 2022.

56. As alluded to in the above-noted press release of the Investment Funds Institute of Canada, some mutual fund families offer a series or class of their funds, typically called Series D or Class D, that is intended for sale through Discount Brokers. Series D or Class D (or similar discount classes) mutual funds pay a lower management fee than traditional retail classes because they include no, or a substantially reduced, trailing commission to partially reflect the fact that services and advice are not being provided to investors through a Discount Broker.
57. The Defendants offer Class D units of a very small number of CIBC Mutual Funds. It has not made Class D units available for the vast majority of the CIBC Mutual Funds. The Class D units that have been offered are not available from every Discount Broker. Further, even for the CIBC Mutual Funds that have been made available at some stage in Class D, other classes of units of those CIBC Mutual Funds that carry a higher trailing commission have been held, and continue to be held, by Class Members through Discount Brokers. In any event, the payment of *any* trailing commissions to Discount Brokers in respect of the CIBC Mutual Funds was in breach of the Defendants' duties to the Class Members, as pleaded herein.

RIGHTS OF ACTION

Breach of Fiduciary Duty

58. As trustee of each of the CIBC Mutual Funds, CIBC Trust is, and was at all material times, in a common law fiduciary relationship with the Class Members and owes, or owed at the material times, fiduciary duties to the Class Members.

59. As manager of each of the CIBC Mutual Funds, CIBC is, and was at all material times, a trustee *de son tort* of the CIBC Mutual Funds. Pursuant to the Management Agreements and the Trust Instruments, CIBC at all material times undertook full responsibility for the administration of the day-to-day business and affairs of each CIBC Mutual Fund. To carry out that responsibility as manager, CIBC has possession or control of the property of the CIBC Mutual Funds and administers that property. As trustee *de son tort* of each of the CIBC Mutual Funds, CIBC is, and was at all material times, in a common law fiduciary relationship with the Class Members and owes, or owed at the material times, fiduciary duties to the Class Members. As a trustee *de son tort* of the CIBC Mutual Funds, CIBC also has or had an obligation to abide by the duties and obligations of the trustee set out in the Trust Instruments.
60. Further or in the alternative, as manager of each of the CIBC Mutual Funds, CIBC has significant discretion, power or control in relation to the business and affairs of the CIBC Mutual Funds and the assets of the CIBC Mutual Funds. CIBC can unilaterally exercise that discretion, power or control so as to affect the Class Members' legal or substantial practical interests, including the Class Members' financial interests arising from their ownership of units of the CIBC Mutual Funds, the value of which are tied to the value of the assets of the CIBC Mutual Funds. The Class Members are particularly vulnerable to CIBC holding that discretion, power or control as manager of the CIBC Mutual Funds.
61. CIBC has expressly or impliedly undertaken to act in the best interests of the Class Members, including by virtue of the standard of care imposed on CIBC under the Management Agreements, the Trust Instruments and under section 116 of the *OSA* and/or section 2.1 of NI 81-107. Accordingly, as manager of each of the CIBC Mutual Funds,

CIBC is, and was at all material times, in a common law fiduciary relationship with the Class Members and owes, or owed at the material times, fiduciary duties to the Class Members.

62. By their acts and omissions, the Defendants have breached their fiduciary duty to the Class Members. The Defendants' breaches include (without limitation):

- (a) paying and/or receiving the Unearned Management Fees out of the assets of the CIBC Mutual Funds;
- (b) failing to preserve the property of the CIBC Mutual Funds;
- (c) failing to maximize the value of the units of the CIBC Mutual Funds;
- (d) paying the Unearned Management Fees to the Discount Brokers for no purpose;
- (e) failing to ascertain the nature of any services being provided by Discount Brokers to the Class Members and to ascribe a reasonable value to those services, to ensure that the assets of the CIBC Mutual Funds are being used for proper purposes and in a reasonable amount;
- (f) failing to impose an obligation on Discount Brokers to provide particular services to Class Members in consideration for the trailing commissions;
- (g) failing to conduct any auditing or inquiries, or any adequate auditing or inquiries, into whether Discount Brokers are providing particular services to Class Members in respect of the CIBC Mutual Funds;
- (h) failing to conduct any auditing or inquiries, or any adequate auditing or inquiries, into whether Discount Brokers use or apply the trailing commissions for the

purpose of providing particular services to Class Members in respect of the CIBC Mutual Funds;

- (i) permitting classes of units of the CIBC Mutual Funds carrying a trailing commission to be acquired and/or held through Discount Brokers;
- (j) failing to create and make available to Class Members through Discount Brokers a class of units of the CIBC Mutual Funds that carries no trailing commission;
- (k) failing to advise, permit and/or cause Class Members to re-designate, re-classify, switch or convert their units of the CIBC Mutual Funds into a class of units of the CIBC Mutual Funds that carries no trailing commission;
- (l) in the alternative to paragraphs 62(i) to 62(k):
 - (i) permitting non-Class D (or similar discount classes) units of the CIBC Mutual Funds to be acquired and/or held through Discount Brokers;
 - (ii) failing to create and make available to Class Members through Discount Brokers Class D (or similar discount classes) units of the CIBC Mutual Funds;
 - (iii) failing to advise, permit and/or cause Class Members to re-designate, reclassify, switch or convert their non-Class D units of the CIBC Mutual Funds into Class D (or similar discount classes) units of the CIBC Mutual Funds;
- (m) CIBC Trust acting in a conflict of interest by paying the Unearned Management Fees to its parent, CIBC, and negotiating non-arm's length Management Agreements for payment of those fees with its parent, CIBC;

- (n) CIBC acting in a conflict of interest by paying trailing commissions to Discount Brokers for its own benefit, effectively as a marketing expense to secure access to the Discount Brokers' clients, resulting in increased management fees for CIBC as the assets of the CIBC Mutual Funds grow through new investment capital from the Discount Broker platforms;
- (o) CIBC acting in a conflict of interest by failing to make available to Class Members holding CIBC Mutual Funds through Discount Brokers a class of units of the CIBC Mutual Funds that pays no trailing commission, or alternatively a reduced trailing commission, because of a concern that it would adversely affect the distribution of CIBC Mutual Funds through the full-service or advisory distribution channels and thereby reduce CIBC's management fees;
- (p) CIBC acting in a conflict of interest by receiving a portion of the Unearned Management Fees for the purpose of paying such amount to CIBC Investor's Edge (a division of CIBC Investor Services, which is a wholly-owned subsidiary of CIBC), for the ultimate benefit of CIBC, when such amount could have been retained in the CIBC Mutual Funds for the benefit of the Class Members;
- (q) failing to pay and/or accept a management fee reduced by the amount of the Unearned Management Fees and distributing (rebating) that amount to the Class Members as a "management fee distribution";
- (r) failing to waive payment of the Unearned Management Fees;
- (s) CIBC Trust failing to adequately supervise CIBC, as manager of the CIBC Mutual Funds, and failing to prevent and/or rectify the misconduct of CIBC, as manager of

the CIBC Mutual Funds, as particularized herein, in breach of the manager's standard of care set out in the Trust Instruments, the Management Agreements and section 116 of the *OSA* and/or section 2.1 of NI 81-107.

63. The Plaintiff and the other Class Members have suffered loss and damage as a result of the Defendants' breach of fiduciary duty as particularized herein.

Breach of Trust

64. Under the Trust Instruments governing the CIBC Mutual Funds, CIBC Trust, as trustee of the CIBC Mutual Funds, has and had at all material times a duty to exercise its powers and discharge its duties honestly, in good faith and in the best interests of each CIBC Mutual Fund, and to exercise the degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.
65. The duty under the Trust Instruments is a duty to act honestly, in good faith and in the best interests of the Class Members and the other unitholders of the CIBC Mutual Funds, and to exercise the degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances. That duty is enforceable by the Class Members and breaches of that duty are actionable by the Class Members.
66. Alternatively, the duty under the Trust Instruments includes a duty to act honestly, in good faith and in the best interests of the Class Members and the other unitholders of the CIBC Mutual Funds, and to exercise the degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances. That duty is enforceable by the Class Members and breaches of that duty are actionable by the Class Members.

67. Alternatively, the duty under the Trust Instruments is a duty to act honestly, in good faith and in the best interests of the CIBC Mutual Funds, and to exercise the degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances. The CIBC Mutual Funds are trust relationships between CIBC Trust and the unitholders in respect of property held for the benefit of the unitholders. Any breach of the duty to the CIBC Mutual Funds causes direct loss and damage to the Class Members and the other unitholders of the CIBC Mutual Funds. That duty is enforceable by the Class Members and breaches of that duty are actionable by the Class Members.
68. By its acts and omissions, including (without limitation) its acts and omissions set out in paragraph 62 hereof, CIBC Trust, as trustee of the CIBC Mutual Funds, has breached its duty under the Trust Instruments and committed a breach of trust.
69. The CIBC Mutual Funds, the Plaintiff and the other Class Members have suffered loss and damage as a result of CIBC Trust's breach of trust as particularized herein.

Breach of Contract — Management Agreements

70. Pursuant to section 9.1 of the Current Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), CIBC, as manager of the CIBC Mutual Funds, is and was at all material times required to exercise its rights and discharge its duties and responsibilities as manager honestly, in good faith and in the best interests of the unitholders of the CIBC Mutual Funds, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Section 9.2 of the Current Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times)

makes CIBC responsible for any loss that arises out of its failure to act in accordance with that standard of care.

71. Pursuant to section 3.3 of the Current Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times), CIBC has undertaken to comply with the Current DOT, which includes complying with the standard of care set out in section 7.2 of the Current DOT (and the equivalent provisions of other Trust Instruments applicable at material times).
72. The Plaintiff and the other Class Members are third party beneficiaries of the Current Management Agreement and, in particular, sections 3.3, 9.1 and 9.2 thereof (and the equivalent provisions of other Management Agreements applicable at material times).
73. The Current Management Agreement and sections 3.3, 9.1 and 9.2 thereof (and the equivalent provisions of other Management Agreements applicable at material times) explicitly or implicitly evidence an intention to extend the benefit of those provisions (and the equivalent provisions of other Management Agreements applicable at material times) to the Class Members.
74. The CIBC Mutual Funds are trust relationships between CIBC Trust and the unitholders in respect of the trust property held for the benefit of the unitholders. CIBC Trust, as trustee, enters into the Management Agreements on unitholders' behalf with CIBC, as manager, for the administration and management of the trust property for the benefit of the unitholders.
75. Sections 3.3, 9.1 and 9.2 of the Current Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times) are for the

protection and benefit of the unitholders of the CIBC Mutual Funds. They are intended to ensure that the manager acts in accordance with a minimum standard of care in administering the business and affairs of the CIBC Mutual Funds and dealing with the property of the CIBC Mutual Funds that is held for the benefit of the unitholders, and that the manager is accountable for any loss that arises if the manager does not comply with the standard of care. Section 9.1 of the Current Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times) explicitly requires CIBC to act in “best interests of the Unitholders” of the CIBC Mutual Funds.

76. Further, the unitholders of the CIBC Mutual Funds are intended beneficiaries of sections 3.3, 9.1 and 9.2 of the Current Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times) as they have the only realistic interest in enforcing those provisions against the manager. CIBC Trust is a wholly-owned subsidiary of CIBC. CIBC Trust will not realistically seek recovery against its parent for breaches of the Management Agreements.
77. By its acts and omissions, including (without limitation) the acts and omissions set out in paragraph 62 hereof, CIBC has breached sections 3.3 and 9.1 of the Current Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times) and is liable to the Class Members pursuant to section 9.2 of the Current Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times). CIBC’s acts and omissions fall within the scope of sections 3.3, 9.1 and 9.2 of the Current Management Agreement (and the equivalent provisions of other Management Agreements applicable at material times).

78. Alternatively, the Plaintiff and the other Class Members seek recovery from CIBC, as manager of the CIBC Mutual Funds, for breach of contract on the basis of the cause of action accruing to CIBC Trust, as trustee of the CIBC Mutual Funds.
79. CIBC Trust has failed and/or refused to take steps to enforce CIBC's compliance with the Management Agreements and/or seek compensation for breaches thereof.
80. There are special circumstances justifying the Plaintiff and the other Class Members making a direct claim against CIBC including, among other things, that:
- (a) CIBC Trust is a wholly-owned subsidiary of CIBC. CIBC Trust will not realistically seek recovery against its parent for breaches of the Management Agreements. It is, therefore, impossible or difficult for CIBC Trust to seek recovery from CIBC;
 - (b) the Defendants colluded to pay and receive the Unearned Management Fees;
 - (c) the Plaintiff and the other Class Members seek recovery of trust property in the form of the Unearned Management Fees; and
 - (d) CIBC Trust has failed to protect the beneficiaries in that it paid the Unearned Management Fees to CIBC and failed to take steps to recover compensation for CIBC's contractual breaches.
81. The Plaintiff and the other Class Members have suffered loss and damage as a result of CIBC's acts or omissions.

Disallowance of Improper Expenses under Section 23.1 of the Trustee Act

82. The Unearned Management Fees are expenses paid by CIBC Trust from the trust property of the CIBC Mutual Funds.

83. The expenses are not properly incurred in carrying out the trust because they are on account of trailing commissions paid or payable to Discount Brokers, and such trailing commissions are not properly paid or payable to Discount Brokers because the Discount Brokers do not provide services or advice to the Class Members.
84. The payment of the expenses ought to be disallowed pursuant to section 23.1(2) of the *Trustee Act* (and, if necessary, the equivalent provisions of comparable Canadian legislation).

Prospectus Misrepresentation

85. The Plaintiff asserts against the Defendants the right of action for prospectus misrepresentation in section 130 of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation) on his own behalf and on behalf of the Class Members.
86. The Defendants have prepared, filed and disseminated Simplified Prospectuses and, since January 1, 2011, Fund Facts Documents, to permit the continuous offering to the public of units of the CIBC Mutual Funds.
87. The Fund Facts Documents are incorporated by reference into the relevant Simplified Prospectuses and form part of those Simplified Prospectuses.
88. Pursuant to section 56(1) of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation), the Simplified Prospectuses are and were required to provide full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed under the Simplified Prospectuses.

89. The Simplified Prospectuses are prospectuses for the purposes of section 130 of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation).
90. The Fund Facts Documents prepared, filed and disseminated by the Defendants in respect of the CIBC Mutual Funds have contained at all material times a common statement that trailing commissions are paid to dealers for the “services and advice” provided by those dealers to their clients.
91. That common statement is a misrepresentation within the meaning of the *OSA* (and, if necessary, the Other Canadian Securities Legislation). It falsely represents that trailing commissions are only paid to dealers that provide services and advice to investors, whereas in fact trailing commissions are also paid to Discount Brokers even though they do not provide services or advice to their clients. The statement is, and was at all material times, material to the Class Members.
92. Each of the Defendants certified and signed the Simplified Prospectuses as required by NI 81-101 and Form 81-101F2, and are liable pursuant to section 130 of the *OSA* (and, if necessary, the equivalent provisions of the Other Canadian Securities Legislation).
93. The offering of units of the CIBC Mutual Funds to which the Simplified Prospectuses and Fund Facts Documents related constituted distributions of the units in Ontario and/or distributions of units from Ontario to persons outside of Ontario. The offering was governed by the *OSA* and its subsidiary instruments and regulations, and was carried out under Ontario securities laws.
94. The Plaintiff and the other Class Members have suffered loss and damage as a result of the Defendants’ acts and omissions as particularized herein.

DAMAGE SUFFERED BY THE CLASS MEMBERS

95. The CIBC Mutual Funds, the Plaintiff and the other Class Members have suffered loss and damage as a result of the Defendants' acts and omissions particularized herein.
96. As a result of the payment of the Unearned Management Fees out of the assets of the CIBC Mutual Funds, the value of the assets of the CIBC Mutual Funds has been significantly reduced.
97. As a result of the payment of the Unearned Management Fees out of the assets of the CIBC Mutual Funds, there has been a significant reduction in the value of the units of the CIBC Mutual Funds held the Class Members and/or the value of the distributions received by the Class Members on their units of the CIBC Mutual Funds (whether received in cash or reinvested in additional units).
98. The Plaintiff and the other Class Members have also suffered loss and damage as a result of the loss of opportunity to earn a reasonable return on investment if the Unearned Management Fees had not been paid out of the assets of the CIBC Mutual Funds.
99. The Plaintiff and the other Class Members who continue to hold units of the CIBC Mutual Funds are suffering ongoing loss and damage as a result of the Defendants' acts and omissions particularized herein.
100. The Defendants knew, or ought to have known, that as a result of its acts and omissions particularized herein, the Class Members would suffer loss and damage.

REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

101. The Plaintiff pleads that this action has a real and substantial connection with Ontario because, among other things:

- (a) the Plaintiff is resident in Ontario;
- (b) the Defendants are domiciled in Ontario;
- (c) the Defendants carry on business in Ontario;
- (d) each of the CIBC Mutual Funds is, or was at material times, a reporting issuer in Ontario;
- (e) the Simplified Prospectuses and Fund Facts Documents referred to herein were disseminated in Ontario;
- (f) a substantial portion of the Class Members reside in Ontario; and
- (g) a substantial portion of the damages sustained by the Class were sustained by persons and entities domiciled in Ontario.

RELEVANT LEGISLATION

102. The Plaintiff pleads and relies on the *CJA*, the *CPA*, the *Trustee Act* and the *OSA* (and, if necessary, the Other Canadian Securities Legislation).

PLACE OF TRIAL

103. The Plaintiff proposes that this action be tried in the City of Toronto, in the Province of Ontario, as a proceeding under the *CPA*.

September 18, 2018

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SCHEDULE "A"
CIBC MUTUAL FUNDS

1. CIBC Canadian T-Bill Fund
2. CIBC Money Market Fund
3. CIBC U.S. Dollar Money Market Fund
4. CIBC Short-Term Income Fund
5. CIBC Canadian Bond Fund
6. CIBC Monthly Income Fund
7. CIBC Global Bond Fund
8. CIBC Global Monthly Income Fund
9. CIBC Balanced Fund
10. CIBC Dividend Income Fund
11. CIBC Dividend Growth Fund
12. CIBC Canadian Equity Fund
13. CIBC Canadian Equity Value Fund
14. CIBC Canadian Small-Cap Fund
15. CIBC U.S. Equity Fund
16. CIBC U.S. Small Companies Fund
17. CIBC Global Equity Fund
18. CIBC International Equity Fund
19. CIBC European Equity Fund
20. CIBC Emerging Markets Fund
21. CIBC Asia Pacific Fund
22. CIBC Latin American Fund
23. CIBC International Small Companies Fund
24. CIBC Financial Companies Fund
25. CIBC Canadian Resources Fund
26. CIBC Energy Fund

27. CIBC Canadian Real Estate Fund
28. CIBC Precious Metals Fund
29. CIBC Global Technology Fund
30. CIBC Canadian Short-Term Bond Index Fund
31. CIBC Canadian Bond Index Fund
32. CIBC Global Bond Index Fund
33. CIBC Balanced Index Fund
34. CIBC Canadian Index Fund
35. CIBC U.S. Broad Market Index Fund
36. CIBC U.S. Index Fund
37. CIBC International Index Fund
38. CIBC European Index Fund
39. CIBC Emerging Markets Index Fund
40. CIBC Asia Pacific Index Fund
41. CIBC Nasdaq Index Fund
42. CIBC Managed Income Portfolio
43. CIBC Managed Income Plus Portfolio
44. CIBC Managed Balanced Portfolio
45. CIBC Managed Monthly Income Balanced Portfolio
46. CIBC Managed Balanced Growth Portfolio
47. CIBC Managed Growth Portfolio
48. CIBC Managed Aggressive Growth Portfolio
49. CIBC U.S. Dollar Managed Income Portfolio
50. CIBC U.S. Dollar Managed Balanced Portfolio
51. CIBC U.S. Dollar Managed Growth Portfolio
52. CIBC Conservative Passive Portfolio
53. CIBC Balanced Passive Portfolio
54. CIBC Balanced Growth Passive Portfolio

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**SECOND FRESH AS AMENDED STATEMENT OF
CLAIM**

Siskinds LLP

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London, ON N6B 3L1

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Lawyers for the Plaintiff

SCHEDULE "B"
LITIGATION PLAN

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

STEPHEN POZGAJ

Plaintiff

- and -

CANADIAN IMPERIAL BANK OF COMMERCE
and CIBC TRUST CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

LITIGATION PLAN

Pursuant to section 5(1)(e)(ii) of the *Class Proceedings Act, 1992* (“*CPA*”), the Plaintiff proposes that this Litigation Plan be followed with respect to these proceedings, subject to the Court’s approval.

INTERPRETATION

1. This Litigation Plan is subject to, and should be read in conjunction with, the stay order of Justice Akbarali dated August 1, 2023 made in the action styled *Woodard v Canadian Imperial Bank of Commerce et al*, Court File No. CV-22-00690374-00CP (“**2022 Action**”).

DEFINED TERMS

2. Capitalized terms that are not defined in this litigation plan (“**Plan**”) have the meanings attributed to them in the proposed Second Fresh as Amended Statement of Claim.

REPORTING AND COMMUNICATION

3. Siskinds LLP (“**Class Counsel**”) has posted information about the nature and status of this action on its website, <https://www.siskinds.com/mutual-fund-trailing-commissions> (“**Website**”). That information will be updated regularly. Copies of important, publicly available court documents, court decisions, notices, documentation, and other information relating to the action are or will be accessible on the Website.
4. The Website also contains a communication webpage, a feature that permits putative Class Members to submit inquiries to Class Counsel, which are sent directly to a designated member of the Class Counsel team, who will promptly respond.

DOCUMENT MANAGEMENT

5. Class Counsel will use data management systems to organize, code, and manage the documents produced by the Defendants and all relevant documents in the Plaintiff’s possession. The agreement of the Defendants’ counsel will be sought to facilitate the electronic exchange of documents. Once the volume of documents to be produced in this action is determined, Class Counsel may retain the services of a third-party document management firm for assistance.
6. Kalloghlian Myers LLP, as counsel to the plaintiff in the 2022 Action, shall, on a go-forward basis until the stay is lifted in the 2022 Action, provided that the 2022 Action has not been settled, discontinued or finally dismissed, will be provided with a copy of all affidavits of documents, productions, transcripts of examination for discovery, motion materials, and transcripts of cross-examinations in this proceeding, with Kalloghlian Myers LLP and the plaintiff in the 2022 Action being subject to the deemed undertaking rule and

only permitted to use any such materials for purposes of observing the progress of the 2018 Action and preserving the rights of the plaintiff in the 2022 Action.

LITIGATION SCHEDULE

7. The Plaintiff has brought a motion seeking certification of the action as a class proceeding pursuant to the *CPA* (“**Certification Motion**”).
8. Following disposition of the Certification Motion, absent agreement among counsel, the Plaintiff will ask the Court to set a litigation schedule for the remaining steps in the action.
9. From time to time, the Plaintiff or Defendants may ask that the litigation schedule be amended.

RESOURCES AND EXPERTISE

10. The Plaintiff has retained Class Counsel as his counsel in this action. Class Counsel has the experience, resources and expertise to prosecute this action on behalf of the Class.

MEDIATION

11. The Plaintiff will participate in a mediation if the Defendants are prepared to do so. If the parties reach a proposed settlement of the action and the court approves the settlement, this Plan will require amendment.

NOTICE OF CERTIFICATION AND OPT OUT PROCEDURE

12. Notice of certification (“**Certification Notice**”) will be circulated to advise Class Members, among other things, that:
 - a. the Court certified the action as a class proceeding;

- b. a person may only opt out of the class proceeding by sending a written opt out election to the recipient designated by the Court, before a date and time fixed by the Court;
- c. a person may not opt out of the class proceeding after the date fixed by the Court; and
- d. if the common issues are resolved in favour of the Class, claimants may be required to register, file a claim and submit documentation to a designated person in order to be entitled to any compensation.

13. The Certification Notice, in a form approved by the Court, will be distributed and published in the following manner:

- a. posted by Class Counsel on the Website, in English and French;
- b. provided by Class Counsel to any person who requests it;
- c. posted by the Defendants on SEDAR;
- d. disseminated as a press release in Canada across Canada Newswire (in English and French);
- e. published once in the business section of the national edition of *The Globe and Mail*, in English;
- f. published once in the business section of *La Presse*, in French;
- g. published as an internet Google banner ad for approximately 700,000 impressions/views across Canada to an investor focused audience, in English and French, over 30 days; and

h. sent electronically and/or in paper form to appropriate broker/dealers in Canada, with a cover letter requesting that they bring the Certification Notice to the attention of their clients who may be Class Members.

14. The Plaintiff will appoint an independent person to receive the opt out notices and report to the court the names and addresses of the persons who opt out by the date fixed by the court.

15. The Plaintiff will pay the costs in the first instance, reserving the right to seek recovery of these costs from the Defendants by order of the judge presiding at the common issues trial.

REFINEMENT OF COMMON ISSUES

16. Following the completion of discovery, the parties may seek an amendment of the order certifying this action to deal with any necessary refinements to the common issues.

TRIAL OR SUMMARY JUDGMENT ON THE COMMON ISSUES

17. The common issues will be determined in two phases in accordance with the stay order dated August 1, 2023 made in the 2022 Action.

18. If appropriate, the Plaintiff or Defendants may seek summary judgment on one or more of the common issues.

19. After the final resolution of the phase one common issues in the 2018 Action, the Plaintiff, the plaintiff in the 2022 Action and the Defendants shall convene a case conference or pre-trial conference to obtain directions on the conduct of the second phase of the common issues trial.

20. The Plaintiff will ask the Court to hold the hearing on the merits (whether a motion for summary judgment or common issues trial) no later than one (1) year after the completion

of the examinations for discovery and the production of information required by undertakings and any motions.

INDIVIDUAL CLASS MEMBER PARTICIPATION AFTER JUDGMENT ON THE COMMON ISSUES

21. Once the common issues have been determined, the parties will bring a motion to the Court for directions as to the process to be employed to determine any individual issues that remain.

MOTION FOR DIRECTIONS

22. Class Counsel and the Defendants may apply at any time to the court for directions.

CLASS COUNSEL'S FEES AND THE COSTS OF ADMINISTRATION

23. After the trial of the common issues or summary judgment, the Plaintiff will ask the court to approve an agreement respecting fees and disbursements between him and Class Counsel. To the extent that the approved Class Counsel's fees, disbursements and applicable taxes are not completely paid by the costs recovered from the Defendants, the Plaintiff will ask the court to order that the unpaid balance be a first charge on any recovery either by way of aggregate or individual assessment.
24. If the court awards damages in the aggregate, Class Counsel will ask the court to order payment of their fees, disbursements and applicable taxes as a first charge on the aggregate amount.
25. If the court does not award damages in the aggregate and requires the Class Members to prove their damages through individual assessments, Class Counsel will ask the court to order payment of their fees, disbursements and applicable taxes as a first charge on the awards made at individual assessments.

FURTHER ORDERS CONCERNING THIS PLAN

26. This Plan may be amended from time to time by directions given at case conferences or by further order of the Court.

EFFECT OF THIS PLAN

27. This Plan shall be binding on all Class Members who do not opt out in accordance with the procedure directed by the Court whether or not they make a claim under the Plan.

SCHEDULE "C"
LONG-FORM NOTICE

**CIBC MUTUAL FUNDS CLASS ACTION
REGARDING TRAILING COMMISSIONS PAID TO DISCOUNT BROKERS**

NOTICE OF CERTIFICATION AND OPT-OUT DEADLINE

Read this notice carefully as it may affect your legal rights

This notice is to certain investors in the units of CIBC Mutual Funds other than certain persons and entities associated with the defendants, further described below.

THE CERTIFICATION ORDER


By Order dated [date], the Ontario Superior Court of Justice (“**Court**”) has certified *Stephen Pozgaj v Canadian Imperial Bank of Commerce and CIBC Trust Corporation*, File No. CV-18-00605345-00 (“**Class Action**”) as a class proceeding pursuant to the Ontario *Class Proceedings Act, 1992*. The Court has appointed Stephen Pozgaj as the representative plaintiff for the class defined as follows (“**Class**” and “**Class Members**”):

All persons, wherever they may reside or be domiciled, who held or hold units of a CIBC Mutual Fund through a Discount Broker, except for the Excluded Persons, from September 18, 2003 to the date the Certification Order was issued.

The Class Action pertains to CIBC Mutual Funds organized as trusts. The “CIBC Mutual Funds” are defined as:

All mutual fund trusts (including, without limitation, all classes of units thereof) of which CIBC Trust Corporation (“**CIBC Trust**”) is trustee, was trustee or may be trustee at any time prior to the conclusion of the trial of the common issues in this proceeding (but only in respect of the period during which CIBC Trust is trustee, was trustee or may be trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been or may be terminated, (ii) those mutual funds that have been or may be merged into other mutual funds, and (iii) those mutual funds that have undergone or may undergo name changes.

Excluded from the Class are the “Excluded Persons” defined as Canadian Imperial Bank of Commerce and CIBC Trust (“**Defendants**”), their past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns, and the past and present members of the independent review committee of each CIBC Mutual Fund.

Certification is a procedural matter that defines the form of the class action. The merits of the claims in the action, and the allegations of fact on which the claims are based, have not been finally determined by the Court. The Defendants dispute the claims asserted against ~~it~~ them. 

The Class Action will now proceed to trial as a class action. The Court has identified the issues that will be dealt with collectively. The Class Action will proceed in Toronto, Ontario.

THE NATURE OF THE CLAIMS ASSERTED

It is alleged that the Defendants paid trailing commissions, out of the CIBC Mutual Fund assets, to Discount Brokers. The CIBC Mutual Funds are trusts governed by trust instruments. The Defendants are the trustee and manager of the CIBC Mutual Funds. It is alleged that the Defendants breached their trust, fiduciary and contractual duties because the trailing commissions paid to Discount Brokers are excessive, inflated and/or unearned.

It is further alleged that the Defendants made misrepresentations about the nature of the trailing commission payments in the fund facts documents they have prepared and filed with securities regulators to permit the sale of units of the CIBC Mutual Funds.

On behalf of the Class, the Class Action asserts claims under section 130 of the Ontario *Securities Act* and, if necessary, the equivalent provisions of the securities legislation of the other Canadian provinces and territories. Additionally, the Class Action advances claims under section 23.1 of the *Trustee Act*, and for breach of trust, breach of fiduciary duty and breach of contract.

If you wish to pursue other claims against the Defendants relating to the matters at issue in the Class Action, you should immediately seek independent legal advice.

**DO NOTHING IF YOU WANT TO PARTICIPATE IN
THE CLASS ACTION**

Class Members who want to participate in the Class Action are automatically included and do not have to do anything at this time.

**YOU MUST OPT OUT IF YOU DO NOT WANT TO BE
BOUND BY THE CLASS ACTION**

Each Class Member who does not validly opt out of the Class Action will be bound by the terms of any judgment or settlement, whether favourable or not, and will not be allowed to prosecute an independent action.

Class Members who do not want to be bound by the outcome of the Class Action must “opt out,” meaning that they must exclude themselves from the Class Action in accordance with the following procedure.

If you wish to opt out of the Class Action, you must complete, sign and return (by mail or courier) the opt-out form provided at Appendix “A” hereto to RicePoint Administration Inc.

In order for your opt-out to be valid, your complete and signed opt-out form must be postmarked by no later than [DATE].

A Class Member who opts out will not be entitled to participate in the Class Action.

CLASS COUNSEL AND LEGAL FEES

The representative plaintiff and the Class are represented by Siskinds LLP (“**Class Counsel**”). Class Counsel are conducting the Class Action on a contingent fee basis.

In the event of success, Class Counsel will make a motion to the Court for approval of their fees and disbursements to be paid from the funds recovered in the Class Action.

A Class Member will not be required to pay any costs in the event that the Class Action is unsuccessful.

Class Members have the right to seek intervenor status in the Class Action. A Class Member who intervenes in the Class Action may be required to pay legal costs arising from the Class Action.

ADDITIONAL INFORMATION

This notice has been approved by the Ontario Superior Court of Justice. The Court offices cannot answer any questions about the matters in this notice. The Orders of the Court and other information are available on Class Counsel’s website at <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions>.

Questions relating to the Class Action may be directed to Class Counsel:

Gigi Pao
Siskinds LLP
275 Dundas Street, Unit 1,
London, ON, Canada N6B 3L1
Tel: 226-636-1615
Email: gigi.pao@siskinds.com

If you require assistance in the French language, please contact Class Counsel using the contact details above and we will direct your inquiry to an appropriate person.

The publication of this notice was authorized by the Ontario Superior Court of Justice

(PLEASE CIRCLE THE APPROPRIATE LANGUAGE)

I believe that **I am / the organization that I represent** is a member of the Class in the Class Action.

I believe that **I am not / the organization that I represent is not** amongst the persons and entities excluded from the Class Action.

I understand that by opting out of the Class Action, **I will not be eligible / the organization that I represent will not be eligible** for any benefit that may be available to the Class upon resolution of this matter, if and when such resolution may occur.

I, _____ (print your full name), **OPT OUT FROM THE CLASS ACTION** and wish to be excluded from this class action.

I wish to opt out from this class action for the following reason(s) (*optional*):

I, _____ (print your full name), **CERTIFY** that the information provided herein is complete and true.

Date

Signature

In order to validly opt out, you must complete and send this Opt-Out Form by no later than [DATE] to:

[administrator contact details, including mail and courier details]

SCHEDULE "D"
SHORT-FORM NOTICE

DRAFT TEXT (subject to design)

**CIBC MUTUAL FUNDS CLASS ACTION
REGARDING TRAILING COMMISSIONS PAID TO DISCOUNT BROKERS
NOTICE OF CERTIFICATION AND OPT-OUT DEADLINE**

**HAVE YOU HELD UNITS OF
A CIBC MUTUAL FUND
THROUGH A DISCOUNT BROKER?**

The Superior Court of Justice of Ontario has certified a class action which permits a defined group of investors (the “Class”) to pursue claims against CIBC Trust Corporation and Canadian Imperial Bank of Commerce (“Defendants”). It is alleged that the Defendants paid excessive, inflated, and/or unearned trailing commissions to Discount Brokers out of the assets of the CIBC Mutual Fund trusts. The class action claims monetary damages on behalf of the Class. The allegations made in the class action have not been proven and are contested by the Defendants.

If you wish to participate in the class action, DO NOTHING.

If you do not wish to participate in the class action, be bound by or receive any benefits from it, you must opt out by sending the opt-out form to RicePoint Administration Inc. by [DATE].

To obtain a copy of the opt-out form or for other important information regarding the class action:

- Visit <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/>
- Call toll-free 1 800 461 6166 ext 1615 (North America)
- Call 226-636-1615 (Outside North America)

*The publication of this notice was authorized by
the Superior Court of Justice of the Province of Ontario*

SCHEDULE "E"
INTERNET BANNER

Have you held units of a CIBC mutual fund
through a discount brokerage?

You may be included in a class action certified by
the Ontario Superior Court of Justice.

Click to learn your legal rights, including how to
opt-out of the class action.

[https://www.siskinds.com/class-action/mutual-
fund-trailing-commissions/](https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/)

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto
Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(CERTIFICATION, NOTICE AND OPT-OUT)**

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