

SUMMARY RATIONALE FOR SETTLEMENT AND PLAN OF ALLOCATION

A proposed settlement has been reached in the case called *Woodard v. Canadian Imperial Bank of Commerce et al.*

The defendants Canadian Imperial Bank of Commerce (“CIBC”) and CIBC Trust Corporation have agreed to pay \$11,000,000.00 for the benefit of the class members who are all CIBC and CIBC Asset Management Inc. (“Renaissance”) mutual fund unitholders, except those that held their mutual fund units through a discount broker.

The settlement fund, after deduction of counsel fees and other expenses, will be divided among class members based on a plan of allocation. You can see the settlement agreement and plan of allocation at these links: [Settlement Agreement](#), [Plan of Allocation](#).

The proposed settlement and plan of allocation must be approved by the Court. The class members’ lawyers will ask the court to approve them at a hearing on December 22, 2025.

This document provides a summary of what this case is about and the lawyers’ rationale for recommending the settlement and plan of allocation. A more detailed explanation will be set out in the court materials for the approval motion which will be posted at <https://www.kalloghlianmyers.com/trailing> before the hearing date.

PART I - BACKGROUND

A. What this case is about

This case is about CIBC and Renaissance’s payment of trailing commissions to discount brokers.

Trailing commissions are payments from a mutual fund’s assets to mutual fund brokers. Their stated purpose is to compensate brokers for providing advice and service to their clients that hold mutual fund units. Although trailing commissions are paid from the mutual fund, they are paid indirectly by mutual fund unitholders. This is because the payments deplete the mutual fund assets, causing the value of each individual mutual fund unit to decline.

Investors could acquire CIBC and Renaissance mutual fund units both through “full-service” brokers or “discount” brokers. A full-service broker can provide clients with a range of financial services over and above just buying or selling mutual fund units, including financial advice. By contrast, discount brokers can only provide buying and selling services and are prohibited from providing financial advice.

Until June 2022, investors could buy units of the same CIBC and Renaissance mutual funds through either a full-service or a discount broker. When this happened, CIBC and Renaissance paid trailing commissions to the unitholders' full-service and discount brokers at the same rate.

This case alleges that the payments to discount brokers were improper because discount brokers did not provide the advice for which the trailing commissions were purportedly paid. This case seeks recovery for the decline in value of the class members' mutual fund units caused by these allegedly improper payments.

B. Related class action against CIBC

Before this case was started, a separate class action was started against CIBC that also alleged payment of trailing commissions to discount brokers was improper. Although the allegations in the two cases are similar, this first case was brought only on behalf of investors that held CIBC mutual funds through a discount broker.

PART II - PROPOSED SETTLEMENT

The proposed settlement was after negotiations with both CIBC and the plaintiff in the other case on behalf of discount broker purchasers, who also settled with CIBC. Several risk factors, discussed below, informed the decision to settle this case rather than continue to trial.

A. The risks of proving CIBC's payments to discount brokers were improper

CIBC has always denied that its conduct was improper or inconsistent with the duties it owed to class members. Trailing commission payments to discount brokers were not banned until June 2022, at which time CIBC stopped making the payments. CIBC argued that the Canadian mutual fund industry was heavily regulated and that regulators knew about, and permitted, its trailing commission payments to discount brokers. This argument, if accepted, would be a full defence to the lawsuit and would result in no recovery.

B. The risk of the Court accepting CIBC's limitation period defence

CIBC argued that the majority of class members could not sue for losses arising from trailing commissions because those claims expired under the *Limitations Act, 2002*.

The general rule is that a person cannot start a lawsuit more than two years after "discovering" their claim. Discovery occurs when a person knows, or reasonably should have known, of conduct that can justify a lawsuit. As explained above, CIBC argued that class members discovered their

claims when they bought their mutual fund units because the payment of trailing commissions to discount brokers was disclosed to them.

If the Court accepted this argument, it would preclude recovery of losses on any units purchased before January 26, 2020.

C. The risk of the Court finding that former unitholders' claims were released

CIBC argued that under the trust instruments establishing the mutual funds, all claims relating to CIBC mutual fund units are released upon the sale of that unit. If the Court accepted this argument, it would limit recovery to losses only from units still held by class members.

D. The risk that the Court finds the trailing commission rate, or some portion of it, was justified

CIBC argued that the trailing commissions were justified because the value of the services that discount brokers provided far outweighed the fees CIBC paid to them.

Alternatively, it argued that at least some part of the trailing commissions paid to discount brokers was justified because, although discount brokers do not provide financial advice, they still provide services to their clients. CIBC argued that a trailing commission rate of 0.25% was reasonable and that it should only be required to compensate class members for fees paid to discount brokers in excess of that rate.

If the Court accepted either of these arguments, it could result in no recovery or significantly lower recovery.

E. The risk that the Court finds class members are not entitled to a remedy

As explained above, there are two class actions about trailing commissions. If both cases established liability, the Court would then have to decide how to allocate between the two cases any amounts payable by CIBC.

The plaintiff in the other case alleges that units held by full-service purchasers did not suffer any losses because the value of their units reflected the proper rate payable to their full-service brokers. The plaintiff in the other case says that any compensation should be paid only to the class members in his action, and that the class members in this case should not be entitled to any recovery. If the Court accepted this argument, it would mean there would be no recovery to class members in this case, even if the Court found that CIBC's payments to discount brokers were improper.

PART III - PROPOSED PLAN OF ALLOCATION

The plan of allocation sets out the method by which settlement funds will be distributed to class members.

The plan of allocation categorizes class members as:

- (a) current holders of CIBC mutual funds (“**Current CIBC Holder**”);
- (b) former holders of CIBC mutual funds (“**Former CIBC Holder**”); and
- (c) holders of Renaissance mutual funds.

A Current CIBC Holder is anyone that currently holds one or more units of a CIBC mutual fund. A Former CIBC Holder is a class member that does not currently own any units of a CIBC mutual fund.

The net settlement amount will be allocated as follows:

- 38.11% to Current CIBC Holders;
- 59.05% to Former CIBC Holders; and,
- 2.84% to holders of Renaissance mutual funds.

The amount allocated to Current CIBC Holders and Renaissance mutual fund holders will be deposited into the existing CIBC and Renaissance mutual funds, which will result in an increase in the value of those units. There is no cost to make this deposit, significantly reducing the overall administration cost of this settlement. It also obviates the necessity of each current holder coming forward to submit a claim.

The amount allocated to Former CIBC Holders will be distributed through a claims process. Each former holder that files a valid claim will receive \$32.00 regardless of the number of units the person held, subject to a pro rata reduction if the entire amount allocated to former holders is taken up.

Class counsel acknowledges that this claims process could result in either the over- or under-compensation of individual class members. That said, given the large number of class members compared to the amount of funds to be distributed, the costs of administering a more precise claims process will significantly deplete the funds available for distribution to class members. This plan of allocation will therefore minimize administration expenses and maximize the funds available for distribution to class members.