

**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE
COMMISSION**

Admin. Proc. File No. 3-11818 :

In the Matter of :

**BANC OF AMERICA CAPITAL
MANAGEMENT, LLC, BACAP
DISTRIBUTORS, LLC, AND BANC
OF AMERICA SECURITIES, LLC,** :

Respondents.

PROPOSED PLAN OF DISTRIBUTION

I. Background

1.1. On February 9, 2005 the Securities and Exchange Commission ("SEC" or "Commission") entered an order in this proceeding (the "Order"). Among other things, the Order recited that between July 2000 and July 2003: (i) Banc of America Capital Management, LLC ("BACAP") and BACAP Distributors, LLC ("BACAP Distributors") "allowed certain market timing clients to engage in short-term or excessive trading and never disclosed this fact to other investors"; (ii) BACAP and BACAP Distributors "entered into arrangements with two entities, allowing them to engage in frequent short-term trading in at least 13 Nations Funds mutual funds ... despite knowing that such trading could be detrimental to Nations Funds' shareholders"; and (iii) Banc of America Securities, LLC ("BAS") "facilitated market timing and late trading by some introducing broker dealers and a hedge fund at the expense of shareholders of Nations Funds and other mutual fund families." (Order ¶¶1-2, 7). As a result, the Commission found that the Respondents willfully violated the antifraud provisions of the securities laws. (Order ¶¶116-132). The Order established a Fair Fund consisting of \$250,000,000 in disgorgement and \$125,000,000 in civil money penalties, for a total fund of \$375,000,000. That Order required an Independent Distribution Consultant ("IDC") to develop a plan ("Distribution Plan" or "Plan") for the distribution of the Fair Fund, "according to a methodology developed by the IDC

in consultation with Respondents and the independent trustees of the Nations Funds mutual funds and acceptable to the staff of the Commission.” (Order ¶139(a)).¹ Shortly after the entry of the Order, Professor Lawrence A. Hamermesh, Ruby R. Vale Professor of Corporate and Business Law at Widener University School of Law in Wilmington, Delaware, was appointed as the IDC in this proceeding.² On February 25, 2005, Respondents deposited the amount of the Fair Fund (\$375,000,000) at the U.S. Treasury for investment in government obligations. Other than interest from these investments, it is not anticipated that the Fair Fund will receive additional funds. If such funds are received before distributions under this Plan have begun, such funds will be distributed by means of proportionally increasing distributions otherwise provided for in this Plan, or by such other means approved by the IDC in consultation with the Respondents, the trustees of the Nations Funds, and the Commission or its staff. After distributions under this Plan have begun, the Fund will not accept additional funds for distribution.

1.2. This Distribution Plan is the result of extensive consultation. Among other efforts, Professor Hamermesh:

- Met with Deloitte & Touche to review the analyses it prepared for the Independent Trustees of the Nations Funds to assist with their evaluation of the effects of market timing and late trading activity in the Nations Funds.
- Met and spoke with Respondents’ economic adviser Lexecon, which has, at Professor Hamermesh’s request and under his guidance, managed the trading data and developed and executed the numerical and financial analyses of that data.
- Retained Professor Erik R. Sirri, professor of finance at Babson College and former Chief Economist of the Commission, and consulted him, prior to April 30, 2006, on issues of financial and economic analysis associated with the development of the Distribution Plan with respect to distributions to Nations Funds shareholders.³

¹ The plan of distribution of the Fair Fund is to provide for the distribution of the entire \$375 million fund, including both the disgorgement and penalty portions of the Fund. Order ¶139(a).

² Professor Hamermesh also serves as IDC for the fair fund established under the February 9, 2005 order in *In the Matter of Columbia Management Advisors, Inc. and Columbia Funds Distributor, Inc.* (the “Columbia Funds Proceeding”). That proceeding involves a separate fair fund from the fund established with respect to the Nations Funds. As prescribed in the Order in this proceeding involving the Nations Funds (¶139), Respondents have agreed to pay all compensation of and expenses incurred by Professor Hamermesh as IDC for the Nations Funds Fair Fund.

³ Erik Sirri is now Director of the Division of Market Regulation at the Commission. His consultation with Professor Hamermesh occurred during the period from around March 2005 through March 2006.

