

CITATION:		
ONTARIO SUPERIOR COURT OF JUSTICE (TORONTO REGION) CIVIL ENDORSEMENT FORM <i>(Rule 59.02(2)(c)(i))</i>		
BEFORE	Justice LEIPER	Court File Number: CV-18-00605345-00CP
Title of Proceeding: <div style="text-align: center; margin-top: 20px;"> POZGAJ Plaintiff(s) ----- -v- ----- CANADIAN IMPERIAL BANK OF COMMERCE et al Defendants(s) </div>		

Case Management: <input type="checkbox"/> Yes If so, by whom:	No
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Participants and Non-Participants: *(Rule 59.02(2)((vii))*

Party	Counsel	E-mail Address	Phone #	Participant (Y/N)
PL – Stephen Pozgaj	Anthony O'Brien	anthony.obrien@siskinds.com		Y
PL	Garett Hunter	garett.hunter@siskinds.com		Y
DF – Canadian Imperial Bank of Commerce	Gillian Dingle	gdingle@torys.com		Y
DF	Hanna Singer	hsinger@torys.com		Y
For the responding party Bates Barristers P.C.	Paul Bates	pbates@batesbarrister.com		Y

Date Heard: September 2, 2025

Nature of Hearing (mark with an "X"): <i>(Rule 59.02(2)(c)(iv))</i>				
<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Appeal	<input type="checkbox"/> Case Conference	<input type="checkbox"/> Pre-Trial Conference	<input type="checkbox"/> Application

Format of Hearing (mark with an "X"): <i>(Rule 59.02(2)(c)(iv))</i>	
<input type="checkbox"/> In Writing	<input type="checkbox"/> Telephone <input checked="" type="checkbox"/> Videoconference
<input type="checkbox"/> In Person	
If in person, indicate courthouse address:	

Relief Requested: <i>(Rule. 59.02(2)(c)(v))</i>
Approval of First Notice and related matters pursuant to the Class Proceedings Act, 1992, SO 1992, c 6.

Disposition made at hearing or conference (operative terms ordered): *(Rule 59.02(2)(c)(vi))*

Orders made, on consent of the parties.

Costs: On a _____ indemnity basis, fixed at \$ _____ are payable
by _____ to _____ [when]

Brief Reasons, if any: *(Rule 59.02(2)(b))*

Introduction

1. These brief reasons describe the first stage approval to give notice to the class of the consent settlement in this class proceeding, as well as proposed amendments to the class definition with a supplemental opt-out procedure.
2. This action concerns unitholders who held CIBC Mutual Funds through Discount Brokers.
3. A Discount Broker provides “order execution only services”. They are often referred to as “DIY” or “online” brokers. Discount Brokers are prohibited from providing investment recommendations and advice.
4. The Defendants were the trustee and manager of CIBC Mutual Funds.
5. In this action, the Plaintiff alleged that the Defendants improperly paid trailing commissions to Discount Brokers on the Plaintiff and Class Members’ behalf for services and advice that were never provided. The Plaintiff claimed that the Defendants’ improper payment of trailing commissions to Discount Brokers was, among other things, a breach of trust, fiduciary duty and contract. He also asserted claims under section 130 of the *Securities Act*, R.S.O. 1990 c. S. 5 for misrepresentations in the Defendants’ Fund Facts documents, and under section 23.1 of the *Trustee Act*, R.S.O. 1990, c. T. 23 for the disallowance of improper trust expenses.
6. The Plaintiff brought this action to recover the trailing commissions he alleges were improperly paid, along with any investment returns or interest flowing from the payment of those trailing commissions.
7. The Defendants have at all times denied and continue to deny these allegations.
8. On January 25, 2024, Justice Akbarali certified this Action as a class proceeding. In early 2024, notice of certification was disseminated. The period for members of the certified class to opt out of this action expired as of May 26, 2024. No opt-outs were received.
9. Counsel have since completed settlement negotiations and have filed comprehensive materials which set out in detail the rationale for the proposed orders, which are on consent. On reviewing that material and hearing submissions from the parties, I am satisfied that the orders should issue.

Discussion

10. The parties finalized a settlement in this action on August 20, 2025. Under the terms of that settlement, the Defendants will pay an amount of \$26 million, without any admission of liability.
11. The Plaintiff and Class Members are unitholders of CIBC Mutual Funds. Part of this motion seeks to add unitholders of Renaissance Mutual Funds.
12. In addition to the terms for providing notice to the class as originally certified, the parties agree that the Renaissance Mutual Funds unitholders should be added to the class pursuant to s. 8(3) and s. 12 of the *Class Proceedings Act*.
13. The current certified class definition is:

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 January 25, 2024.

*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.

14. The Settlement Agreement contemplates expanding the class definition to the following (changes underlined):

All persons, wherever they may reside or be domiciled, who held or hold units of a CIBC Mutual Fund or a Renaissance Mutual Fund through a Discount Broker, except for the Excluded Persons, from September 18, 2003 to January 25, 2024.

Excluded Persons means (a) the Defendants and CAM; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of each of the Defendants and CAM; and the past and present members of the independent review committee of each CIBC Mutual Fund and each Renaissance Mutual Fund; (b) any Person who would otherwise be a Class Member but who validly excluded themselves from the Action in accordance with the Order of the Honourable Justice Akbarali dated January 25, 2024 providing for certification notice and an opt-out process; or (c) any Person who would otherwise be a Class Member and who held units of a Renaissance Mutual Fund through a Discount Broker from September 18, 2003 to January 25, 2024 (but only if they did not also hold units of a CIBC Mutual Fund through a Discount Broker during that period), but who validly excludes themselves from the Action in accordance with this Order.

15. The Renaissance Mutual Funds in the proposed amended class definition are mutual fund trusts. CIBC Asset Management Inc. ("CAM") is the trustee and manager of the Renaissance Mutual Funds. CAM is a wholly owned subsidiary of the Defendant CIBC and is a corporate affiliate of the Defendant CIBC Trust. CAM paid trailing commissions to Discount Brokers with respect to the Renaissance Mutual Funds.
16. I am satisfied that the amendment should be made and that the unitholders of the Renaissance Mutual Funds should be added to the class. I also approve the proposed supplemental opt-out procedure for the added members of the class.

17. Turning next to the form and timing of notice, counsel have provided the proposed content of the First Notice. Through this notice, the class will receive notice of the Settlement Agreement, the proposed amended class definition, the proposed Distribution Protocol, Class Counsel's fee and disbursement request, the pending settlement approval hearing, the supplemental opt-out procedure, and the objection procedure. I agree that the notice proposed is intelligible, informative and tailored to the circumstances of this case. Further, the notice will be distributed via an array of digital platforms, similar to those previously approved in similar cases and circumstances.

Conclusion

18. I am satisfied that the orders sought to expand the class definition, provide for a supplemental opt-out procedure, provide First Notice to the class and approve the objection procedure should be made.

19. The settlement approval motion is returnable before me on **November 5, 2025 at 2:00 p.m.**

Additional pages attached: ☐ Yes ☒ No

Sept 5

20 **25**

Date of Endorsement (Rule 59.02(2)(c)(ii))

Leiper, J.

Signature of Judge/Associate Judge (Rule 59.02(2)(c)(i))