

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 8943A/ July 11, 2008**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 58150A/ July 11, 2008**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 2753A/ July 11, 2008**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 28330A/ July 11, 2008**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12554**

**In the Matter of**

**MICHAEL SASSANO,  
DOGAN BARUH, ROBERT  
OKIN, AND R. SCOTT  
ABRY,**

**Respondents.**

**CORRECTED ORDER 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(f) OF THE INVESTMENT  
ADVISERS ACT OF 1940, AND SECTION  
9(b) OF THE INVESTMENT COMPANY  
ACT OF 1940 AS TO DOGAN BARUH**

**I.**

On January 31, 2007, the Securities and Exchange Commission (“Commission”) instituted public administrative and cease-and-desist proceedings pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Dogan Baruh (“Baruh” or “Respondent”).

## II.

In connection with these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order 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(f) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 (“Order”), as set forth below.

## III.

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>1</sup> that:

### **Respondent**

1. Dogan Baruh, 31, resides in New York, New York. From June 1998 until January 2003, Baruh was employed as a registered representative (“RR”) by CIBC World Markets, Corp. (“CIBC” or “World Markets”) in its Private Client Division (“PCD”) as part of a group of RRs working in a market timing unit headed by Broker Doe. Baruh was an RR of World Markets until January 2003, at which time he became an RR of Fahnestock & Co., Inc. (“Fahnestock”). He holds a Series 7 license. In March 2004, Oppenheimer and Co., Inc. (“Oppenheimer”) indefinitely suspended Baruh and, in July 2004, Baruh resigned from Oppenheimer.

### **Other Relevant Entities**

2. CIBC is a New York-based broker-dealer subsidiary of Canadian Imperial Bank of Commerce, a Canadian financial and bank holding company. During the relevant time period, CIBC was registered with the Commission as both a broker-dealer and an investment adviser. CIBC, through its CIBC Oppenheimer retail division, serviced high-net-worth individuals, money managers, and other customers, including hedge funds. In January 2003, CIBC sold its Oppenheimer retail division to Fahnestock. On July 20, 2005, the Commission instituted settled administrative and cease-and-desist proceedings against CIBC, in which CIBC settled to charges that it violated Section 17(a) of the Securities Act, Sections 7(c), 10(b), 11(d), 15(c) and 17(a) of the Exchange Act and Rules 10b-3, 10b-5 and 17a-3 thereunder, as well as Rule 22c-1 as adopted under Section 22(c) of the Investment Company Act and Regulation T promulgated by the Federal Reserve Board regarding the extension of margin credit.

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

3. Fahnestock was a New York-based broker-dealer which, in January 2003, through its parent holding company Fahnestock Viner Holdings, Inc., acquired CIBC's retail division. After the purchase, Baruh became a Fahnestock employee. In September 2003, Fahnestock changed its name to Oppenheimer and Co., Inc. Oppenheimer is registered with the Commission as both a broker-dealer and an investment adviser.

### **Summary**

4. This matter involves Baruh's deceptive market timing and late trading while an RR at CIBC and Fahnestock. Together with other RRs at CIBC and Fahnestock (the "Brokers"), Baruh and the Brokers engaged in a scheme to defraud mutual fund companies.

5. Between 1998 and September 2003, Baruh and the Brokers actively assisted market timing customers in deceiving mutual funds. CIBC, Fahnestock and the Brokers received hundreds of letters and emails from mutual funds regarding their market timing trading activities. Baruh and the Brokers repeatedly ignored these communications, and continued to work with their market timing customers to implement their market timing strategies up until the point when mutual funds threatened to terminate their dealer agreements with CIBC or Fahnestock. Even then, Baruh and the Brokers did not always stop market timing, resulting in a number of mutual funds terminating their dealer agreement with CIBC or Fahnestock, or refusing to accept any trades from the Brokers' branch office. CIBC supported the market timing business of Baruh and the Brokers, including giving them the exclusive right to engage in market timing at CIBC. In addition, CIBC created the Mutual Fund Exchange System ("MFES") exclusively for the market timing business. The MFES allowed customers to submit their mutual fund trades via electronic spreadsheet, which Baruh and the Brokers could then electronically convert into orders within CIBC's systems. The MFES system had the added benefit of allowing customers to submit multiple smaller trades within one account as a means to stay "under the radar" of mutual funds' internal timing monitors.

6. Among the deceptive practices that Baruh and the Brokers engaged in on behalf of their customers were the following: (a) using new account numbers for blocked customer accounts; (b) creating new RR numbers to disguise themselves and their customers from the mutual funds; (c) trading in smaller amounts in order to avoid detection by the mutual funds, including using an in-house electronic trading platform to break up trades into small dollar volumes; (d) using annuities to avoid restrictions on market timing; (e) using the investment adviser trading platforms of two broker-dealers, Charles Schwab & Co., Inc. ("Schwab") and FMR Corp. ("Fidelity"), to continue market timing mutual funds that had previously blocked their customers' trading; and (f) on one instance, sending trades from a different branch to deceive the mutual funds about the origins of the trade. Baruh also engaged in late trading by accepting trade orders from a hedge fund customer with the understanding that those trades would be entered after 4:00 p.m.

### **Deceptive Market Timing**

7. Baruh started at CIBC in 1998 and became part of a market timing group headed by Broker Doe. Baruh and the Brokers opened multiple accounts for their customers in order to

disguise the identity of account holders and continue market timing on behalf of customers that mutual funds had previously blocked. Creating new accounts enabled a market timer to evade blocks mutual funds had placed on their previous timing accounts.

8. Some mutual funds discerned that Baruh and the Brokers enabled their customers to clone accounts to evade blocks and notified CIBC and Fahnestock that they disapproved of the practice. Dozens of mutual fund companies, through letters, e-mails and other communications, told Baruh and the Brokers of the harm suffered by long-term shareholders as a result of their deceptive market timing. Time and time again, Baruh and the Brokers continued to enter trades in violation of the instructions of the mutual fund companies to stop. As an internal CIBC e-mail to Baruh in January 2003 stated, one mutual fund company was “frustrated by the fact that you stop timing in current accounts when they ask only to show up later in others.”

9. Baruh and the Brokers used multiple RR numbers to deceive mutual funds about the source of market timing trades. Using alternative RR numbers allowed the Brokers and their customers to “disguise” their identity and fool the mutual funds into believing that they had not been previously blocked from trading. This became increasingly important as mutual funds began to identify RR numbers associated with Baruh as the source of the abusive trading. Baruh and the Brokers had at least 85 RR numbers at CIBC.

10. Another method used to disguise their timing from mutual funds was to stay “under the radar” of the funds by trading in small dollar amounts. Baruh and the Brokers opened multiple accounts for their timing customers in order to spread timing money across multiple accounts, instead of trading one large lump sum, which would have been a “red flag” to mutual funds. For example, one market timing customer of Baruh’s had 195 accounts at CIBC and Fahnestock; another had 246 accounts.

11. Baruh and the Brokers also used platforms at other broker-dealers as a way to deceive mutual funds. Specifically, utilizing CIBC’s status as an investment adviser, accounts were opened at Fidelity and Schwab on behalf of the market timing customers of Baruh and the Brokers as another means of evading mutual fund blocks.

12. The market timing of Baruh and the Brokers occurred on a large scale. From June 1998 through September 2003, Baruh and the Brokers market timed more than 80 mutual funds. Their customers purchased more than \$90 billion of mutual fund shares through more than 217,000 trades. During this period, the trades placed by Baruh and the Brokers on behalf of their customers had a median holding period of only two days. Baruh benefited from the conduct described above.

### **Late Trading**

13. From at least August 2001 to November 2002, Baruh accepted numerous trade orders from one of his market timing hedge fund customers before 4:00 p.m. with the understanding that he would not receive final instructions on executing the proposed trades until after 4:00 p.m. Further, despite the fact that the trading decision was made after 4:00 p.m., the understanding was that the proposed trades would be priced as of 4:00 p.m., the time as of which

the relevant mutual funds determined their net asset value. Typically, the customer would fax its proposed trades to Baruh before the market closed. Thereafter, the customer would call and instruct him whether to execute the proposed trades. While these calls occasionally occurred before 4:00 p.m., they very often occurred after 4:00 p.m., allowing the customer to observe the after-hours markets. Baruh also cancelled trades after 4:00 p.m. at the customer's request.

### **Violations**

14. As a result of the conduct described above, Baruh willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities, and in connection with the purchase or sale of securities. Among other things, Baruh participated in a scheme with his market timing customers to defraud mutual funds and their shareholders by engaging in deceptive market timing. Baruh defrauded mutual funds and their shareholders when he and the Brokers misrepresented and concealed the identities of CIBC's RRs and customers, as well as the nature of their customers' market timing activity, from the mutual funds. Baruh acted knowingly and/or recklessly in engaging in these activities.

15. As a result of the conduct described above, Baruh willfully aided and abetted and caused his customers' violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities, and in connection with the purchase or sale of securities. Among other things, the market timing customers of Baruh and the Brokers engaged in a fraudulent scheme to conceal their identities from mutual fund companies' internal monitors and by late trading. Customers consulted with Baruh and authorized deceptive market timing and late trading. Baruh acted knowingly and/or recklessly in engaging in these activities.

16. As a result of the conduct described above, Baruh willfully aided and abetted and caused CIBC's violations of Section 15(c) of the Exchange Act, which prohibits a broker or a dealer from effecting any transaction in, or inducing or attempting to induce the purchase or sale of, any security by means of any manipulative, deceptive, or other fraudulent device or contrivance, and Rule 10b-3, which prohibits a broker or dealer from using or employing any act, practice or course of business that is a manipulative, deceptive, or other fraudulent device or contrivance in connection with the purchase or sale of any security otherwise than on a national security exchange.

17. As a result of the conduct described above, Baruh willfully aided and abetted and caused CIBC's violations of Rule 22c-1, as adopted under Section 22(c) of the Investment Company Act, which provides that "[n]o registered investment company issuing any redeemable security, no person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and no principal underwriter of, or dealer in any such security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security."

### Undertakings

18. Ongoing Cooperation by Baruh. Baruh undertakes to cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in this Order. In connection with such cooperation, Baruh has undertaken:

a. To produce, without service of a notice or subpoena, any and all documents and other information reasonably requested by the Commission's staff;

b. To be interviewed by the Commission's staff at such times as the staff reasonably may request and to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and

c. That in connection with any testimony of Baruh to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Baruh:

i. Agrees that any such notice or subpoena for his appearance and testimony may be served by regular mail on his counsel, Andrew Lawler, 641 Lexington Avenue, 27<sup>th</sup> floor, New York, NY 10022; and

ii. Agrees that any such notice or subpoena for his appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure or the Commission's Rules of Practice.

### IV.

In view of the foregoing, the Commission deems it appropriate, and in the public interest to impose the sanctions agreed to in Respondent Baruh's Offer.

Accordingly, pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, Section 203(f) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, it is hereby ORDERED that:

A. Respondent Baruh shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

B. Respondent Baruh shall cease and desist from causing any violations and any future violations of Section 15(c) of the Exchange Act and Rule 10b-3 thereunder, and Rule 22c-1 promulgated under Section 22(c) of the Investment Company Act;

C. Respondent Baruh shall be, and hereby is, barred from association with any broker, dealer or investment adviser, and is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter;

D. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order;

E. IT IS FURTHERED ORDERED that Respondent shall pay disgorgement of \$1 and a civil money penalty in the amount of \$325,000 to the Securities and Exchange Commission. Baruh shall satisfy this obligation by paying \$162,501 within ten (10) days of entry of this Order and the remaining \$162,500 within 180 days of entry of this Order. Such payments shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Baruh as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to David Stoelting, Senior Trial Counsel, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 3 World Financial Center, New York, NY 10281;

F. Such civil money penalty may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 ("Fair Fund distribution") by the Fair Fund established in In the Matter of Canadian Imperial Holdings, Inc. and CIBC World Markets Corp., AP File No. 3-11987. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that he shall not, after offset or reduction in any Related Investor Action based on Respondent's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by offset or reduction of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall

not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Florence E. Harmon  
Acting Secretary