

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99586 / February 22, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-11987

In the Matter of	:	ORDER AUTHORIZING THE TRANSFER
	:	TO THE U.S. TREASURY OF THE
	:	REMAINING FUNDS AND ANY FUNDS
Canadian Imperial Holdings Inc.	:	RETURNED TO THE FAIR FUND IN THE
and CIBC World Markets Corp.,	:	FUTURE, DISCHARGING THE FUND
	:	ADMINISTRATOR, AND TERMINATING
Respondents.	:	THE FAIR FUND
	:	

On July 20, 2005, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, Section 203(e) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940¹ against Canadian Imperial Holdings Inc. and CIBC World Markets Corp. (collectively, the “Respondents”) for their alleged participation in a scheme to defraud numerous mutual funds (the “CIBC Order”). The Commission ordered the Respondents to jointly and severally pay disgorgement and prejudgment interest in the amount of \$100 million and pay civil money penalties in the amount of \$25 million, for a total payment of \$125 million to the Commission. In the Order, the Commission established a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 (the “CIBC Fair Fund”), so the collected civil penalties, along with collected disgorgement and prejudgment interest, could be distributed to the mutual funds harmed by the Respondents’ conduct described in the Order (the “Affected Funds”). The CIBC Order also provided that the Respondents would undertake to retain an Independent Distribution Consultant (“IDC”) to develop a distribution plan for the distribution of the CIBC Fair Fund. The Respondents retained Bernard A. Katz as the IDC, who developed a proposed distribution plan in consultation with the Division of Enforcement and Respondents.

The CIBC Fair Fund was comprised of \$126,258,200.60 in collections on the CIBC Order and an additional \$1,258,200.60 collected in two related administrative and cease-and-desist proceedings.² The Fair Fund was deposited in a Commission-designated account at the

¹ Securities Act Rel. No. 8592 (July 20, 2005).

² *In the Matter of Marshall Dornfeld*, Exchange Act Rel. No. 55209 (Jan. 31, 2007), Admin. Proc. File No. 3-12555; *In the Matter of Michael Sassano, et al.*, Securities Act Rel. No. 8778 (Jan. 31, 2007), Admin. Proc. File No.

U.S. Department of the Treasury, and accrued interest was added to, and became a part of, the CIBC Fair Fund.

On December 10, 2009, the Secretary, pursuant to delegated authority, published a Notice of Proposed Plan of Distribution and Opportunity for Comment (“Notice”),³ pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Commission’s Rules”);⁴ and simultaneously posted the Proposed Plan of Distribution (the “Proposed Plan”). The Notice advised interested persons that they could obtain a copy of the Proposed Plan from the Commission’s public website or by submitting a written request to William Finkel, Senior Counsel, United States Securities and Exchange Commission, 3 World Financial Center, New York, NY 10281. The Notice also advised that all persons desiring to comment on the Proposed Plan could submit their comments, in writing, within 30 days of the Notice. The Commission received no comments on the Proposed Plan during the comment period, and on February 23, 2010, the Secretary, pursuant to delegated authority, issued an order that approved a Corrected Plan of Distribution (the “Plan”), appointed J.H. Cohn LLP as the Fund Administrator, and waived the administrator’s bond requirement.⁵

Pursuant to the Plan, the Respondents were obligated pay all fees and costs associated with the administration of the Plan. Taxes, investment costs, and tax related bond expenses were paid by the CIBC Fair Fund. The Plan allocated the net CIBC Fair Fund to the Affected Funds based on calculations of the amount of enrichment received by market timers through illegal transactions in each Affected Fund as an estimated measure of the relative harm. Each Affected Fund’s allocation was quantified as a percentage of the net CIBC Fair Fund’s assets. Any remaining funds following distribution to Affected Funds are to be transferred to the U.S. Treasury and the Fair Fund terminated, subject to the Commission’s approval of the Fund Administrator’s final accounting.

As ordered by the Commission, the Fund Administrator distributed the Fair Fund pursuant to the Plan in four tranches for a total of \$134,628,946.26.⁶ Of this amount \$134,558,369.21 (99.9%) was successfully disbursed and cashed by the Affected Funds.

The Fair Fund earned \$12,985,835.99 in interest; and paid state and federal taxes of \$4,519,573.52, investment/bank fees of \$76,836.91, and tax related bond expenses of \$4,861.90. The Fair Fund currently holds \$84,395.05, which is comprised of \$70,577.05 in undeliverable and uncashed checks and \$13,818 in accumulated interest.

The Plan provides that the Fair Fund is eligible for termination and the Fund Administrator discharged after all of the following have occurred: (a) the final accounting has been submitted by the Fund Administrator for approval and has been approved by the

3-12554. In these settled administrative and cease-and-desist proceedings, the Commission pursued five individuals who participated in the misconduct underlying the CIBC Order.

³ Exchange Act Rel. No. 61142 (Dec. 10, 2009).

⁴ 17 C.F.R. § 201.1103.

⁵ Order Approving Plan, Appointing a Fund Administrator, and Waiving Bond, Exchange Act Rel. No. 61568 (Feb. 23, 2010).

⁶ See Orders Directing Disbursement of Fair Fund, Exchange Act Rel. Nos. 65697 (Nov. 7, 2011), 65798 (Nov. 21, 2011), 65892 (Dec. 5, 2011), and 85017 (Jan. 31, 2019).

Commission; (b) all taxes, fees, and expenses have been paid; and (c) any amount remaining in the Fair Fund has been received by the Commission.

The Commission staff has confirmed that the Fund Administrator has completed the distribution process in accordance with the Commission's orders, that all taxes and fees owed by the Fair Fund have been paid, and that all monies remaining in the Fair Fund have been received by the Commission.⁷ The final accounting, which was submitted to the Commission for approval, as required by Rule 1105(f) of the Commission's Rules, 17 C.F.R. § 201.1105(f), and as set forth in the Plan, has been approved.

Accordingly, it is ORDERED that:

- A. the Fair Fund's remaining funds, and any funds returned to the Fair Fund in the future, shall be transferred to the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934, 15 U.S. Code § 78u-6(g)(3);
- B. the Fund Administrator, J.H. Cohn LLP, is discharged; and
- C. the Fair Fund is terminated.

By the Commission.

Vanessa A. Countryman
Secretary

⁷ Pursuant to the Plan, the Respondents were responsible for all Fund Administration and Tax Administration fees and expenses.