

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8945 / July 18, 2008

SECURITIES EXCHANGE ACT OF 1934
Release No. 58193 / July 18, 2008

INVESTMENT ADVISERS ACT OF 1940
Release No. 2756 / July 18, 2008

INVESTMENT COMPANY ACT OF 1940
Release No. 28333 / July 18, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-12554

In the Matter of

**Michael Sassano, Dogan
Baruh, Robert Okin, and R.
Scott Abry,**

Respondents.

**ORDER 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(f) OF THE INVESTMENT ADVISERS
ACT OF 1940, AND SECTION 9(b) OF
THE INVESTMENT COMPANY ACT OF
1940 AS TO MICHAEL SASSANO**

I.

On January 31, 2007, the Securities and Exchange Commission (“Commission”) instituted public administrative and cease-and-desist proceedings pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Michael Sassano (“Sassano” or “Respondent”).

II.

In connection with these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these

proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order 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(f) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Respondent

1. Michael Sassano, 37, resides in Monaco. From 1997 until January 2003, Sassano was employed as a registered representative ("RR") by CIBC World Markets Corp. ("CIBC") in its CIBC Oppenheimer retail division, and specifically in its Private Client Division ("PCD"). On April 24, 2002, Sassano was promoted to Managing Director. He was a RR of CIBC until January 2003, at which time he became a RR of Fahnestock & Co., Inc. ("Fahnestock"). In September 2003, Fahnestock changed its name to Oppenheimer and Co., Inc. ("Oppenheimer"). Sassano holds Series 7, 63 and 65 licenses. In March 2004, Oppenheimer indefinitely suspended Sassano, and later in 2004 his employment terminated.

Other Relevant Entities

2. CIBC is a New York-based broker-dealer subsidiary of Canadian Imperial Bank of Commerce, Inc., a Canadian financial and bank holding company. During the relevant time period, CIBC was registered with the Commission as both a broker-dealer and an investment adviser. CIBC, through its CIBC Oppenheimer retail division, serviced high-net-worth individuals, money managers, and other customers, including hedge funds. In January 2003, CIBC sold its Oppenheimer retail division to Fahnestock. On July 20, 2005, the Commission instituted settled administrative and cease-and-desist proceedings against CIBC, in which CIBC, without admitting or denying the findings contained therein, agreed to the entry of an order finding that it violated Section 17(a) of the Securities Act, Sections 7(c), 10(b), 11(d), 15(c) and 17(a) of the Exchange Act and Rules 10b-3, 10b-5 and 17a-3 thereunder, as well as Rule 22c-1 as adopted under Section 22(c) of the Investment Company Act and Regulation T promulgated by the Federal Reserve Board regarding the extension of margin credit.

3. Fahnestock was a New York-based broker-dealer which, in January 2003, through its parent holding company Fahnestock Viner Holdings, Inc., acquired CIBC's retail division. After the purchase, Sassano became a Fahnestock employee. In September 2003, Fahnestock

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

changed its name to Oppenheimer. Oppenheimer is registered with the Commission as both a broker-dealer and an investment adviser.

Summary

4. This matter involves Sassano's deceptive market timing while a RR at CIBC and Fahnestock. Sassano and other RRs at CIBC and Fahnestock (the "Brokers"), engaged in a scheme to defraud mutual fund companies.

5. Between 1998 and September 2003, Sassano and the Brokers, who acted under his direction, actively assisted market timing customers in deceiving mutual funds. CIBC, Fahnestock and the Brokers received hundreds of letters and emails from mutual funds regarding their market timing trading activities. Sassano and the Brokers repeatedly ignored these communications, and continued to work with their market timing customers to implement their market timing strategies up until the point when mutual funds threatened to terminate their dealer agreements with CIBC or Fahnestock. Even then, Sassano and the Brokers did not always stop market timing, resulting in a number of mutual fund companies terminating their dealer agreements with CIBC or Fahnestock, or refusing to accept any trades from Sassano's branch.

6. Among the deceptive practices that Sassano and the Brokers engaged in on behalf of their customers were the following: (a) using new account numbers for blocked customer accounts; (b) creating new RR numbers to disguise themselves and their customers from the mutual funds; (c) trading in smaller amounts in order to avoid detection by the mutual funds, including using an in-house electronic trading platform to break up trades into small dollar volumes; (d) using annuities to avoid restrictions on market timing; (e) using the investment adviser trading platforms of two broker-dealers, Charles Schwab & Co., Inc. ("Schwab") and FMR Corp. ("Fidelity"), to continue market timing mutual funds that had previously blocked Sassano's customers' trading; and (f) on one instance, sending trades from a different branch to deceive the mutual funds about the origins of the trade. Sassano's supervisors were aware that Sassano and the Brokers used deceptive tactics to evade the mutual fund companies' restrictions.

Deceptive Market Timing

7. Sassano started at CIBC in 1997 and, over the next few years, he created a large market timing business in which he executed mutual fund orders on behalf of his customers – large market timing hedge funds. CIBC supported his market timing business, including giving him the exclusive right to engage in market timing at CIBC. Sassano also requested, and his supervisors approved, the creation of an electronic trading platform at CIBC to facilitate Sassano's market timing business. Thus, CIBC created the Mutual Fund Exchange System ("MFES") exclusively for Sassano. The MFES allowed Sassano's customers to submit their mutual fund trades via electronic spreadsheet, which Sassano and the Brokers could then electronically convert into orders within CIBC's systems. The MFES system had the added benefit of allowing customers to submit multiple smaller trades within one account as a means to stay "under the radar" of mutual funds' internal timing monitors.

8. The Brokers, acting at Sassano's direction, opened multiple accounts for their customers in order to disguise the identity of account holders and continue market timing on behalf of customers that mutual funds had previously blocked. Creating new accounts enabled a market timer to evade blocks mutual funds had placed on their previous timing accounts.

9. Some mutual funds discerned that Sassano and the Brokers enabled their customers to clone accounts to evade blocks and notified CIBC and Fahnestock that they disapproved of the practice. Dozens of mutual fund companies, through letters, e-mails and other communications, told Sassano and the Brokers of the harm suffered by long-term shareholders as a result of their deceptive market timing. Sassano and the Brokers continued to enter trades in violation of the instructions of the mutual fund companies to stop. As an internal CIBC e-mail to Sassano and a Broker in January 2003 stated, one mutual fund company was "frustrated by the fact that you stop timing in current accounts when they ask only to show up later in others."

10. Sassano and the Brokers used multiple RR numbers to deceive mutual funds about the source of market timing trades. Using alternative RR numbers allowed the Brokers and their customers to "disguise" their identity and fool the mutual funds into believing that they had not been previously blocked from trading. This became increasingly important as Sassano's business grew and mutual funds began to identify RR numbers associated with Sassano as the source of the abusive trading. Sassano and the Brokers had at least 85 RR numbers at CIBC.

11. Another method Sassano and the Brokers used to disguise their timing from mutual funds was to stay "under the radar" of the funds by breaking up trades in smaller dollar amounts. The Brokers, acting at Sassano's direction, opened multiple accounts for their timing customers in order to spread timing money across multiple accounts, instead of trading one large lump sum, which would have been a "red flag" to mutual funds. For example, one market timing customer of Sassano's had 195 accounts at CIBC and Fahnestock; another had 246 accounts.

12. Platforms at other broker-dealers were also used as a way to deceive mutual funds. Specifically, utilizing CIBC's status as an investment adviser, Sassano and the Brokers opened accounts at Fidelity and Schwab on behalf of his market timing customers as another means of evading mutual fund blocks.

13. The market timing of Sassano and the Brokers occurred on a large scale. From January 1998 through September 2003, Sassano and the Brokers market timed more than 80 mutual fund companies. Their market timing customers purchased more than \$90 billion of mutual fund shares through more than 217,000 trades. During this period, the trades placed by Sassano and the Brokers on behalf of their market timing customers had a median holding period of only two days. Sassano benefited from the conduct described above.

Violations

14. As a result of the conduct described above, Sassano willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which

prohibit fraudulent conduct in the offer and sale of securities, and in connection with the purchase or sale of securities. Among other things, Sassano participated in a scheme with his market timing customers to defraud mutual funds and their shareholders by engaging in deceptive market timing. Sassano defrauded mutual funds and their shareholders when he and the Brokers misrepresented and concealed the identities of CIBC's RRs and customers, as well as the nature of their customers' market timing activity, from the mutual funds. Sassano acted knowingly and/or recklessly in engaging in these activities.

15. As a result of the conduct described above, Sassano willfully aided and abetted and caused his customers' violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities, and in connection with the purchase or sale of securities. Among other things, Sassano's market timing customers engaged in a fraudulent scheme to conceal their identities from mutual fund companies' internal monitors. Customers consulted with Sassano and authorized deceptive market timing. Sassano acted knowingly and/or recklessly in engaging in these activities.

16. As a result of the conduct described above, Sassano willfully aided and abetted and caused CIBC's violations of Section 15(c) of the Exchange Act, which prohibits a broker or a dealer from effecting any transaction in, or inducing or attempting to induce the purchase or sale of, any security by means of any manipulative, deceptive, or other fraudulent device or contrivance, and Rule 10b-3, which prohibits a broker or dealer from using or employing any act, practice or course of business that is a manipulative, deceptive, or other fraudulent device or contrivance in connection with the purchase or sale of any security otherwise than on a national security exchange.

IV.

In view of the foregoing, the Commission deems it appropriate, and in the public interest to impose the sanctions agreed to in Respondent Sassano's Offer.

Accordingly, pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, Section 203(f) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, it is hereby ORDERED that:

A. Respondent Sassano shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

B. Respondent Sassano shall cease and desist from causing any violations and any future violations of Section 15(c) of the Exchange Act and Rule 10b-3 thereunder.

C. Respondent Sassano shall be, and hereby is, barred from association with any broker, dealer or investment adviser, and is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or

principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

D. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order;

E. IT IS FURTHER ORDERED that Respondent shall pay disgorgement of \$1 and a civil money penalty in the amount of \$1,000,000 to the Securities and Exchange Commission. Sassano shall satisfy this obligation by paying: (1) \$100,001 within 10 days of entry of this Order; (2) \$450,000 within 180 days of entry of this Order; and (3) the remaining \$450,000 within 360 days of entry of this Order. Such payments shall be: (1) made by United States postal money order, certified check, bank cashier's check or bank money order; (2) made payable to the Securities and Exchange Commission; (3) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (4) submitted under cover letter that identifies Sassano as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to David Stoelting, Senior Trial Counsel, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 3 World Financial Center, New York, NY 10281.

F. Such civil money penalty may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 ("Fair Fund distribution") by the Fair Fund established in In the Matter of Canadian Imperial Holdings, Inc. and CIBC World Markets Corp., AP File No. 3-11987. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that he shall not, after offset or reduction in any Related Investor Action based on Respondent's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by offset or reduction of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought

against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Florence E. Harmon
Acting Secretary