

CIBC Unit May Face Class Action, \$22-million loss claimed: Alleged fund change left investors exposed to falling U.S. dollar

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The asset management arm of Canadian Imperial Bank of Commerce is the target of a proposed class action after it allegedly failed to disclose a change to a mutual fund that left investors exposed to the falling U.S. dollar.

Mark Rabinovitch of Point-Claire, Que., a suburb of Montreal, bought units in the Atlas American RSP Index Fund, later known as the Merrill Lynch U.S. RSP Index Fund, beginning in 1999.

When created, the objective of the fund was to track the return of a combination of U.S. indices, such as the S&P 500 index and Nasdaq 100 Index.

In addition, the fund was billed as "currency-neutral," so investors were supposedly protected from fluctuations in the exchange rate between the U.S. and Canadian dollar.

After buying the retail operations of Merrill Lynch Canada Inc., CIBC took control of the fund in March, 2002, and renamed it the Renaissance U.S. RSP Index Fund. It is managed by CIBC's subsidiary, TAL Global Asset Management Inc.

Since that time, U.S. indices have dropped 6.79%. However, the performance of the Renaissance fund has dived more than 24%, according to proposed class action filed in Quebec Superior Court last week.

The gap between the performance of the U.S. indices and the fund's return is 17.32%, according to Mr. Rabinovitch's claim. Based on the size of the fund - - about \$106-million in assets under management -- his lawyers figure this translates into a \$22-million loss for unitholders.

Mr. Rabinovitch noticed the discrepancy on his statement in April, 2003, and phoned CIBC. The reason for the fund's poor performance, he was told, was the decline in the U.S. dollar against the loonie.

When Mr. Rabinovitch pointed out that the fund was supposed to be currency neutral, a CIBC representative said the fund was no longer insulated from of currency risk. The representative did not offer an explanation for the change.

"Somebody purchased the fund on the basis that the Canadian dollar was going to be hedged, so that the only risk would be the up or down of the particular indices," said Neil Stein of Stein & Stein, which filed the proposed class action on behalf of Mr. Rabinovitch.

"CIBC somehow either stopped hedging or didn't do something because it's not tracking the index," he said.

According to Mr. Stein, Mr. Rabinovitch was forced to contact CIBC's ombudsman because he couldn't get a timely or satisfactory response to his concerns from CIBC Asset Management.

A CIBC spokeswoman declined to comment because the class action has not been certified by the courts. CIBC has the right to argue against acknowledgement of the class action.

Mr. Rabinovitch is seeking to find out, among other things, when CIBC subjected the fund to currency risk and whether CIBC failed to disclose a material change to the fund's objectives or investment policy.

The fund's most recent prospectus, dated Nov. 17, notes currency fluctuations as a potential risk, but also says managers, "may use derivatives, such as options, futures, forward contracts and swaps, to hedge against losses caused by changes in exchange rates."

In support of certifying the class action, his lawyers will argue that unitholders may be deterred from taking action against CIBC individually because the costs might eclipse the amount of money they lost.