

# Legal Developments: Third Quarter, 2009

## ORDER ISSUED UNDER INTERNATIONAL BANKING ACT

### *Canadian Imperial Bank of Commerce Toronto, Canada*

#### Order Approving Retention of an Agency

Canadian Imperial Bank of Commerce (“Bank”), Toronto, Canada, a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 7(d) of the IBA<sup>1</sup> to retain an agency in New York, New York. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish an agency in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York (*New York Post*, May 11, 2009). The time for filing comments has expired, and all comments received have been considered.

Bank, with total consolidated assets of approximately \$309 billion,<sup>2</sup> is the fifth largest bank in Canada by asset size. Bank’s shares are widely held, with no shareholder or group of shareholders controlling more than 10 percent of its outstanding shares.<sup>3</sup> Bank engages in a broad range of retail banking, commercial banking, private banking, asset management, and investment banking activities through numerous offices and subsidiaries located throughout the world. Outside Canada, Bank has operations in the United States, the Caribbean, the United Kingdom, Ireland, Australia, Japan, and Singapore.

In the United States, Bank operates a branch in Chicago, Illinois;<sup>4</sup> two agencies in New York, New York; and representative offices in Houston, Texas; and Los Angeles,

California.<sup>5</sup> Bank is a qualifying foreign banking organization under Regulation K.<sup>6</sup>

Bank operates a New York agency at 300 Madison Avenue. The 300 Madison Avenue agency engages in trading activities, such as securities investments and other treasury activities, and extends a small volume of credit products. Some agency activities were recently moved to 425 Lexington Avenue, including real estate financing and commercial lending, necessitating this application under section 7(d) of the IBA to retain this location as an agency.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish an agency, the Board must consider whether the foreign bank (1) engages directly in the business of banking outside of the United States; (2) has furnished to the Board the information it needs to assess the application adequately; and (3) is subject to comprehensive supervision on a consolidated basis by its home-country supervisor.<sup>7</sup>

As noted above, Bank engages directly in the business of banking outside the United States. Bank also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

With respect to supervision by home-country authorities, the Board previously has determined that Bank is subject to comprehensive supervision on a consolidated basis.<sup>8</sup> There has been no material change in the manner in which Bank is supervised by Canada’s Office of the Superintendent of Financial Institutions (“OSFI”). Based on all the facts of record, it has been determined that Bank is subject to

5. Bank downgraded its Los Angeles agency to a representative office in May 2009.

6. 12 CFR 211.23(a).

7. 12 U.S.C. § 3105(d)(2); 12 CFR 211.24(c)(1). In assessing this standard, the Board considers, among other factors, the extent to which the home-country supervisors (i) ensure the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank’s financial condition on a worldwide, consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. These are indicia of comprehensive, consolidated supervision. No single factor is essential, and other elements may inform the Board’s determination.

8. *Canadian Imperial Bank of Commerce*, 87 *Federal Reserve Bulletin* 678 (2001); *Canadian Imperial Bank of Commerce*, 85 *Federal Reserve Bulletin* 733 (1999).

1. 12 U.S.C. § 3105(d).

2. Unless otherwise indicated, data are as of July 31, 2009.

3. As of July 31, 2009, Royal Bank of Canada, Montreal, Canada, holds, directly and indirectly in a fiduciary capacity, 10 percent of Bank’s total shares outstanding. Harris Financial Corp., Wilmington, Delaware, a subsidiary of Bank of Montreal, Montreal, holds indirectly 5.6 percent of Bank’s total shares outstanding, of which 5.1 percent are held in a fiduciary capacity. No other shareholder or group of shareholders controls more than 5 percent of Bank’s outstanding shares.

4. The Chicago branch conducts limited activities and reports no assets.

comprehensive supervision on a consolidated basis by its home-country supervisor.

The additional standards set forth in section 7 of the IBA and Regulation K have also been taken into account.<sup>9</sup> The OSFI has no objection to the proposed agency.

Canada's risk-based capital standards are consistent with those established by the Basel Capital Accord. Bank's capital is in excess of minimum levels that would be required of a U.S. banking organization. Managerial and other financial resources of Bank also are considered consistent with approval, and Bank appears to have the experience and capacity to support the proposed agency. Bank has established controls and procedures for the proposed agency to ensure compliance with U.S. law and for its operations in general.

Canada is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering and terrorist financing. In accordance with those recommendations, Canada has enacted laws and adopted regulations to deter money laundering and terrorist financing. Money laundering is a criminal offense in Canada, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering and terrorist financing throughout their worldwide operations. Bank has policies and procedures to comply with these laws and regulations, and its compliance with applicable laws and regulations is monitored by Bank's auditors and the OSFI.

With respect to access to information about Bank's operations, the restrictions on disclosure in relevant jurisdictions in which Bank operates have been reviewed and relevant government authorities have been communicated with regarding access to information. Bank has committed

to make available to the Board such information on the operations of Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In addition, subject to certain conditions, the OSFI may share information on Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the conditions described below, it has been determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.

On the basis of the foregoing and all the facts of record, Bank's application to retain an agency is hereby approved.<sup>10</sup> Should any restrictions on access to information on the operations or activities of Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require termination of any of Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application.<sup>11</sup>

By order, approved pursuant to authority delegated by the Board, effective September 17, 2009.

ROBERT DEV. FRIERSON  
*Deputy Secretary of the Board*

9. See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2). These standards include (i) whether the bank's home-country supervisor has consented to the establishment of the office; (ii) the financial and managerial resources of the bank; (iii) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (iv) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; (v) whether the bank and its U.S. affiliates are in compliance with U.S. law; (vi) the needs of the community; and (vii) the bank's record of operation.

10. Approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.

11. The Board's authority to approve the agency parallels the continuing authority of the state of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the state of New York to license Bank's New York offices in accordance with any terms or conditions that it may impose.