

## **CIBC Hit With Suit over U.S. Index Fund**

Barry Critchley

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One day after CIBC's chief executive John Hunkin assured shareholders that recent "unacceptable events" including involvement in the Enron collapse and the U.S. mutual-funds trading scandal will not be repeated, the bank has found itself embroiled in a fresh controversy.

Yesterday, Quebec's Superior court gave the green light to a class-action law suit against one of the bank's investment management arms. The action was brought by Mark Rabinovitch, a financial advisor, on behalf of everyone who held units in the Renaissance U.S. RSP Index Fund after March 28, 2002. Mr. Rabinovitch a partner at Castlerock Financial, and his clients are investors in the fund.

That fund, formed in 1996 to invest in a combination of three major U.S. indexes, the S&P 500, S&P midcap 400 and the Nasdaq 100 has been under the management of CIBC since the spring of 2002. The fund is regarded as Canadian property because it uses derivatives to track the performance of the U.S. stock indexes.

The fund was supposed to generate returns that mirrored the return on the indexes irrespective of any fluctuation in the Canadian dollar exchange rate. At least that's what happened in the first six years of the fund's life or when the fund wasn't under the control of CIBC.

"Since the CIBC control date, the U.S. indexes have decreased in value by 6.79%. During the same period the performance of the fund has not only mirrored the performance of the U.S. indexes, the fund has decreased in value by 24.11%," said the motion, a 12-page document filed by Mr. Rabinovitch to support his claim.

"The returns achieved by the petitioner and the other members of the class are an astonishing 17.32% less than the performance of the U.S. indexes," adds the motion. That loss suffered by the investors in the fund has been

calculated to be around \$22-million. Mr. Rabinovitch's motion said "the losses sustained by the petitioner and the other members of the class are entirely the result of the respondent's negligent and/or inadvertent decision to submit the fund to a currency risk."

Mr. Rabinovitch, who became aware of the discrepancy last April and who filed a petition last November, argues the loss to investors is a direct result of the respondent exposing "the fund to the risk of fluctuations in the exchange rate."

Two Montreal law firms Kugler Kandestin and Stein & Stein are handling the action. Robert Kugler, a lawyer with Kugler Kandestin said that after taking control "CIBC, without any authority, exposed the index fund to the risk of currency fluctuation. Now instead of tracking the performance of the U.S. indexes we are way down. It is no longer doing what it was supposed to do." Mr. Kugler said that the next stage in the process will be to file the class action suit that "we have been authorized to take." That's expected to occur in a few weeks.

Neil Stein, a lawyer with Stein & Stein, said CIBC "substantially altered the fund's fundamental objective with the result that the loss in returns is about equal to the appreciation in the C\$ over the period."

Mr. Stein said Mr. Rabinovitch made his filing last November after he and his lawyers had tried talked to the respondent, to the representatives of the fund and to CIBC's ombudsman. "Our efforts were unsuccessful though our discussions did indicate that they changed the fund's objectives."

Reached yesterday, CIBC said that "a motion for the certification of a class action lawsuit concerning our Renaissance US RSP Index Fund was certified in Quebec earlier this week. The certification is not a judgment but one step in the legal process. Our policy is not to comment on cases that are pending before the Courts."