

SUPREME COURT OF NOVA SCOTIA

Between:

GAYLE CROOKS, ARCHIE GILLIS AND KAREN MCGRATH

PLAINTIFFS

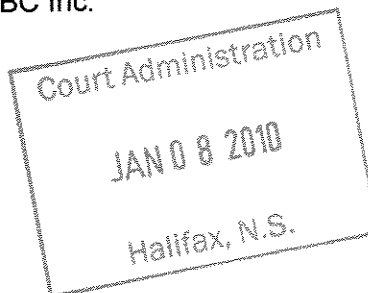
and

**CIBC WORLD MARKETS INC./MARCHES MONDIAUX CIBC INC. CARRYING
ON BUSINESS AS CIBC WOOD GUNDY**

DEFENDANTS

**NOTICE OF ACTION
BROUGHT UNDER THE CLASS PROCEEDINGS ACT, S.N.S. 2007, C. 28**

To: CIBC World Markets Inc./Marches Mondiaux CIBC Inc.
1969 Upper Water Street, Suite 1801
Halifax, NS B3J 3R9
c/o Michael S. Ryan, Q.C.
Cox & Palmer
Purdy's Wharf, Tower 1
1100-1959 Upper Water Street
Halifax, NS
B3J 3N2



Counsel for CIBC World Markets

Action has been Started against You

The Plaintiffs take action against you.

The Plaintiffs started the action by filing this Notice with the court on the date certified by the Prothonotary.

The Plaintiffs claim the relief described in the attached Statement of Claim. The claim is based on the grounds stated in the Statement of Claim.

Defending the Action

*Service accepted
20 January, 2010
by ms Ryan*

To defend against the Plaintiffs' claim, you or your counsel must file a Notice of Defence with the Court no more than following number of days after the day this Notice of Action is delivered to you:

- 15 days if delivery is made in Nova Scotia
- 30 days if delivery is made elsewhere in Canada
- 45 days if delivery is made anywhere else.

Judgment Against You if you do not Defend

The court may grant an order for the relief claimed without further notice, unless you file a Notice of Defence before the action by the deadline shown in this Notice.

You may Demand Notice of Steps in the Action

If you do not have a defence to the claim or you do not choose to defend it, you may, if you wish to have further notice, file a Demand for Notice.

If you file a Demand for Notice, the Plaintiff must notify you before obtaining judgment and, unless the court orders otherwise, you will be entitled to notice of each other step in this action.

Rule 57 - Action for Damages Under \$100,000

Civil Procedure Rule 57 limits pre-trial and trial procedures in a defended action so it will be more economical. The Rule applies if the Plaintiff states the action is within the Rule. Otherwise the Rule does not apply, except as a possible basis for costs against the Plaintiff.

This action is not within Rule 57.

Filing and Delivering Documents

Any documents you file with the court must be filed at the office of the Prothonotary, The Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia (902) 424-6900.

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required or a judge orders it is not required.

Contact Information

The Plaintiff designates the following address:

GEORGE MACDONALD, Q.C. / JANE O'NEILL
 McInnes Cooper
 Purdy's Wharf Tower II
 1300 – 1969 Upper Water Street

PO Box 730
Halifax NS B3J 2V1
Tel: (902) 425-6500 / Fax: (902) 425-6350

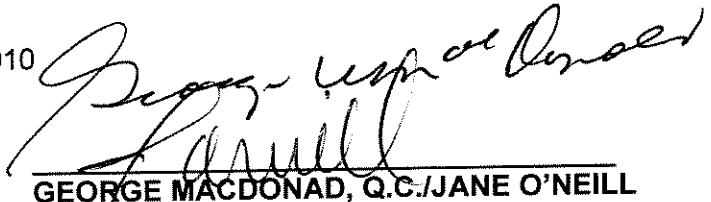
Documents delivered to this address are considered received by the Plaintiff on delivery.
Further contact information is available from the Prothonotary.

Proposed Place of Trial

The Plaintiff proposes that, if you defend this action, the trial will be held in Halifax, Nova Scotia.

Signature

Signed this 8th day of January, 2010



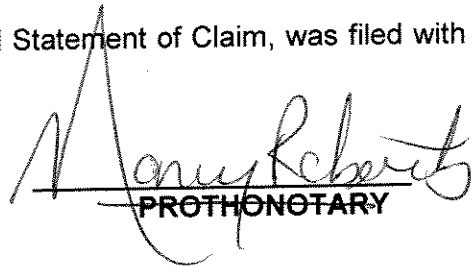
GEORGE MACDONAD, Q.C./JANE O'NEILL

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Halifax NS B3J 2V1
Tel: (902) 444-8571 / Fax: (902) 425-6350

SOLICITORS FOR THE PLAINTIFFS

Prothonotary's Certificate

I certify that this Notice of Action, including the attached Statement of Claim, was filed with the Court on the 8th day of January, 2010.


PROTHONOTARY

NANCY ROBERTS
Deputy Prothonotary

STATEMENT OF CLAIM

1. The Plaintiffs, Gayle Crooks, Archie Gillis and Karen McGrath, are individuals resident in Nova Scotia.
2. The Defendant, CIBC World Markets Inc./Marches Mondiaux CIBC Inc. ("CIBCWM"), is the wholesale and corporate banking arm of the Canadian Imperial Bank of Commerce and it has its Head Office at 161 Bay Street, Toronto, Ontario. CIBCWM is a subsidiary of the Canadian Imperial Bank of Commerce ("CIBC").
3. CIBCWM has a retail division which operates under the business name CIBC Wood Gundy ("Wood Gundy"). Wood Gundy advertises that it is a full service investment dealer which provides comprehensive wealth management services.
4. CIBCWM is registered as an investment dealer in Nova Scotia pursuant to the *Securities Act*, R.S.N.S. 1989, c. 418. CIBCWM and its licensed employees in Nova Scotia are regulated by the Nova Scotia Securities Commission (the "NSSC").
5. CIBCWM is a member of and is regulated by the Investment Industry Regulatory Organization of Canada ("IIROC"). Prior to the formation of IIROC, CIBCWM was a member of and was regulated by the Investment Dealers' Association ("IDA").
6. The Plaintiffs and the Class Members (the "Investors") entered into contracts with Wood Gundy to participate in an investment strategy that included options trading. Under this strategy, the Investors would sell options in the form of puts and calls that would remain open for a specified period of time unless the Investor chose to close them. The purchase and sale of the options depended, in part, on the balance contained in the Investors' margin accounts as they had to maintain enough funds in their margin accounts to cover the options.
7. The Investors' investment advisor at Wood Gundy was Fredrick Saturley. With Mr. Saturley's guidance, the Investors used a specialized investments strategy. They managed their risk by monitoring the margin under which the investment strategy operates. In carrying out the investment strategy, the Investors used, among other options, an investment fund called Emerging Markets Index Shares ("EEM"), which is

comprised of 325 companies that closely tracks the performance of the S&P 500. The margin value of their account is key to the Investors' investment strategy.

8. On July 24, 2008, the EEM split three for one. Wood Gundy failed to account for this split, causing the Investors' margin accounts to be overstated. This overstatement of the margin accounts caused Investors to make investment decisions on the basis of erroneous information.
9. In or around early October, 2008, Wood Gundy discovered its error. Initially, Wood Gundy did not reveal the error to the Plaintiffs but rather, Wood Gundy management directed that the Plaintiffs be told that losses in their accounts were due to losses in the markets.
10. Wood Gundy eventually admitted the error to the Plaintiffs and informed them that their accounts contained a margin deficit. Without the approval of the Plaintiffs, Wood Gundy proceeded to sell, cancel and close securities belonging to the Plaintiffs to cover the margin deficits. Wood Gundy also unilaterally cancelled all EEM options that were open as of, or opened after, July 24, 2008 in the Investors accounts back to the date that the options were originally opened. When Wood Gundy cancelled these options, they did not credit the Investors with any of the gains that had been incurred on the options.
11. After the Investors learned of the error, they were forced to sell a number of their securities to cover the margin in their accounts. As a result of having to sell these securities, the Investors incurred tax liabilities and other fees. In addition they were forced to cover any currency exchange on the sale of those securities. Further, the Investors say that they were forced to sell securities that carried with them a dividend payment. As a result of selling the securities, they are no longer entitled to this dividend payment.
12. After the Plaintiffs learned of the error, they attempted to get advice from Mr. Saturley but were advised by Wood Gundy that Mr. Saturley was on disability leave. Wood Gundy refused to provide the Plaintiffs any other information about Mr. Saturley and appointed another investment advisor for the Plaintiffs' accounts. The Plaintiffs say that the replacement investment advisor appointed for them did not have the necessary licence under the *Securities Act* to provide advice or perform options trades.

13. The Plaintiffs Gayle Crooks and Karen McGrath say that after Wood Gundy appointed a new investment advisor, unauthorized trading occurred in their accounts.
14. The Plaintiffs further say that they have also incurred losses in the form of lost opportunities as a result of Wood Gundy's failure to provide them with any meaningful advice following CIBC's discovery of the error in October 2008.
15. The Plaintiffs say that Wood Gundy breached their investment contracts by failing to maintain proper margin accounts and as a result, the Plaintiffs have suffered losses to their accounts that have not been fully compensated.
16. The Plaintiffs say that Wood Gundy owed them a duty of care to ensure that the margin account information was correct and that Wood Gundy breached that duty of care in failing to maintain proper margin account information. As a result of Wood Gundy's negligence, the Plaintiffs have suffered losses in their accounts that have not been fully compensated through Wood Gundy's efforts to correct the error.
17. The Plaintiffs say that Wood Gundy negligently misrepresented the status of their margin accounts from July 24, 2008 to October 9, 2008. The margin information was inaccurate and misleading. In reasonable reliance on that margin account information, the Plaintiffs made certain investment decisions that they would not otherwise have made had the margin account information been correct and suffered damages as a result.
18. The Plaintiffs say that Wood Gundy owed them a fiduciary duty as their investment advisor. When Wood Gundy discovered the margin error, Wood Gundy put its own interests ahead of the Plaintiffs when it attempted to correct the error by cancelling Emerging Market Options in the Plaintiffs' accounts that were open as of, or were opened after July 24, 2008 regardless of whether they had generated a profit or a loss. The method chosen by Wood Gundy to supposedly correct the error did not fully compensate the Plaintiffs for their losses and resulted in gains to Wood Gundy.
19. The Plaintiffs say that the actions of Wood Gundy in late 2008 did not, in fact, compensate them for the losses they incurred as result of Wood Gundy's error. In particular, but not limited to, the Plaintiffs says that Wood Gundy:

- a) Failed to adjust the EEM options in their accounts to July 24, 2008, the date that the error occurred. Instead, Wood Gundy cancelled all options which were open as of July 24, 2008, or opened after July 24, 2008, as of the opening date.
- b) Failed to cancel the commissions earned by Wood Gundy on the trades made in their accounts based on the erroneous margin information;
- c) Failed to compensate the Plaintiffs for losses incurred in all of their uncovered option accounts;
- d) Failed to compensate the Plaintiffs for losses incurred as a result of investment decisions that they had to make during the period that the information in their margin accounts was erroneous;
- e) Failed to compensate the Plaintiffs for interest and fees incurred by them as a result of their inability to access funds in their accounts while Wood Gundy was attempting to account for its error;
- f) Failed to compensate the Plaintiffs for the amounts payable by them under the *Income Tax Act* as a result of having to sell certain securities;
- g) Failed to compensate the Plaintiffs for currency exchange costs incurred by them as a result of having to sell certain securities;
- h) Failed to compensate the Plaintiffs for dividend payments they were forced to forgo as a result of having to sell certain securities.

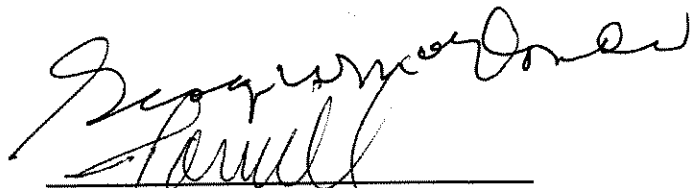
20. The Plaintiffs bring this action on behalf of all clients and former clients (including their estates and assigns) of Wood Gundy operating in Halifax, Nova Scotia, who held investment accounts as of July 24, 2008 that used an investment fund called Emerging Markets Index Shares ("EEM") to carry out their investment strategy. The Plaintiffs plead and rely on the *Class Proceedings Act*, S.N.S. 2007, c. 28.

21. On behalf of themselves and the proposed class members, the Plaintiffs repeat the foregoing and claim from the Defendant:

- a) General damages;
- b) Special damages, the particulars of which will be provided prior to trial;
- c) Punitive and/or aggravated damages
- d) Interest;
- e) Costs;
- f) Such further and other relief as this Honourable Court deems just.

Signature

Signed this 8th day of January, 2010.



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