

24 FEB 1994

PUBLIC

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 94-73-CC
The Capitol Mutual
Funds and Nations
Fund Trust
File Nos. 811-6030;
811-4305

Solely with respect to the availability of Rule 17a-8 under the Investment Company Act of 1940 (the "1940 Act"), and without expressing any opinion on any other aspect of the proposed reorganization, we would not recommend any enforcement action to the Commission under Section 17(a) of the 1940 Act if the Capitol Mutual Funds and the Nations Fund Trust implement the proposed reorganization described in your letter. ^{1/} Having stated our views with respect to the availability of Rule 17a-8 in transactions involving registered investment companies that are affiliated persons solely by reason of having investment advisers that are under common control, we will no longer respond to requests for no-action relief in this area unless they present novel or unusual issues.



Edward J. Rubenstein
Attorney

^{1/} See Smith Barney Shearson Small Capitalization Fund (pub. avail. Oct. 4, 1993); MFS Family of Funds (pub. avail. May 24, 1993); Shearson Lehman Hutton Group of Funds (pub. avail. Oct. 7, 1988).

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February 9, 1994

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Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Act	ICA-40
Section	
Rule	17a-8
File	2/24/94

Re: The Capitol Mutual Funds and Nations Fund Trust

Dear Mr. Harman:

We are writing with respect to the proposed reorganization of certain investment companies, the investment advisers of which are direct or indirect wholly owned subsidiaries of NationsBank Corporation, and the implications of these transactions under Section 17(a) of the Investment Company Act of 1940, as amended (the "1940 Act"), and Rule 17a-8 under the 1940 Act. The proposed reorganization (the "Reorganization") will consist of a transfer of substantially all of the assets and liabilities of certain portfolios (the "Acquired Funds") of The Capitol Mutual Funds (the "Capitol Funds") to certain portfolios (the "Acquiring Funds") of Nations Fund Trust (the "Trust") which have substantially similar investment objectives and policies, as indicated below:

<u>Portfolio of the Capitol Funds</u>	<u>Corresponding Fund of the Trust</u>
Equity Portfolio.....	Nations Value Fund
Special Equity Portfolio.....	Nations Special Equity Fund
Fixed Income Portfolio.....	Nations Strategic Fixed Income Fund
Maryland Tax Free Securities Portfolio.....	Nations Maryland Intermediate Municipal Bond Fund

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Following the transfer of assets and liabilities by each Acquired Fund in exchange for shares of the corresponding Acquiring Fund, the Acquired Fund will be dissolved and liquidated and the shares of the Acquiring Fund received by the Acquired Fund will be distributed to the shareholders of the Acquired Fund. On behalf of the Acquired Funds and the Acquiring Funds (each, a "Fund" and collectively, the "Funds"), we respectfully request your assurance that the staff (the "Staff") of the Securities and Exchange Commission (the "SEC") will not recommend that the SEC institute enforcement proceedings if the Reorganization is effected under the circumstances described below. As noted below, the circumstances described below are virtually identical to those supporting the no-action position recently taken by the Staff in Smith Barney Shearson Special Equities Fund; Smith Barney Shearson Small Capitalization Fund (pub. avail. October 4, 1993).

BACKGROUND

Description of the Funds and Their Servicing Relationships

The Acquired Funds are part of the Capitol Funds, an open-end, diversified, management investment company organized as a Massachusetts business trust. The Capitol Funds currently consists of nine separate portfolios. The Acquired Funds offer Class A Shares at net asset value to Security Trust Company, N.A., its affiliates and correspondents for the investment of assets for which they act in a fiduciary capacity. Class B Shares are offered to individual and institutional investors.

The Acquiring Funds are part of the Trust, an open-end, diversified, management investment company organized as a Massachusetts business trust. The Trust currently consists of thirty-four separate investment portfolios. In addition, the Trust is a part of the Nations Fund Family, which consists of all funds of the Trust and Nations Fund, Inc., a separate investment company registered under the 1940 Act. Trust A Shares of the Acquiring Funds are offered at net asset value to bank trust departments and other financial institutions acting on behalf of customers having a qualified trust account at or a relationship with the institution. Purchases of Investor A Shares of the Acquiring Funds, which are subject to initial sales charges, may be made through banks, broker/dealers and other financial institutions that have entered into agreements

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with the Trust.^{1/} Holders of Investor Shares of a fund of the Nations Fund Family can exchange their shares for shares of another fund within the Nations Fund Family, subject to certain restrictions described in the prospectuses of each fund.

The Acquired Funds are advised by ASB Capital Management Inc. ("ASBCM") and the Acquiring Funds are advised by NationsBank of North Carolina, N.A. ("NationsBank"). NationsBank is a wholly-owned subsidiary of NationsBank Corporation. In connection with the merger of MNC Financial, Inc. with and into NationsBank Corporation, ASBCM, which was formerly an indirect wholly-owned subsidiary of MNC Financial, Inc., became an indirect wholly-owned subsidiary of NationsBank Corporation. Accordingly, NationsBank and ASBCM are under the common control of NationsBank Corporation.

SEI Financial Services Company serves as the distributor of the Acquired Funds and SEI Financial Management Company provides administrative services and transfer agency services to the Acquired Funds. Security Trust Company, N.A. provides custodial services to the Acquired Funds. Stephens Inc. serves as the sponsor, distributor and administrator of the Acquiring Funds and The Boston Company Advisors Inc. serves as the Acquiring Funds' co-administrator. NationsBank of Texas, N.A. is the custodian of the Acquiring Funds.

Currently, the Acquired Funds and the Acquiring Funds have no trustees or officers in common. However, at a special meeting of shareholders of the Capitol Funds (the "Special Meeting of Shareholders") held for the purpose of considering the Plan, it is anticipated that a new slate of trustees, comprised of the persons who currently serve as the trustees to the Trust, will be proposed for the Capitol Funds, and that, if approved, the new trustees will in turn elect new officers for the Capitol Funds, comprised of the persons who currently serve as the Trust's officers. Accordingly, assuming shareholder approval, the Acquired Funds and the Acquiring Funds will have common trustees and officers prior to the Reorganization.

^{1/} Besides offering Trust A and Investor A Shares, the Acquiring Funds also offer Trust B, Investor B and Investor C Shares.

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Proposed Reorganization

The Board of Trustees of the Capitol Funds and the Board of Trustees of the Trust, including a majority of the members of each of the Boards who are not "interested persons," as such term is defined in Section 2(a)(19) of the 1940 Act, of any Fund, have approved an Agreement and Plan of Reorganization (the "Plan") with respect to the Funds. The Board of Trustees of the Capitol Funds has determined to recommend that each Acquired Fund's shareholders also approve the Plan at the Special Meeting of Shareholders. The Plan need not be approved by the shareholders of the Acquiring Funds.

The Reorganization will consist of the transfer of substantially all of the assets and liabilities of each Acquired Fund in exchange for shares of the corresponding Acquiring Fund and the distribution, pursuant to the Plan, of such shares to the shareholders of the Acquired Funds in liquidation of the Acquired Funds. Shareholders of each Acquired Fund will receive shares of the corresponding Acquiring Fund equal in value to the shares of the class of the Acquired Fund owned by such shareholder immediately prior to the transaction. Holders of Class A Shares of each Acquired Fund will receive Trust A Shares of the corresponding Acquiring Fund and holders of Class B Shares of each Acquired Fund will receive Investor A Shares of the corresponding Acquiring Fund. Any front-end sales charge which would otherwise be applicable upon the acquisition of shares of an Acquiring Fund will be waived with respect to shares acquired in the Reorganization. No commission or sales loads will be charged in connection with the Reorganization. The result of the transfer of assets will be that each Acquiring Fund will add to its portfolio substantially all of the assets held by the corresponding Acquired Fund on the date of consummation of the Reorganization, and shareholders of each Acquired Fund will become shareholders of the corresponding Acquiring Fund. The management of the Acquired Funds intends to dissolve the Acquired Funds following the Reorganization.

Reasons for the Reorganization

In determining whether to approve the Reorganization and, in the case of the Acquired Funds, whether to recommend approval of the Reorganization to shareholders, the Boards of the Capitol Funds and the Trust (including the independent Board members) inquired into a

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number of matters and considered the following factors, among others: (i) the terms and conditions of the Reorganization and whether it would result in a dilution of the existing shareholders' interests; (ii) the comparability of each Acquired Fund's investment objective, strategy and policies with those of its corresponding Acquiring Fund, as well as the views of the investment advisers to the Acquired Funds and the Acquiring Funds that any differences between the investment policies and restrictions of each Acquired Fund and its corresponding Acquiring Fund should not appreciably increase investment risks; (iii) the experience and resources of NationsBank with respect to providing investment management services, and the similarity between the Acquired Funds' and the Acquiring Funds' respective distribution, administrative, transfer agency, shareholder service and custody arrangements; (iv) the projected expense ratios, and information regarding fees and expenses of the Acquired Funds, the Acquiring Funds and other similar funds; (v) the absence of federal tax consequences to the Funds or their shareholders resulting from the Reorganization; and (vi) other factors deemed relevant.

In reaching the decision to approve the Reorganization, the respective Board of each of the Capitol Funds and the Trust concluded that the Reorganization is in the best interests of each Fund's shareholders and would not result in the dilution of the shareholders' interests. Each Board's conclusion was based on a number of factors, including the following: (1) the Reorganization should eliminate any duplication of services that currently exists as a result of the Funds' separate operations; (2) combining the assets of the Acquired Funds with the assets of the Acquiring Funds should lead to reduced expenses, on a per-shares basis, by allowing fixed and relatively fixed costs to be spread over a larger asset base;^{2/} and (3) higher asset levels should enable the Acquiring Funds to purchase larger individual portfolio investments or other quantities

^{2/} Because the Nations Special Equity Fund is a newly organized fund which will have minimal assets at the time of the Reorganization, combining the assets of this fund with the Special Equity Portfolio will not immediately result in higher asset levels. However, it is anticipated that higher asset levels will result over time because the Nations Special Equity Fund is part of a broader overall family of portfolios and because its asset-based fee levels are lower in the aggregate than those of the Special Equity Portfolio.

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that may result in reduced transaction costs and provide the opportunity for greater portfolio diversity.

LEGAL ANALYSIS

Section 17(a) of the 1940 Act generally prohibits an affiliated person, or an affiliated person of an affiliated person, of a registered investment company from knowingly purchasing securities or other property from, or selling securities or other property to, the investment company or a company controlled by it. This section was included in the 1940 Act largely to protect shareholders by prohibiting a purchase or sale transaction when a party to the transaction has both the ability and the pecuniary incentive to influence the actions of the investment company. See Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess., 17 (1940). Where two investment companies have in common an investment adviser, directors, and/or officers, the companies may be considered to be under common control and, therefore, affiliated persons of each other; thus, their merging, consolidating or combining could be considered to be a prohibited purchase or sale under Section 17(a) of the 1940 Act. See Investment Company Act Release No. 10886 (Oct. 2, 1979) (proposing rule 17a-8 ("Proposing Release")) at n. 5.

Rule 17a-8 under the 1940 Act excepts from the prohibitions of Section 17(a) mergers or consolidations of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions are satisfied. Rule 17a-8 is based on the rationale that "when a merger involves investment companies which are affiliated persons exclusively by virtue of sharing common officers, directors and/or an investment adviser, no person who is responsible for evaluating and approving the terms of the transaction on behalf of the various participating investment companies would have a significant financial interest in improperly influencing these terms." Id., at text accompanying note 9.

Because NationsBank and ASBCM are not a single entity, but instead are affiliates, the express terms of the exemption provided by Rule 17a-8 might appear to be inapplicable to the Reorganization. Nevertheless, because ASBCM and NationsBank are under common control, the condition of Rule 17a-8 that reorganizing funds have a

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"common" investment adviser should be deemed to have been met. In this regard, the application of Rule 17a-8 to a situation involving the merger of funds having investment advisers under common control would appear to be wholly consistent with the policy of Rule 17a-8, as expressed by the SEC in the Proposing Release, that "no person who is responsible for evaluating and approving the terms of the transaction on behalf of the various participating investment companies would have a significant financial interest in improperly influencing these terms." See Investment Company Act Release No. 10886 (Oct. 2, 1979), at text accompanying note 9.

The Reorganization complies with the other conditions for reliance on Rule 17a-8 because the Board of Trustees of the Capitol Funds and the Board of Trustees of the Trust, including a majority of the members of each Board who are not interested persons of any Fund, have determined that the Reorganization would be in the best interests of the Acquired Funds' shareholders and the Acquiring Funds' shareholders, respectively, and that no dilution of shareholders' financial interests would result from the Reorganization. In addition, these findings and the bases therefor have been or will be recorded fully in the minutes of each respective Fund. Finally, if, as expected, the Capitol Funds have elected new Trustees (identical to the Trust's current group of Trustees), who have, in turn, elected new officers (identical to the Trust's current group of officers) prior to the date of the Reorganization, the Acquired Funds and the Acquiring Funds would have common directors and officers, thereby satisfying the two other conditions for reliance on Rule 17a-8.^{3/}

As noted above, the Staff has recently issued a favorable no-action response under Section 17(a) of the 1940 Act in circumstances virtually identical to those described in this letter. Specifically, in Smith Barney Shearson Special Equities Fund; Smith Barney Shearson Small Capitalization Fund (pub. avail. October 4, 1993), the Staff stated that it would not recommend enforcement action under

^{3/} If the new Trustees and officers are not in place prior to such time, the other two conditions for reliance on Rule 17a-8 would be irrelevant because the affiliation between the Acquired Funds and Acquiring Funds would not have been caused by the existence of common directors or officers.

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Section 17(a) with respect to a reorganization between two funds where the advisers to the funds were under common control and the funds otherwise complied with the provisions of Rule 17a-8. This position is also consistent with positions taken by the Staff previously in similar circumstances. See, e.g., Shearson Lehman Hutton Group of Funds (pub. avail. October 7, 1988) (Staff stated that it would not recommend enforcement action under Section 17(a) of the 1940 Act with respect to a reorganization between two funds where the investment adviser of one fund was the sub-investment adviser of the other fund, and the investment advisers of both funds were under common control); see also, MSF Family of Funds; MSF Lifetime Investment Program (pub. avail. May 24, 1993) (Staff stated that it would not recommend enforcement action under Section 17(a) of the 1940 Act with respect to a reorganization between two funds where the investment adviser of one fund was a wholly-owned subsidiary of the investment adviser of other fund).

CONCLUSION

In view of the foregoing, we believe that the Reorganization would be fully consistent with both the terms of and the policies underlying Rule 17a-8. Accordingly, we respectfully request your assurance that the Staff will not recommend that the SEC institute enforcement proceedings if the Funds proceed to consummate the Reorganization under the circumstances described above.

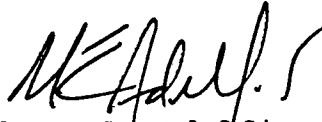
A registration statement on Form N-14 (File No. 33-74334) relating to the Reorganization was filed on January 24, 1994 and is expected to become effective on or about February 23, 1994. Accordingly, we would very much appreciate your earliest consideration of this matter.

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Pursuant to Release No. 33-6269 (Dec. 5, 1980), we enclose the original and seven copies of this letter. If further clarification or amplification of any of the facts or issues discussed in this letter is required, please do not hesitate to call Robert Kurucza, at (202) 887-1515, or me, at the number indicated above.

Very truly yours,



Marco E. Adelfio

cc: Robert M. Kurucza
Mark Williamson
Steven W. Duff
Theodore O. Johnson
Robert M. Kurucza