

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 85017 / January 31, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-11987

In the Matter of	:	
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	:	
CANADIAN IMPERIAL HOLDINGS,	:	ORDER DIRECTING
INC. AND CIBC WORLD MARKET	:	DISBURSEMENT OF
CORP.	:	FAIR FUND
	:	
	:	
Respondents.	:	
	:	

On July 20, 2005, the United States Securities and Exchange Commission (“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 1940 (“Order”)¹ 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 “Affected Funds”) and shareholders in the Affected Funds through late trading and deceptive market timing. The Commission ordered the Respondents to jointly and severally disgorge \$100,000,000.00 and to pay a civil money penalty in the amount of \$25,000,000.00, for a total of \$125,000,000.00. The Order further established a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 for the total amount ordered (the “Fair Fund”) and required the Respondents to retain an Independent Distribution Consultant (“IDC”) to develop a distribution plan for the distribution of the Fair Fund.

On December 10, 2009, the Commission published a Notice of Proposed Plan of Distribution and Opportunity for Comment² pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Rules”), 17 C.F.R. § 201.1103. The Commission received no comments and on February 4, 2009, the Secretary, pursuant to delegated authority,

¹ Securities Act Rel. No. 8592 (July 20, 2005).
² Exchange Act Rel. No. 61142 (Dec. 10, 2009).

issued an order that approved a Corrected Plan of Distribution (the “Plan”), appointed J.H. Cohn LLP as the Fund Administrator, and waived the bond requirement.³

Respondents are required under the Plan to pay all fees and costs associated with the administration of the Plan, but taxes are to be paid by the Fair Fund. The Plan allocates Fair Fund monies to each Affected Fund 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 is quantified as a percentage of the Fair Fund assets. The Plan includes as assets of the Fair Fund disgorgement and civil penalties collected in related administrative proceedings against certain former employees of the Respondents alleged to have been involved in the scheme to defraud (the “Related Proceedings”).⁴ Under the Plan, prior to distribution, amounts ordered to be disbursed from the Fair Fund would be held at the Wilmington Trust Company (the “Escrow Account”) and disbursed upon the issuance by the Commission of an Order to disburse pursuant to Rule 1101(b)(6) of the Rules.⁵ The Plan further provides that, where the Fund Administrator deems necessary after consultation with the Commission staff, the Fund Administrator may implement immaterial changes to the Plan to effectuate its general purposes.

On November 7, 2011, November 21, 2011, and December 5, 2011, the Commission issued orders directing the disbursement of an aggregate of approximately \$133.379 million from the Fair Fund for distribution by the Fund Administrator to the asset bases of 511 Affected Funds.⁶ These orders resulted in the distribution of approximately \$133.4 million to the asset bases of 509 Affected Funds. In January 2013, the Fund Administrator returned approximately \$10,800 to the Commission, which was deposited in an account at the United States Department of the Treasury’s Bureau of the Fiscal Service (“BFS”) with approximately \$10,000 returned by the Tax Administrator, \$1.23 million collected in the Related Proceedings, and accrued interest. The Fair Fund currently holds approximately \$1.25 million.

The Fund Administrator has determined distribution of the approximately \$1.25 million less a reserve for taxes (the “Net Fair Fund”), feasible, in the interests of the Affected Funds, and consistent with Plan. The Fund Administrator has proposed to distribute the Net Fair Fund directly from BFS, as opposed to the Escrow Account, to save cost and time. As permitted under the Plan, the Fund Administrator, in consultation with the Commission staff, has determined this to be an immaterial change to the Plan to effectuate its general purposes.

The Fund Administrator has compiled and submitted to the Commission staff a list of payees and payment amounts in a Commission-approved format, together with a reasonable assurances letter representing that the list of payees: (a) was compiled in accordance with the

³ See Order Approving Plan, Appointing a Fund Administrator, and Waiving Bond, Exchange Act Rel. No. 61568 (Feb. 23, 2010).

⁴ See *Marshall Dornfeld*, Admin. Proc. File No. 3-12555 and *Michael Sassano, et al.*, Admin. Proc. File No. 3-12554.

⁵ 17 C.F.R. § 201.1101(b)(6).

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

Plan; (b) is accurate as to the Affected Funds names, addresses, and amounts; and (c) provides all information necessary to make payments to each Affected Fund.

The Commission staff has reviewed the payee list and requests that, pursuant to Rule 1101(b)(6) of the Rules,⁷ the Commission authorize the disbursement of \$1,249,607.33 from the Fair Fund to the Affected Funds in accordance with the Plan.

Accordingly, it is ORDERED that the Commission staff shall direct the payment of \$1,249,607.33 from the Fair Fund to the Affected Funds as described in accordance the Plan.

By the Commission.

Brent J. Fields
Secretary

⁷ 17 C.F.R § 201.1103.