Securities and Exchange Commission
Washington, D.C.

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Accounting and Auditing Enforcement
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***Canadian Imperial Bank of Commerce, Daniel Ferguson, Ian Schottlaender, Mark Wolf*, Case No. H-03-5785 (Hoyt) (S.D. Tex.)**

SEC Charges Canadian Imperial Bank of Commerce and Three Executives With Aiding and Abetting Enron's Accounting Fraud

CIBC Simultaneously Settles Charges, Consenting to a Permanent Anti-Fraud Injunction and Payment of $80 Million in Disgorgement, Penalties and Interest

The Securities and Exchange Commission ("Commission") today charged Canadian Imperial Bank of Commerce ("CIBC") and three of its executives with aiding and abetting Enron Corp.'s securities fraud. The Commission's complaint, filed in U.S. District Court in Houston, alleges that CIBC and the three executives aided and abetted Enron's manipulation of its reported financial results through a series of complex structured finance transactions over a period of several years preceding Enron's bankruptcy. The 34 financings were structured as "asset sales" for accounting and financial reporting purposes, allowing Enron to hide from investors and rating agencies the true extent of its borrowings. Between June 1998 and October 2001, Enron used these disguised loans to increase reported earnings by more than $1 billion, to increase reported operating cash flows by almost $2 billion, and to avoid disclosure of more than $2.6 billion in debt on its financial statements. Enron's alternative, borrowing money using the asset as collateral, would have given Enron access to cash to meet its operating expenses, but carried with it financial reporting consequences -- increased debt, no positive effect on cash flow, and no positive effect on earnings -- that would have had a detrimental impact on Enron's credit rating and stock price.

Simultaneously with the filing of the complaint, CIBC consented to entry of a final judgment settling the Commission's action against it. In the consent, CIBC has agreed, without admitting or denying the allegations of the complaint, to the entry of a final judgment permanently enjoining it from future violations of the antifraud, books and records, and internal control provisions of the federal securities laws [Sections 10(b), 13(a), 13(b)(2)(A) and (B), and 13(b)(5) of the Securities Exchange Act of 1934, and Exchange Act Rules 10b-5, 12b-20, 13a-1, 13a-13 and 13b2-1]. CIBC also has agreed to pay $80 million: $37.5 million in disgorgement, a $37.5 million civil penalty and $5 million in prejudgment interest. The Commission intends to have these funds paid into a court account pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002 ("Fair Fund") for ultimate distribution to victims of the fraud.

Daniel Ferguson and Mark Wolf, without admitting or denying the Commission's allegations, also consented to the entry of a final judgment that permanently enjoins each from violating the same antifraud, books and records, and internal control provisions of the federal securities laws. In addition, Ferguson has agreed to pay a total of $563,000: disgorgement of $265,000, a penalty of $265,000, and prejudgment interest of $33,000, and has agreed to the entry of an order barring him from serving as an officer or director of a publicly traded company for a period of five years. Wolf, who is no longer employed by CIBC, has agreed to pay a total of $60,000: $27,500 as disgorgement, a penalty of $27,500, and prejudgment interest of $5,000. The Commission will likewise direct those monies to Enron fraud victims pursuant to the Fair Fund provisions. Ian Schottlaender, a former managing director in CIBC's corporate leveraged finance group in New York City, is contesting the matter.

As alleged in the Commission's complaint, the financings involved purported transfers of assets from Enron to Enron-sponsored off-balance sheet qualified special purpose entities (QSPEs) or special purpose entities (SPEs). Enron treated these transfers as accounting "sales" pursuant to Financial Accounting Standards Board (FASB) Statements No. 125 and 140, in order to book earnings and recognize operating cash flows, without reporting the associated debt on its financial statements. CIBC organized a syndicate of banks to provide, in the form of debt, the majority of the capitalization of the QSPEs and SPEs. Applicable accounting rules also require that a portion of their capitalization -- nominal in the case of a QSPE and at least three percent in the case of an SPE -- be equity unrelated to Enron and at risk of loss. CIBC provided this outside "equity at risk" to validate the financings. The accounting rules also require that the transferor, Enron, relinquish control over the assets, transferring the risk and rewards of ownership of the assets to the transferees.

The complaint further alleges that the transactions met neither the requirement that the equity stake be at risk, nor the requirement that the transferor relinquish control over the asset. With respect to the equity, the complaint alleges that a senior CIBC official directed Schottlaender to obtain commitments from Enron senior management that Enron would support CIBC's equity contribution. In conversations between Andrew Fastow, Enron's CFO, and defendant Schottlaender, Fastow gave Schottlaender "the strongest possible assurances" that CIBC's equity would be repaid. The defendants knew that this "undocumented understanding" could not be disclosed in written deal documents between Enron and CIBC because it would be fatal to the "sale" accounting treatment that was the sole basis for the financings. Within CIBC, the guaranteed equity stake in the Enron transactions was referred to as, among other things, "trust me" equity, a term attributed to Schottlaender. Up to the date Enron filed for bankruptcy, consistent with the assurances, Enron fully repaid CIBC for its equity stake and the promised 15 percent return in each of the financings as they unwound or were settled, even when the assets had lost value.

The complaint further alleges that Enron did not relinquish control over the assets. For example, the parties understood that Enron, not CIBC, was responsible for the ultimate disposition of each asset. Consistent with this undocumented understanding, Enron or an Enron affiliate reacquired or refinanced each of the assets before the expiration date of the financing. Similarly, CIBC's return on its equity stake was -- like a loan -- limited to its original investment and a stated yield of generally 15 percent. In the event an asset appreciated beyond CIBC's limited contractual return, Enron structured the financings to receive any further increase in asset value, an increase generally considered a return on equity. The complaint also points to the limited or no due diligence performed in connection with the transfers. According to the complaint, the transactions were in fact a form

of asset parking. Both CIBC and Enron described the largest transaction structure as a "short term revolving warehouse facility."

The complaint alleges that although CIBC officials had concerns over whether Enron had "financially engineered" a large portion of its profits, CIBC was determined to achieve status as one of Enron's elite "Tier I" of banks. CIBC earned approximately $18 million in fees from the fraudulent financings. The disgorgement award of $37.5 million includes all the fees from the fraudulent transactions, as well as all "relationship" fees from any other transactions occurring at or after the date of the first fraudulent transaction. CIBC's civil penalty also is based upon the total fees CIBC received from Enron from 1998 until Enron's demise.

The Commission brought this action in coordination with the U.S. Department of Justice Enron Task Force, the Federal Reserve Bank of New York, and the Canadian Office of the Superintendent of Financial Institutions.

The Commission's investigation is continuing.

For additional information, see

- SEC v. Michael J. Kopper - Litigation Release 17692 (Aug. 21, 2002)
- SEC v. Andrew S. Fastow - Litigation Release 17762 (Oct. 2, 2002)
- SEC v. Kevin A. Howard and Michael W. Krautz - Litigation Release 18030 (March 12, 2003)
- SEC v. Merrill Lynch & Co. Inc., et al. - Litigation Release 18038 (March 17, 2003)
- SEC v. Kevin A. Howard, Michael W. Krautz, Kenneth D. Rice, Joseph Hirko, Kevin P. Hannon, Rex T. Shelby, and F. Scott Yeager - Litigation Release 18122 (May 1, 2003) (Amended Complaint)
- SEC v. J.P. Morgan Chase - Litigation Release 18252 (July 28, 2003)
- In the Matter of Citigroup, Inc. - Exchange Act Release 48230 (July 28, 2003)
- SEC v. Ben F. Glisan, Jr. - Litigation Release 18335 (Sept. 10, 2003)
- SEC v. Wesley H. Colwell - Litigation Release 18403 (Oct. 9, 2003)
- SEC v. David W. Delainey - Litigation Release 18435 (Oct. 30, 2003)
- SEC v. Daniel Gordon - Litigation Release 18515 (Dec. 19, 2003)

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▶ SEC Complaint in this matter

http://www.sec.gov/litigation/litreleases/lr18517.htm