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October 17,2003

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549-0609

Re: Proposed Foreign Bank Exemption from the Insider Lending Prohibition of Exchange Act Section 13(k) – File No, S7-15-03

Dear Mr. Katz:

Canadian Imperial Bank of Commerce ("CIBC") appreciates the opportunity to comment on Proposed Rule 13k-1. CIBC strongly supports the efforts of the SEC to extend the exemption under Section 402 of the Sarbanes-Oxley Act that is available to U.S. banks to loans made by non-U.S. banks to their directors and executive officers.

However, the Proposed Rule does not completely eliminate the discriminatory impact of Section 402 on non-U.S. banks because the laws and regulations of Canada and, we believe, many other foreign countries that have comprehensive bank regulatory regimes, will not satisfy the technical requirements of the Proposed Rule. Therefore, as described below, CIBC respectfully requests that the Proposed Rule be revised to defer to the insider lending restrictions of a foreign bank's home country in certain circumstances.

The Laws of Canada do not **Satisfy the Proposed Rule**

Section 13k-1(b)(2) of the Proposed Rule conditions the availability of the exemption on the requirement that the *"laws or regulations"* of the foreign bank's home country jurisdiction prohibit the foreign bank from making loans to its executive officers and directors unless the loan is:

- On substantially the same terms as those prevailing at the time for comparable transactions by the foreign bank with other persons who are not executive officers, directors or employees of the foreign bank; or
- Pursuant to a benefit or compensation program that is widely available to the employees of the foreign bank and does not give preference to any executive officers or directors of the foreign bank over any other employees of the foreign bank, or
- Expressly approved by the bank's home country supervisor.

The first two standards are based on the limitations under U.S. laws and regulations that govern insider lending activities of U.S. banks.

Canadian banking law imposesincludes comprehensive restrictions on transactions with "related parties," which include senior officers and directors. All such transactions are prohibited unless they fit within a permitted statutory category and meet all specified requirements. In general, Canadian banking law prohibits loans by a bank to a director or senior officer unless (i) the loan is on market terms and conditions and (ii) the aggregate amount of all such loans does not exceed statutory limits.[1] In addition, certain such loans must be approved by a two-thirds majority of the bank's board of directors (and, if the loan is to a director, such director is not permitted to participate in the decision).[2] Canadian banlung law also permits a bank to make a loan to a senior officer that is not on market terms and conditions, but only if the loan is approved by the bank's conduct review committee and does not exceed statutory limits.[3] Under Canadian banking law, the conduct review committee of a bank is a committee of at least three members of the bank's board of directors, none of whom is permitted to be an officer or employee of the bank or any of its subsidiaries, and the majority of whom must not otherwise be affiliated with the bank.[4]

Section 13k-1(b)(2) of the Proposed Rule does not appear to permit a foreign bank to rely on the exemption if it is subject to laws and regulations that permit loans to executive officers and directors under circumstances not specifically set forth in that Section. Therefore, despite the comprehensive framework established Canadian law restricting loans by banks to related parties, neither CIBC nor any other Canadian bank would qualify under the Proposed Rule because of the exception under Canadian banking law for non-market loans to senior officers that are approved by the conduct review committee of the bank.

CIBC's Comments on the Proposed Rule

1. Foreign Banks that the Federal Reserve has Determined are Subject to Comprehensive and Consolidated Supervision

CIBC respectfully requests that the Commission revise the Proposed Rule to provide that loans by foreign banks that have been found by the Federal Reserve to be subject to "comprehensive and consolidated supervision" ("CCS") be exempt from Section 402.[5]

Although this would permit foreign banks located in countries with insider lending laws that are not identical to U.S. laws to make loans to executive officers and directors under circumstances in which a U.S. bank could not make the loan, CIBC believes that this result is consistent with the U.S. legislation that is specifically designed to regulate the conduct of non-U.S. banks, such as the International Banking Act and Gram-Leach-Bliley Act. These laws defer to a foreign bank's home country regulatory regime on fundamental banking matters related to the head office operations of the foreign bank. For example, the Gram-Leach-Bliley Act requiresd the Federal Reserve to give "due regard to the principal of national

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[1] See sections 496(1) and (2) and 497(2) of the *Bank Act* (Canada).
[2] See sections 497(1) and 203 of the *Bank Act* (Canada).
[3] See sections 496(4) and 497(2) of the *Bank Act* (Canada).
[4] See section 195 of the *Bank Act* (Canada).
[5] Since 1991, the Federal Reserve has been required to make a CCS finding before approving an application by a foreign bank to acquire a U.S. bank or establish a U.S. branch or agency. Details regarding the CCS standards were previously provided to the Commission. *See* Letter from Cleary, Gottlieb, Steen & Hamilton, to Martin Dunn, Deputy Director, and Paul M. Dudek, Chief, Office of International Corporate Finance, Division of Corporate Finance, Securities and Exchange Commission (August 16,2002). The Federal Reserve determined that CIBC is subject to CCS in 1999.

treatment and equality of competitive opportunity" in establishing criteria that non-U.S. banks must satisfy to become U.S. "financial holding companies." The Federal Reserve implemented this Congressional intent by basing the capital ratio criteria on the capital adequacy rules of the foreign bank's home country, not U.S. capital adequacy rules.[6] CIBC also notes that the Federal Reserve has not extended the insider lending rules that apply to U.S. banks to the U.S. branches or agencies of foreign banks.[7] This reflects the Federal Reserve's decision to defer to home country laws and regulations in the area of insider lending.

As the Commission has noted, there is no legislative history that provides guidance regarding the Congressional intent underlying Section 402 andor the exemption provided to U.S. banks. Under these circumstances, CIBC believes that it is appropriate for the Commission to refer to Congressional intent in legislation that specifically governs the treatment of non-U.S. banks, such as the International Banking Act and Gramm-Leach-Bliley Act.

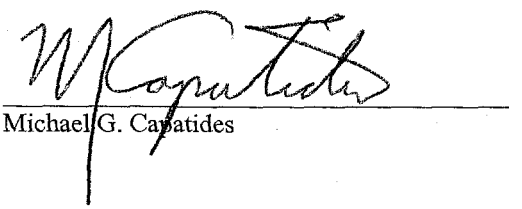
2. Compliance in fact with the Standards Set Forth in Section 13k-1(b)(2)

If the Commission decides not to exempt banks that have been determined to be subject to CCS, then CIBC requests that the Commission revise Section 13k-1(b)(2) of the Proposed Rule to exempt loans that in fact satisfy one of the three standards, even if the laws and regulations of the home country do not prohibit loans that do not satisfy the standards. This revision would effectively eliminate the disparate impact of Section 402 on foreign banks. Also, it would be consistent with the intent of requiring foreign banks to comply with the standards to which U.S. banks are subject. The requirement that the restriction be contained in a local law or regulation does not add any substantive value since requiring all exempt loans to conform to one of the three standards results in the same outcome.

This proposal is also consistent with the current exemptions in Section 402, which permit loans that are made in the ordinary course of the issuer's consumer credit business so long as the loan is of the type that is generally made available by the issuer to the public and the loan is on market terms. This exemption only requires that the loan conform to the statutory criteria, without reference to any limitations under local law.

CIBC appreciates this opportunity to comment on the Proposed Rule. Please contact me or Christopher Greene of my staff (917-332-4255) with any questions regarding this letter.

Very truly yours



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[6] ***See*** 12 C.F.R. 225.90(b)(1).
[7] ***See*** 12 C.F.R. 215.2(j).