UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION, 450 Fifth Street, NW Washington, DC 20549-0911 Plaintiff, v. CIBC MELLON TRUST COMPANY, 320 Bay Street Toronto, Ontario M5H 4A6 Canada Defendant.	)

COMPLAINT

Plaintiff Securities and Exchange Commission (the "SEC" or the "Commission") for its complaint against defendant CIBC Mellon Trust Company ("CIBC Mellon Trust ") alleges as follows:

NATURE OF THE ACTION

1. This action concerns both the participation by CIBC Mellon Trust, between July 1998 and September 1999, in a fraudulent scheme to promote, distribute, and sell the stock of Pay Pop, Inc. ("Pay Pop"), a now-defunct British Columbia-based telecommunications company and CIBC Mellon Trust's failure to register with the Commission as a transfer agent and as a broker-dealer. While acting as Pay Pop's transfer agent, one of CIBC Mellon Trust's senior managers, Alnoor Jiwan, was bribed by Daryl Desjardins and Robert Zaba, two of Pay Pop's officers and directors. These bribes were in exchange for Jiwan's assistance in obtaining a ready supply of Pay Pop stock, through CIBC Mellon Trust, for Desjardins and Zaba to illegally

distribute to investors. By its failure to have sufficient policies, procedures and internal controls in place, CIBC Mellon Trust failed to detect Jiwan's bribes, and his illegal conduct, and thereby allowed Desjardins and Zaba's scheme to succeed. In addition, between 1998 and 2003, CIBC Mellon Trust acted as a transfer agent for at least 113 companies registered with the Commission, and as a broker-dealer on behalf of U.S. resident investors in the securities of 45 companies. In that time period, CIBC Mellon Trust was not registered with the Commission as a transfer agent or as a broker-dealer, thereby violating, respectively, Sections and 17A and 15(a) of the Securities and Exchange Act of 1934 [15 U.S.C. §78*l*].

2. The object of the fraudulent scheme involving Pay Pop was for Desjardins and Zaba to obtain legend-free Pay Pop stock certificates from CIBC Mellon Trust, create an artificial demand for Pay Pop stock through a series of false and misleading statements concerning Pay Pop's assets and business prospects, and then sell the Pay Pop shares to investors in the United States and Canada.

3. CIBC Mellon Trust played an essential, indispensable role in this fraudulent scheme by supplying Desjardins and Zaba with a virtually limitless supply of purportedly "free trading" Pay Pop stock – *i.e.,* Pay Pop stock certificates that created the false appearance that the shares represented therein could be traded without restriction and fully complied with the United States securities laws. Over the course of fifteen months, CIBC Mellon Trust illegally issued approximately 70 million shares of Pay Pop, which were distributed to the public.

4. From 1998 through 2003, CIBC Mellon Trust also acted as a transfer agent for 113 companies whose securities were registered under Section 12 of the Exchange Act and is listed as the transfer agent of record for at least 900 securities issues that are processed in the United States by the Depository Trust Company, the nation's largest securities depository and

clearinghouse for trading settlement. During the events at issue, CIBC Mellon Trust was not registered as a transfer agent as required by Section 17A of the Exchange Act [15 U.S.C. §78q-1]. Subsequently, on February 6, 2004, the company registered as a transfer agent.

5. From 1998 through the present, CIBC Mellon Trust also has acted as a broker-dealer by engaging in the business of effecting securities transactions for U.S. resident investors in connection with its administration of dividend reinvestment and stock purchase plans, employee stock purchase plans, employee stock option plans, and odd-lot programs. CIBC Mellon Trust has not registered as a broker-dealer as required by Section 15(a) of the Exchange Act [15 U.S.C. §78*o*], though it continues to provide such broker-dealer services today. CIBC Mellon Trust has requested that the Commission issue an order exempting it from the broker-dealer registration requirement of Section 15(a), subject to certain conditions on the scope of its activities. The Commission has approved this request and will issue an order granting the exemption upon entry of a final judgment in this action.

JURISDICTION

6. This Court has jurisdiction over this action pursuant to Sections 20(b) and 22(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. §§77t(b) and 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. §78u-1].

7. Defendant has, directly or indirectly, made use of the means or instrumentalities of interstate commerce and/or of the mails in connection with the transactions described in this Complaint.

DEFENDANT

8. Defendant CIBC Mellon Trust is a Canadian company with its principal office in Toronto, Ontario, in Canada. CIBC Mellon Trust is a joint venture of Canadian Imperial Bank

of Commerce, one of Canada's largest banks, and Mellon Financial Corp., and is engaged in the business of providing transfer agent services. CIBC Mellon Trust served as Pay Pop's transfer agent and registrar from July 1998 through September 1999.

9. CIBC Mellon Trust's Pacific Region Manager, Alnoor Jiwan, oversaw CIBC Mellon Trust's transfer agent relationship with Pay Pop. In exchange for its services as Pay Pop's transfer agent, CIBC Mellon Trust received fees for each transaction of Pay Pop stock it processed, such as the issuance of stock certificates and the transfer of record ownership of Pay Pop stock. CIBC Mellon Trust received $10,500 Canadian Dollars (approximately U.S.$7,100) for acting as Pay Pop's transfer agent.

FACTUAL ALLEGATIONS

A. Pay Pop

10. In the spring of 1998, Zaba purchased Pay Pop, a Nevada shell corporation. That is, while Pay Pop was a legal entity formed under the laws of Nevada, it had no assets or business activity. When Zaba acquired the Pay Pop shell, Pay Pop had a negative net worth.

11. After Zaba's purchase, Pay Pop's principal place of business was in British Columbia, Canada. During all relevant times, Pay Pop's stock was traded in the United States via the NASD's Over-the-Counter Bulletin Board. Prior to July 1998, Pay Pop had only 1 million shares of stock issued and outstanding. Between July 1998 and March 1999, Pay Pop issued over 55 million shares of stock. In March 1999, Pay Pop conducted a 40-1 reverse split of its existing shares of stock, bringing the number of shares issued and outstanding to 1.47 million shares. From March 1999 to August 1999, a period of only six months, the number of issued and outstanding Pay Pop shares again grew to approximately 40 million. Almost all of this stock was distributed to the public in a series of sales and transfers. At no point in time were any of the

transactions involving Pay Pop stock registered with the Commission as required by Section 5 of the Securities Act. [15 U.S.C. §77e].

B. <u>The Fraudulent Scheme To Sell Pay Pop Stock To The Public</u>

12. The fraudulent scheme to sell Pay Pop stock to the public involved three essential parts. The first part of the scheme was for Desjardins and Zaba to obtain a ready source of "free" Pay Pop stock -- that is, without payment to Pay Pop -- and purportedly "free trading" Pay Pop stock. To accomplish this, Desjardins and Zaba sought the cooperation of a transfer agent willing to issue Pay Pop stock free of any restrictive legends and convert the stock into street form (*i.e.,* placing record ownership in the name of a brokerage firm or clearing agency, such as the Depository Trust Company, so that beneficial ownership of the shares could be readily traded via electronic means in the public markets without need to reissue stock certificates).

13. A restrictive legend is a statement placed upon a stock certificate stating, among other things, that the stock is not registered with the Commission pursuant to Section 5 of the Securities Act and an ownership interest in the stock represented by that certificate cannot be sold or transferred absent registration or the existence of a valid exemption from registration. The presence of a restrictive legend on a stock certificate forecloses future sale or distribution of that stock certificate until such time as the issuer's transfer agent removes the legend via re-issuance of the certificate without the legend being present. The absence of the restrictive legend on the stock certificate creates the impression that the stock it represents is the subject of a registration statement with the Commission or exempt from such registration.

14. The second phase of the fraudulent scheme involved creating and maintaining market demand for the shares of Pay Pop stock through the public dissemination of a series of materially false and misleading statements and omissions concerning Pay Pop's assets and

business prospects. These materially false and misleading statements and omissions included eight false press releases and the creation of a set of materially false and misleading "audited" financial statements.

15. The third phase of the fraudulent scheme involved Desjardins' and Zaba's sale of Pay Pop stock through a series of nominee accounts with the assistance of a U.S.-based registered representative, Ronald Brouillette, who at the relevant time was with the brokerage firm Centex Securities. As a result of the fraud, Zaba and Desjardins received, directly and indirectly, at least 46,514,000 of the 98 million certificated shares of Pay Pop stock issued, and made illegal profits of at least $3,362,342.49 from the sales of those shares to the market.

C. CIBC Mellon Trust's Participation In The Fraudulent Scheme

16. In mid-1998, Zaba approached Pay Pop's then-existing U.S.-based transfer agent and sought the issuance of legend-free Pay Pop stock certificates. The transfer agent refused, stating that it would not issue any Pay Pop stock certificates without restrictive legends unless Pay Pop supplied it with either proof that the shares were subject to a registration statement filed with the Commission or an attorney opinion letter representing that the stock was exempt from registration.

17. To bypass Pay Pop's existing transfer agent, Zaba approached Jiwan, the head of CIBC Mellon Trust's Pacific Region. Zaba advised Jiwan of Pay Pop's prior transfer agent's unwillingness to issue legend-free stock without registering the stock with the Commission or providing a legal opinion letter that the transaction was exempt from registration.

18. Jiwan agreed that in return for a bribe in the form of Pay Pop stock, he would allow CIBC Mellon Trust to issue legend-free stock certificates without requiring proof of an

effective registration statement or any proof of an exemption from such registration (such as an attorney opinion letter).

19. Thereafter, between July 1998 and February 1999, Jiwan received at least 315,000 Pay Pop certificated shares from Desjardins and Zaba. By the spring of 1999, CIBC Mellon Trust had issued legend-free Pay Pop stock certificates representing over 50 million shares of Pay Pop stock. To continue the scheme, Jiwan demanded from Desjardins and Zaba additional shares of Pay Pop to compensate him for the risk he was taking. They complied. By the end of the fraudulent scheme, Zaba and Desjardins had paid Jiwan up to 820,000 shares of Pay Pop stock in return for his assistance to their unlawful scheme.

20. Jiwan directed that the majority of the Pay Pop share certificates he received as bribes be placed in the name of the sister of one of CIBC Mellon Trust's managers that reported to Jiwan. Jiwan deposited at least 421,000 shares of Pay Pop stock issued in his nominee's name into his Canadian brokerage accounts and sold at least 166,000 shares from December 1998 through December 1999.

21. By August 1999, CIBC Mellon Trust issued Pay Pop stock certificates representing approximately 98.6 million shares of Pay Pop, all but approximately 23.6 million of which were free of any restrictive legend. CIBC Mellon Trust issued these stock certificates based solely on treasury orders from Zaba and Desjardins requesting the shares be issued as "free trading." CIBC Mellon Trust's inadequate policies and procedures required nothing more to issue legend-free stock certificates than a treasury order signed by two corporate officers.

D. CIBC Mellon Trust's Responsibility for the Conduct of Its Employees

1. Jiwan's Conduct

22. CIBC Mellon Trust, through the doctrine of *respondeat superior*, bears responsibility for Jiwan's actions. At all relevant times, Jiwan acted with the actual or apparent authority of CIBC Mellon Trust. Jiwan was not a low-level employee of CIBC Mellon Trust. Jiwan was the Manager of CIBC Mellon Trust's Pacific Region. In this capacity, Jiwan supervised CIBC Mellon Trust's operations for the province of British Columbia, including the Vancouver office and its 25 employees. At the outset of the fraudulent scheme in July of 1998, Jiwan reported directly to the Chief Executive Officer of CIBC Mellon Trust. Between September and November 1998, Jiwan began reporting to a member of CIBC Mellon Trust's Executive Committee, rather than its Chief Executive Officer. The Executive Committee member in turn reported to CIBC Mellon Trust's Chief Executive Officer.

2. CIBC Mellon Trust's Knowledge of the Illegal Activities

23. CIBC Mellon Trust had knowledge that its conduct violated the United States securities laws. On two separate occasions, Pay Pop's counsel, Warren Soloski, advised CIBC Mellon Trust managers, as described below, that CIBC Mellon Trust was violating the United States securities laws and harming Pay Pop by issuing legend-free stock certificates. In late May of 1999, Soloski discovered that CIBC Mellon Trust had issued approximately 4 million shares of Pay Pop stock in the form of legend-free Pay Pop stock certificates. As a result, Soloski wrote a letter to Jiwan, a CIBC Mellon Trust senior manager, dated June 8, 1999, to advise CIBC Mellon Trust that it had issued stock certificates representing 4 million shares (to that point) of Pay Pop stock, without any restrictive legends, in violation of Section 5 of the Securities Act - - *i.e.*, the transactions were neither registered with the Commission nor exempt from registration.

The June 8th letter further instructed CIBC Mellon Trust to "**NEVER DO THIS AGAIN.**" (Emphasis in the original).

24. Several weeks later, Soloski learned that CIBC Mellon Trust had ignored his instructions and issued legend-free stock certificates representing another 11 million shares of Pay Pop stock. Soloski flew to Vancouver and met with Jiwan and another manager of CIBC Mellon Trust who reported to Jiwan in CIBC Mellon Trust's Vancouver offices on July 19, 1999. Soloski demanded to see a shareholder list and learned that the amount of Pay Pop stock issued and outstanding had grown from 3.7 million to over 18 million shares in a six-week period. Soloski, in the other manager's presence, screamed at Jiwan and again advised him that these actions violated U.S. securities laws and was "beyond civil tort." Soloski also advised Jiwan that CIBC Mellon Trust's actions would destroy Pay Pop.

25. Once again, CIBC Mellon Trust and Jiwan ignored Soloski's admonitions. After Soloski's trip to Vancouver, CIBC Mellon Trust issued legend-free Pay Pop certificates representing at least an additional 3 million shares of Pay Pop stock.

3. <u>CIBC Mellon Trust's Deficient Policies and Procedures</u>

26. CIBC Mellon Trust's internal policies and procedures manual acknowledged the Commission as a regulatory agency and obligated all CIBC Mellon Trust employees to comply with the requirements of applicable regulatory agencies. CIBC Mellon Trust, however, provided no training to its employees or reference materials to enable them to ensure they complied with United States securities laws. CIBC Mellon Trust failed to create systems to assure compliance with United States securities laws despite providing transfer agent services to Pay Pop and over 100 United States publicly-traded companies. Moreover, CIBC Mellon Trust's New Business Committee, comprised of CIBC Mellon Trust's upper management, approved Pay Pop, a Nevada

company with United States stockholders, as a transfer agency client, and CIBC Mellon Trust tracked the number of shares held by United States shareholders throughout its relationship with Pay Pop.

27. CIBC Mellon Trust's inadequate policies and procedures permitted Jiwan to carry out his portion of the fraudulent scheme. CIBC Mellon Trust's policies and procedures allowed its employees to issue new stock of a client, such as Pay Pop, through: (i) initial public offering; (ii) exercise of warrants; or (iii) treasury order from the issuer. With respect to the first two options, CIBC Mellon Trust required an issuer to provide opinions of counsel that all applicable regulatory requirements had been satisfied prior to issuing stock of its clients. For the third option, exploited here by Jiwan, CIBC Mellon Trust required only a treasury order signed by two company representatives for it to issue stock for its publicly-traded clients.

28. As a result, CIBC Mellon Trust's policies and procedures were woefully deficient. In essence, CIBC Mellon Trust allowed stock to be issued without satisfying itself that all United States regulatory requirements had been met. Moreover, there was no requirement at CIBC Mellon Trust that a restrictive legend be placed upon stock certificates where no assurances of regulatory compliance were present.

29. As a result, CIBC Mellon Trust placed Jiwan in a position where he was able to commit fraud, and CIBC Mellon Trust failed to put in place mechanisms to prevent or detect his illegal activities.

30. CIBC Mellon Trust also knew of, or recklessly ignored, several significant red flags that would have alerted it to Jiwan's conduct, or that CIBC Mellon Trust was violating U.S. securities laws. These red flags included the following:

- First, the magnitude of CIBC Mellon Trust's issuance of Pay Pop stock was impossible to overlook. CIBC Mellon Trust records reflect that in July 1998, Pay

Pop provided CIBC Mellon Trust with an attorney opinion letter (the only opinion letter in CIBC Mellon Trust's files) representing that 1 million shares of "free trading" Pay Pop stock were issued and outstanding. Despite this fact, CIBC Mellon Trust issued approximately 70 million legend-free shares without any proof of registration or exemption or any subsequent attorney opinion letters;

- Second, CIBC Mellon Trust's own transfer records reflected that the Pay Pop stock CIBC Mellon Trust issued was part of a public distribution in the United States. CIBC Mellon Trust's records reflect that it delivered stock certificates into the United States on 36 occasions, 22 of which were to U.S. brokers, representing 37.9 million shares of Pay Pop stock. CIBC Mellon Trust computer transfer records further reflect that a large majority of this stock was quickly presented to CIBC Mellon Trust for transfer into street form;

- Third, CIBC Mellon Trust computerized stock transfer and registration records reflected that CIBC Mellon Trust issued two 15,000 share certificates of Pay Pop stock in Jiwan's name in August and October of 1998. Despite the fact that Jiwan's Pay Pop stock ownership violated CIBC Mellon Trust's conflict of interest policies, CIBC Mellon Trust did not detect this violation, and CIBC Mellon Trust did not even look for Jiwan's ownership of Pay Pop stock until August of 1999; and

- Fourth, CIBC Mellon Trust ignored two instructions from Pay Pop's counsel to stop issuing legend-free Pay Pop stock. Soloski expressly advised Jiwan and another manager in CIBC Mellon Trust's Vancouver office who reported to Jiwan that CIBC Mellon Trust's issuance of Pay Pop stock without restrictive legend violated U.S. securities laws and directed CIBC Mellon Trust to cease its activities.

31. By all of the actions alleged herein, CIBC Mellon Trust knowingly and/or recklessly provided necessary and substantial assistance to the fraudulent scheme to distribute legend-free Pay Pop stock to the public in an unregistered distribution.

E. CIBC Mellon Trust Acted As An Unregistered Transfer Agent

32. From 1998 through 2003, CIBC Mellon Trust acted as a transfer agent, as defined by Section 3(a)(25) of the Exchange Act, for 113 companies that have securities registered under Section 12 of the Exchange Act [15 U.S.C. § 78*l*] or which would be required to be registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of that section. CIBC Mellon Trust is listed as the transfer agent of record for at least 900 securities

issues that are processed in the United States by the Depository Trust Company, the United States' largest securities depository and clearinghouse for trading settlement.

33. With respect to each of its clients that had securities registered under Section 12 of the Exchange Act, CIBC Mellon Trust alone, or with other transfer agents, provided one or more of the following services with respect to such securities:

- Countersigning the securities of these issuers upon issuance of their securities;
- Monitoring the issuance of securities with a view to preventing unauthorized issuance;
- Registering the transfer of these securities;
- Exchanging and converting these securities; or
- Transferring record ownership by bookkeeping entry.

34. At no time prior to February 6, 2004, did CIBC Mellon Trust register with the Commission, the appropriate regulatory agency, as a transfer agent as required by Section 17A of the Exchange Act. [15 U.S.C. §78q-1]. As a direct and proximate consequence of CIBC Mellon Trust's rendering of unregistered transfer agent services, CIBC Mellon Trust was unjustly enriched by the receipt of profits of at least U.S. $870,000.

F. <u>CIBC Mellon Trust Acted As An Unregistered Broker-Dealer</u>

35. From 1998 through the present, CIBC Mellon Trust has and continues to act as a broker-dealer, as defined by Section 3(a)(4) and 3(a)(5) of the Exchange Act, by engaging in the business of effecting securities transactions for United States resident investors.

36. In this connection, CIBC Mellon Trust, alone or with other broker-dealers, provided, and continues to provide, one or more of the following services:

- Receive and transmit orders to buy or sell securities for United States resident investors in employee stock option, dividend reinvestment, or odd-lot programs; or
- Receive and transmit funds to a broker-dealer in connection with the purchase or sale of securities for United States resident investors in employee stock option, dividend reinvestment, or odd-lot programs.

37. At no time has CIBC Mellon Trust registered with the Commission, or any other agency, as a broker-dealer, as required by Section 15(a) of the Exchange Act. [15 U.S.C. §*78o*]. As a direct and proximate consequence of CIBC Mellon Trust's rendering of broker-dealer services without registration prior to February 6, 2004, CIBC Mellon Trust was unjustly enriched by the receipt of profits of at least U.S. $11,151.

FIRST CLAIM FOR RELIEF

(FOR FRAUD IN THE PURCHASE OR SALE OF SECURITIES)

Violation of Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5]

38. Paragraphs 1 through 37 are hereby realleged and incorporated by reference.

39. Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder prohibits: (a) employing devices, schemes or artifices to defraud; (b) making untrue statements of material fact or omitting to state material facts necessary to make the statements not misleading; and/or (c) engaging in acts, practices, and a course of business which operates or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

40. Throughout the relevant events, CIBC Mellon Trust, through commission or omission: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of

material fact or omitted to state material facts necessary to make the statements not misleading; and/or (c) engaged in acts, practices, and a course of business which operated, or was intended to operate, as a fraud or deceit upon the purchasers or sellers of Pay Pop stock.

41. CIBC Mellon Trust used the means or instrumentalities of interstate commerce, the mails or the facilities of a national securities exchange in undertaking the conduct described above.

42. CIBC Mellon Trust's acts or omissions occurred in connection with the purchase or sale of the stock of Pay Pop.

43. CIBC Mellon Trust's acts or omissions were made with scienter.

44. By reason of the foregoing allegations, CIBC Mellon Trust violated Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder.

SECOND CLAIM FOR RELIEF

(FOR AIDING AND ABETTING A FRAUDULENT SCHEME IN VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT)

Violation of Section 20(e) of the Securities Exchange Act of 1934 [15 U.S.C. §78t(e)]

45. Paragraphs 1 through 44 are hereby realleged and incorporated by reference.

46. As alleged above, CIBC Mellon Trust participated in a fraudulent scheme to sell Pay Pop stock into a market created and maintained by a series of false and misleading public statements and material omissions in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

47. Defendant CIBC Mellon Trust knew, or was reckless in not knowing, that it was providing substantial assistance to the other participants' violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

48. By reason of the foregoing, CIBC Mellon Trust unlawfully aided and abetted the violations of Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

THIRD CLAIM FOR RELIEF

(FOR SALE AND OFFER OF SALE OF SECURITIES NOT SUBJECT TO A REGISTRATION STATEMENT)

Violation of Section 5(a)(1) of the Securities Act of 1933 [15 U.S.C. §77e(a)(1)]

49. Paragraphs 1 through 48 are hereby realleged and incorporated by reference.

50. The shares of Pay Pop stock were securities within the meaning of Section 2(1) of the Securities Act [15 U.S.C. §77b(1)].

51. Section 5 of the Securities Act prohibits, directly or indirectly, the sale of, and the offer to sell, any security unless a registration statement is on file at the Commission and in effect with regard to that security, absent an applicable exemption from that requirement. [15 U.S.C. §77e(a)(1)].

52. No registration statement had been filed with the Commission or was in effect with regard to any public sale of the Pay Pop securities at issue.

53. Throughout the relevant time period, CIBC Mellon Trust acted as a transfer agent for Pay Pop, while Pay Pop and its principals were engaged in a public distribution of Pay Pop stock that was not registered with the Commission, or exempt from such registration.

54. CIBC Mellon Trust was a necessary and substantial participant in the unregistered public distribution of Pay Pop stock. The illegal unregistered public distribution of Pay Pop stock would not have been possible without CIBC Mellon Trust's issuance of Pay Pop stock certificates that did not bear restrictive legends. Moreover, CIBC Mellon Trust knew, or had reason to know,

that an illegal distribution of Pay Pop's stock was occurring, yet failed to take any steps to forestall this distribution from taking place.

FOURTH CLAIM FOR RELIEF

(FOR DELIVERY OF SECURITIES NOT SUBJECT TO A REGISTRATION STATEMENT)

Violation of Section 5(a)(2) of the Securities Act of 1933 [15 U.S.C. §77e(a)(2)]

55. Paragraphs 1 through 54 are hereby realleged and incorporated by reference.

56. Section 5(a)(2) of the Securities Act prohibits, through the use of the mails or interstate commerce, by any means or instruments of transportation, to deliver any security for the purpose of a sale or for delivery after sale, unless such security is subject to an effective registration statement on file with the Commission.

57. The shares of Pay Pop stock were securities within the meaning of Section 2(1) of the Securities Act [15 U.S.C. §77b(1)].

58. From July 14, 1998 through August 4, 1999, CIBC Mellon Trust issued over 98 million shares of Pay Pop stock on the direction of 51 treasury orders it received from Pay Pop. CIBC Mellon Trust made 36 deliveries of Pay Pop stock into the United States, 22 of which were sent to U.S. brokers. Each of the 36 deliveries was for the completion of a sale or for the purposes of sale into the U.S. securities markets. As a result of these 36 deliveries, 169 certificates, representing 37.9 million shares of Pay Pop, were delivered to be sold or to complete sales into the U.S. securities markets.

59. Each of CIBC Mellon Trust's 36 deliveries into the United States was performed via the instrumentalities of interstate commerce.

60. As a result of the foregoing, CIBC Mellon Trust violated Section 5(a)(2) of the Securities Act [15 U.S.C. §77e(a)(2)].

FIFTH CLAIM FOR RELIEF

(FOR ACTING AS AN UNREGISTERED TRANSFER AGENT)

Violation of Section 17A of the Securities Exchange Act of 1934 [15 U.S.C. §78q-1]

61. Paragraphs 1 through 60 are hereby realleged and incorporated by reference.

62. Section 17A(c)(1) of the Exchange Act makes it unlawful for any transfer agent, unless registered with the appropriate regulatory agency, to make use of the mails or instrumentalities of interstate commerce to perform the function of a transfer agent with respect to any security registered under Section 12 of the Exchange Act.

63. With respect to CIBC Mellon Trust, the Commission is the appropriate regulatory agency.

64. From 1998 through 2003, CIBC Mellon Trust acted as a transfer agent, as defined by Section 3(a)(25) of the Exchange Act, for 113 companies that have securities registered under Section 12 of the Exchange Act [15 U.S.C. §78*l*]. CIBC Mellon Trust is listed as the transfer agent of record for at least 900 securities issues that are processed in the United States by the Depository Trust Company.

65. CIBC Mellon Trust failed to register as a transfer agent under Section 17A of the Exchange Act until February 6, 2004.

66. As a consequence, up through and including February 5, 2004, CIBC Mellon Trust violated Section 17A(c)(1) of the Exchange Act.

FIFTH CLAIM FOR RELIEF

(FOR ACTING AS AN UNREGISTERED BROKER-DEALER)

Violation of Section 15(a) of the Securities Exchange Act of 1934 [15 U.S.C. §78*o*]

67. Paragraphs 1 through 66 are hereby realleged and incorporated by reference.

68. Section 15(a) of the Exchange Act makes it unlawful for any person to make use of the mails or instrumentalities of interstate commerce to perform the function of a broker-dealer on behalf of U.S. investors unless that person is registered in accordance with Section 15(b).

69. From 1998 through the present, CIBC Mellon Trust acted as a broker-dealer, as defined by Sections 3(a)(4) and 3(a)(5) of the Exchange Act, by engaging in the business of effecting securities transactions for United States resident investors. CIBC Mellon Trust continues to provide such services today.

70. CIBC Mellon Trust has never registered as a broker-dealer under Section 15(b) of the Exchange Act.

71. As a consequence, CIBC Mellon Trust violated Section 15(a) of the Exchange Act.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a final judgment:

I.

Permanently enjoining defendant CIBC Mellon Trust Company, from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)], and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5];

II.

Permanently enjoining defendant CIBC Mellon Trust Company from violating, directly or indirectly, Section 5 of the Securities Act [15 U.S.C. §77e];

III.

Permanently enjoining defendant CIBC Mellon Trust Company from violating Section 17A of the Exchange Act [15 U.S.C. §78q-1];

IV.

Permanently enjoining defendant CIBC Mellon Trust Company from violating Section 15(a) of the Exchange Act [15 U.S.C. §78*o*];

V.

Permanently enjoining defendant CIBC Mellon Trust Company from aiding and abetting violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

VI.

Ordering defendant CIBC Mellon Trust Company to disgorge any and all ill-gotten gains, including, but not limited, to all fees, revenues, proceeds and commissions received as a result of its wrongful conduct, to pay prejudgment interest thereon, and to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. §78(u)];

VII.

Entering and establishing a Fair Fund for the benefit of innocent investors in Pay Pop pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002;

VIII.

Granting such other relief as this Court may deem just and proper; and

IX.

Retaining jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

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