

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

---X

STATE OF NEW YORK,

Plaintiff,

-against-

Index No.

CANADIAN IMPERIAL HOLDINGS INC., :  
CIBC BANK and TRUST COMPANY (CAYMAN) :  
LIMITED, RUDY CAPITAL USA LLC, :  
HUDSON RIVER INVESTMENTS LLC, :  
and CIBC WORLD MARKETS CORP., :

Defendants.

----X

**ASSURANCE OF DISCONTINUANCE  
PURSUANT TO EXECUTIVE LAW § 63(15)**

**WHEREAS**, Eliot Spitzer, Attorney General of the State of New York, brought or intends to bring the above-captioned action (the “Action”) in the name of the State of New York pursuant to Civil Practice Law and Rules § 1301, Article 23-A of the General Business Law (the “Martin Act”), section 349 of the General Business Law, and Executive Law § 63(12), for, among other things, a judgment and order permanently enjoining defendants from engaging in fraudulent activities in connection with the purchase and sale of securities and awarding plaintiff damages, restitution, disgorgement, fines, penalties and other just and proper relief.

**WHEREAS**, the complaint dated July 19, 2005 (the “Complaint”) filed or to be filed in the Action, the entirety of which is incorporated herein by reference, alleges, among other things, that in connection with a strategy of trading mutual funds on a short-term basis known as “market timing,” defendants, among other things, violated the Martin Act, section 349 of the General

Business Law, and Executive Law § 63(12) as more fully described therein.

**WHEREAS**, defendants have advised the Attorney General of their desire and agreement to resolve the Action.

**WHEREAS**, defendants have cooperated with the Attorney General in his investigation relating to the matters that are the subject of the Action.

**WHEREAS**, the Attorney General finds the sanctions and agreements contained in this Assurance of Discontinuance (the “Assurance”) appropriate and in the public interest.

**WHEREAS**, the Attorney General will continue his investigation relating to the business, transactions, entities and individuals that are the subject of the Action with the continued cooperation of defendants as provided herein.

**NOW, THEREFORE**, defendants, without admitting or denying the allegations of the Complaint, and the Attorney General hereby enter into this Assurance, pursuant to Executive Law § 63(15), and agree as follows:

**I. Affirmative Relief**

**A. Disgorgement and Civil Penalty**

1 Defendants shall pay \$100,000,000 in disgorgement and restitution plus a civil money penalty in the amount of \$25,000,000 for a total payment of \$125,000,000. The \$125,000,000 payment shall be remitted and administered in accordance with the Order Instituting Administrative And Cease-And-Desist Proceedings, Making Findings, And Imposing Remedial Sanctions Pursuant To Section 8A of the Securities Act Of 1933, Sections 15(b) And 21(C) 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 in the *Matter of Canadian Imperial*

*Holdings Inc. and CIBC World Markets Corp.* issued by the U.S. Securities and Exchange Commission ("SEC") on or near the date hereof (the "SEC Order").

2. The provisions in the SEC Order relating to the payment, administration and distribution of the \$125,000,000 referred to in this section are incorporated herein by reference, and such terms are agreed to as part of this Assurance by defendants. Amounts ordered to be paid as civil money penalties pursuant to this Assurance (*i.e.*, pursuant to the incorporated terms of the SEC Order) shall be treated as penalties paid to the government for all purposes, including tax purposes.

3. Defendants agree that they shall not, collectively or individually, seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, payment made pursuant to any insurance policy, with regard to any or all of the amounts payable pursuant to this Assurance.

**B. Incorporation of Undertakings in the SEC Order**

As part of this Assurance, defendants agree to the terms of and shall comply with the provisions of Section IV in the SEC Order.

**C. General Relief**

1. Defendants admit the jurisdiction of the Attorney General. Defendants, collectively and individually, will cease and desist from engaging in any acts in violation of the Martin Act, General Business Law § 349 and/or Executive Law § 63(12) and will comply with the Martin Act, General Business Law § 349 and Executive Law § 63(12).

2. Evidence of a violation of this Assurance by defendants or any one of them shall constitute prima facie proof of violation of the Martin Act, General Business Law § 349 and Executive Law § 63(12) in any civil action or proceeding hereafter commenced by the Attorney

General against any or all defendants.

## **II. Other Provisions**

### **A. Scope Of This Assurance**

1 After the filing of a Stipulation of Dismissal as provided for in section II.B. below, this Assurance shall conclude the Action brought by the Attorney General and any other action the Attorney General could commence against defendants or any one of them arising from or relating to the subject matter of the Complaint; provided, however, that nothing contained in this Assurance shall be construed to cover any claims that may be brought by the Attorney General to enforce defendants' obligations, either joint or several, arising from or relating to the provisions contained in this Assurance.

2. If defendants do not make the payments as provided in section I.A. of this Assurance (*i.e.*, pursuant to the SEC Order), or defendants or any one of them default on any obligation under this Assurance, the Attorney General may terminate this Assurance, at his sole discretion, upon 10 days written notice to all defendants and defendants agree that any statute of limitations or other time related defenses applicable to the subject of the Complaint and any claims arising from or relating thereto are tolled from and after the date of filing of the Complaint with the Court. In the event of such termination, defendants expressly agree and acknowledge that this Assurance shall in no way bar or otherwise preclude the Attorney General from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Action, against defendants or any one of them or from using in any way any statements, documents or other materials produced or provided by defendants or any one of them prior to or after commencement of the Action, including, without limitation, such statements, documents or other

materials provided for purposes of settlement negotiations.

3. Nothing herein shall preclude New York State, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than the New York State Attorney General and only to the extent set forth in paragraph II.A.2 above (collectively, "State Entities") and the officers, agents or employees of State Entities, from asserting any claims, causes of action, or applications for compensatory, nominal and/or punitive damages, administrative, civil or criminal or injunctive relief against defendants or any one of them arising from or relating to the subject of the Complaint.

4. Except in an action by the Attorney General to enforce the obligations of defendants or any one of them in this Assurance, neither this Assurance nor any acts performed or documents executed in furtherance of this Assurance: (a) may be deemed or used as an admission of, or evidence of, the validity of any alleged wrongdoing, liability or lack of wrongdoing or liability; or (b) may be deemed or used as an admission of or evidence of any such alleged fault or omission of defendants or any one of them in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. This Assurance shall not confer any rights upon persons or entities who are not a party to this Assurance. Nothing herein shall be construed to prohibit the use of any e-mails or other documents of defendants or any one of them or of others.

**B. Stipulation of Dismissal**

After payment is made by defendants in accordance with section I.A hereof, the Attorney General receives evidence satisfactory to him that the payment was in fact made and the attorneys of record for all defendants in the Action have signed a Stipulation of Discontinuance with prejudice with respect to the Action, in the form attached hereto as Exhibit A, the Attorney General

will execute and the Attorney General will file said stipulation with the Court; provided, however, that the Court shall retain jurisdiction of this Assurance, the Action and the parties hereto for purposes of enforcing the terms of this Assurance.

**C. Cooperation**

1 Defendants and each of them shall cooperate fully and promptly with the Attorney General and shall use their best efforts to ensure that all the current and former officers, directors, trustees, agents and employees of defendants (and of any of defendants' parent companies (including, without limitation, Canadian Imperial Bank of Commerce), subsidiaries or affiliates) cooperate fully and promptly with the Attorney General in any pending or subsequently initiated investigation, litigation or other proceeding relating to "market timing," "late trading" and/or the subject matter of the Complaint, and such cooperation shall include, without limitation:

production, voluntarily and without service of subpoena, upon the request of the Attorney General, of all documents or other tangible evidence requested by the Attorney General and any compilations or summaries of information or data that the Attorney General requests that defendants (or defendants' parent companies (including, without limitation, Canadian Imperial Bank of Commerce), subsidiaries or affiliates) prepare;

without the necessity of a subpoena, having the current and former officers, directors, trustees, agents and employees of defendants (and of any of defendants' parent companies (including, without limitation, Canadian Imperial Bank of Commerce), subsidiaries or affiliates) attend any Proceedings (as hereinafter defined) in New York State or elsewhere at which the presence of any such persons

is requested by the Attorney General and having such current and former officers, directors, trustees, agents and employees answer any and all inquiries that may be put by the Attorney General to any of them at any proceedings or otherwise; “Proceedings” include, but are not limited to, any meetings, interviews, depositions, hearings, trials, grand jury proceedings or other proceedings;

(c) fully, fairly and truthfully disclosing all information and producing all records and other evidence in defendants’ possession, custody or control (or the possession, custody or control of defendants’ parent companies (including, without limitation, Canadian Imperial Bank of Commerce), subsidiaries or affiliates) relevant to all inquiries made by the Attorney General;

(d) waiving, upon request by the Attorney General, all privileges including, without limitation, attorney-client and attorney work product privileges, with respect to all matters relating to the Action;

(e) waiving, upon request by the Attorney General, all privileges relating to any internal investigations concerning matters in the Complaint (whether conducted before or after the filing date of the Complaint), including, without limitation, production of all interview notes taken in connection with any internal investigations; and

(f) making outside counsel reasonably available to provide comprehensive presentations concerning any internal investigation relating to all matters in the Complaint and to answer questions.

3. All communications relating to cooperation pursuant to this Assurance may

be made to defendants' attorneys as follows: Jonathan D. Polkes, Esq., Weil, Gotshal & Manges, LLP, 767 Fifth Avenue, New York, New York 10153.

4. In the event defendants, collectively or individually, fail to comply with this section of the Assurance, the Attorney General shall be entitled to specific performance in addition to any other remedies in the Assurance or otherwise.

**D. Miscellaneous Provisions**

This Assurance and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

2. Defendants and each of them acknowledge proper and valid service of the Summons and Complaint upon them.

3. No failure or delay by the Attorney General in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided herein shall be cumulative.

4. Defendants and each of them consent to the jurisdiction of the Attorney General in any proceeding or action to enforce this Assurance.

5. Defendants and each of them enter into this Assurance voluntarily and represent that no threats, offers, promises, or inducements of any kind have been made by the Attorney General or any member, officer, employee, agent or representative of the Attorney General to induce defendants and each of them to enter into this Assurance.

6. Defendants and each of them agree not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Complaint or this



Assurance or creating the impression that the Complaint or this Assurance is without factual basis. Nothing in this paragraph affects the defendants': (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Attorney General is not a party.

7. This Assurance may be changed, amended or modified only by a writing signed by all parties hereto.

8. This Assurance, together with the attached exhibit and the incorporated-by-reference Complaint, constitute the entire agreement between the Attorney General and defendants and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of this Assurance.

9. If any provision of this Assurance is found to be unenforceable, such finding shall not effect the enforceability of the remaining provisions hereof.

10. This Assurance shall be binding upon defendants and their successors and assigns.

11. This Assurance shall be effective and binding only when this Assurance is signed by all parties. This Assurance may be executed in one or more counterparts, each of which

shall be deemed an original but all of which together shall constitute one instrument.

WHEREFORE, the following signatures are affixed hereto on the dates set forth below.

Dated: July 15, 2005

CANADIAN IMPERIAL HOLDINGS INC.

By



Name: Gary W. Brown  
Title: Chief Executive Officer and  
President

ACKNOWLEDGMENT

STATE OF NEW YORK    )  
  :ss.  
COUNTY OF NEW YORK )

On this 15<sup>th</sup> day of July, 2005, before me personally came Gary W. Brown, known to me, who, being duly sworn by me, did depose and say that he is the Chief Executive Officer and President of Canadian Imperial Holdings Inc., the entity described in the foregoing Assurance, is duly authorized by Canadian Imperial Holdings Inc. to execute the same, and that he signed his name in my presence by like authorization.

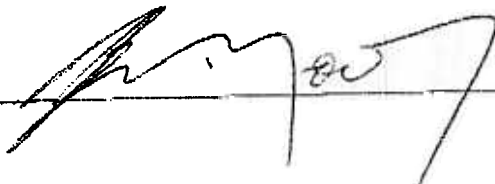
  
Notary Public

My commission expires:

EBONIQUE S. JACKSON  
NOTARY PUBLIC, State of New York  
No. 01JA6064484  
Qualified in New York County  
Commission Expires Sept. 24, 2005

Dated: July 15 2005

CIBC BANK AND TRUST COMPANY  
(CAYMAN) LIMITED


By 

Name: Ben Gillooly  
Title: Managing Director

ACKNOWLEDGMENT

PROVIDE  
STATE OF British Columbia  
:SS.  
COUNTY OF Victoria

On this 15 day of July, 2005, before me personally came Ben Gillooly, known to me, who, being duly sworn by me, did depose and say that he is Managing Director of CIBC Bank and Trust Company (Cayman) Limited, the entity described in the foregoing Assurance, is duly authorized by CIBC Bank and Trust Company (Cayman) Limited to execute the same, and that he signed his name in my presence by like authorization.



Notary Public

My commission expires: not-expiring

JEREMY S.G. DONALDSON  
BARRISTER & SOLICITOR  
2558 SINCLAIR ROAD  
VICTORIA, BC V8N 1S8  
(250) 721-5759

Dated: July 15, 2005

RUDY CAPITAL USA LLC

By \_\_\_\_\_



Name: Gary W. Brown  
Title: Chief Executive Officer and  
President of Canadian  
Imperial Holdings Inc., the  
Managing Member and sole  
owner of Rudy Capital USA  
LLC

ACKNOWLEDGMENT

STATE OF NEW YORK

:ss.

COUNTY OF NEW YORK )

On this 15<sup>th</sup> day of July, 2005, before me personally came Gary W. Brown, known to me, who, being duly sworn by me, did depose and say that he is the Chief Executive Officer and President of Canadian Imperial Holdings Inc., the Managing Member and sole owner of Rudy Capital USA LLC, the entity described in the foregoing Assurance, is duly authorized by Canadian Imperial Holdings Inc. to execute the same, and that he signed his name in my presence by like authorization.

  
Notary Public

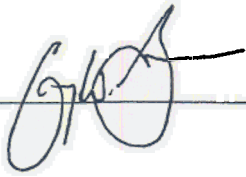
My commission expires:

**EBONIQUE S. JACKSON**  
**NOTARY PUBLIC, State of New York**  
**No. 01JA6064484**  
**Qualified in New York County**  
**Commission Expires Sept. 24, 2005**

Dated: July 15, 2005

HUDSON RIVER INVESTMENTS LLC

By \_\_\_\_\_



Name: Gary W. Brown  
Title: Chief Executive Officer and  
President of Canadian  
Imperial Holdings Inc., the  
Managing Member and sole  
owner of Hudson River  
Investments LLC

ACKNOWLEDGMENT

STATE OF NEW YORK    )  
  :SS.  
COUNTY OF NEW YORK

On this \_\_\_\_ day of July, 2005, before me personally came Gary W. Brown, known to me, who, being duly sworn by me, did depose and say that he is the Chief Executive Officer and President of Canadian Imperial Holdings Inc., the Managing Member and sole owner of Hudson River Investments LLC, the entity described in the foregoing Assurance, is duly authorized by Canadian Imperial Holdings Inc. to execute the same, and that he signed his name in my presence by like authorization.

  
Notary Public

My commission expires:

EBONIQUE S. JACKSON  
NOTARY PUBLIC, State of New York  
No. 01JA6064484  
Qualified in New York County  
Commission Expires Sept. 24, 2005

Dated: July 15, 2005

CIBC WORLD MARKETS CORP.

By \_\_\_\_\_



Name: Gary W. Brown  
Title: Chief Executive Officer and  
President

ACKNOWLEDGMENT

STATE OF NEW YORK    )  
                                  :ss.  
COUNTY OF NEW YORK )

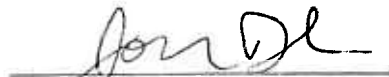
On this \_\_\_\_ day of July, 2005, before me personally came Gary W. Brown, known to me, who, being duly sworn by me, did depose and say that he is Chief Executive Officer and President of CIBC World Markets Corp., the entity described in the foregoing Assurance, is duly authorized by CIBC World Markets Corp. to execute the same, and that he signed his name in my presence by like authorization.

  
Notary Public

My commission expires:

EBONIQUE S. JACKSON  
NOTARY PUBLIC, State of New York  
No. 01JA6064484  
Qualified in New York County  
Commission Expires Sept. 24, 2005

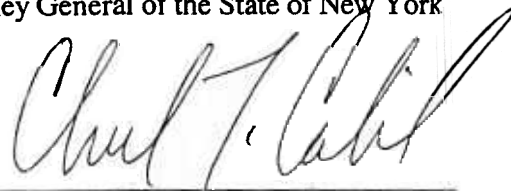
Reviewed by



Jonathan D. Polkes, Esq.  
Weil, Gotshal & Manges, LLP  
*Attorneys for Defendants*  
767 Fifth Avenue  
New York, New York 10153

Dated: July 18, 2005

**ELIOT SPITZER,**  
Attorney General of the State of New York

By: 

Charles T. Caliando  
Assistant Attorney General  
Investment Protection Bureau

Dated: July 18, 2005

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

STATE OF NEW YORK,

Plaintiff,

-against-

Index No.

CANADIAN IMPERIAL HOLDINGS INC., :  
CIBC BANK and TRUST COMPANY (CAYMAN)  
LIMITED, RUDY CAPITAL USA LLC, :  
HUDSON RIVER INVESTMENTS LLC,  
and CIBC WORLD MARKETS CORP., :

Defendants. :

-----X

STIPULATION OF DISMISSAL WITH PREJUDICE

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel for all parties, that there is no party who is an infant or incompetent person for whom a committee has been appointed or conservatee, nor is there any person not a party who has an interest in the subject matter of this action, and pursuant to CPLR § 3217(a), that this action be and the same hereby is discontinued with prejudice as against all defendants, without costs to the parties as against the others; provided, however, that the Court shall retain jurisdiction of this matter, the above-entitled action, plaintiff and all defendants for the purposes of enforcing the terms of the Assurance of Discontinuance Pursuant to Executive Law § 63(15) between Plaintiff and Defendants, dated July , 2005 (the "Assurance"), entered into concerning the above-entitled action.

IT IS FURTHER STIPULATED AND AGREED, by and between the undersigned counsel for all parties, that this Stipulation may be executed in counterparts exchanged by facsimile.



Dated: New York, New York  
\_\_\_\_\_, 2005

ELIOT SPITZER  
Attorney General of the State of New York  
*Attorney for Plaintiff*  
120 Broadway - 23rd Floor  
New York, NY 10271  
(212) 416-6542

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By: Charles T. Caliendo  
Assistant Attorney General  
Of Counsel

WEIL, GOTSHAL & MANGES, LLP

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By: Jonathan D. Polkes  
*Attorneys for Defendants*  
767 Fifth Avenue  
New York, New York 10153  
(212) 310-8881