

Via E-mail



Date: August 13, 2007

Nancy M. Morris, Secretary
Office of the Secretary
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Admin. Proc. File No. 3-11818

To whom it may concern:

We believe that the Distribution Plan ("Plan") for distribution of the Fair Fund established In the Matter of: Banc of America Capital Management, LLC, BACAP Distributors, LLC, and Banc of America Securities, LLC., has certain attributes which recognize the efforts required by financial intermediaries that maintain Omnibus Accounts (hereinafter collectively referred to as "Account Carrying Firms") in order to comply with and facilitate the Plan. These attributes include the recognition of the diminishing value of distributions below a de minimis amount when compared against the cost of making such distributions and allowing Account Carrying Firms flexibility with regarding the options for effecting distributions to beneficial owners including the option to credit distributions to beneficial owners of accounts, rather than mail checks. However, we believe several aspects of this Plan should be revisited, including; distribution to nonsettling funds, the provision for indemnification of Account Carrying Firms involved in the distribution of the Fair Fund, and the inclusion of provisions for certain protections related to the delivery of beneficial owners data by Account Carrying Firms. Certain capitalized terms used but not defined herein have the meanings ascribed to them in the Plan.

Distribution to Nonsettling Funds

Paragraph 6.8 states that the IDC, subject to the concurrence of the Commission's staff, will retain the discretion to choose the appropriate disposition of monies in the case of a Nonsettling Fund. The Nonsettling Fund will be given three options; refuse the distribution, allocation of distribution to portfolio assets, or apply, at its expense, any distribution technique that is consistent with its fiduciary, contractual or other legal obligation. We feel that the ambiguity regarding the distribution to Nonsettling Funds could lead to payments made to Account Carrying Firms and/or other Broker/Dealers who do not possess the capabilities to perform the data analysis required or an appropriate allocation formula or algorithm (as outline in other distribution plans), nor would it be commercially reasonable for them to develop or purchase such services needed to identify and distribute funds to beneficial owners. We suggest that the plan be modified to reflect more specific details and clearer direction regarding the distribution to nonettling funds and ultimate distribution to beneficial owners.

Indemnity:

Paragraph 6.21 (b) states that the limited liability/standard of care of the IDC and Fund Administrator and each of their designees, agents and assistants is merely an expression of the current state of the law. We believe that in certain circumstances Account Carrying Firms are acting as assistants to each of the IDC and/or Fund Administrator, particularly when they accept the responsibility of facilitating distributions from the Fair Funds. However, because it would appear that the current state of law is such that it has not been applied to facts similar to the current situation to reach the issue of the standard of care that would apply to Account Carrying Firms, we respectfully request that the Plan be revised to provide for indemnification of the Account Carrying Firms pursuant to Rule 1101(b)(6) [17 CFR 201.1101(b)(6)] of the Commission's Rules of Practice and Investigations. In particular, we believe that the Plan should include procedures for the indemnification of the Account Carrying Firms by the Respondent except in the case of an Account Carrying Firm's gross negligence, bad faith or willful misconduct, reckless disregard of duty, or reckless failure to comply with the terms of the Plan.

Data Privacy:

The Plan may require Account Carrying Firms to transmit a substantial amount of client sensitive information, including name, address and social security number, to non-affiliated entities whose data control procedures may not be comprehensive. The safeguarding of client data is mandated by Federal law and regulation, and many state laws govern financial institutions' handling of such client data. The transmission of client data exposes Account Carrying Firms to significant regulatory and reputational risks if such data is disclosed or distributed in an unauthorized manner or otherwise mishandled. We respectfully request that the Plan be revised to provide for security and confidentiality obligations and indemnification of all Account Carrying Firms for any misuse or loss of client data which may occur as a result of the delivery of this data.

The Commission has pointed out with respect to other proposed plans of distribution that those plans require the client data to be maintained confidentially by the Fund Administrator. It has come to our attention that Fund Administrators intend to transmit client data to numerous other service providers engaged by them, including data analysis firms, print-mail vendors and others, pursuant to written agreements with standard commercial terms, including confidentiality and indemnity provisions. Accordingly, it would seem only prudent for the Plan to specifically require the Fund Administrator to extract confidentiality obligations from their service providers. Moreover, given the fact that Fund Administrators, in some cases the Respondents themselves (as here) and in other cases paid by the Respondents but not obligated to the Respondent or an agent of the Respondent, have no obligation or commercial incentive to provide any indemnity to Account Carrying Firms and because of the state of the law enjoy limited liability as specifically recognized by the Commission in the Plan, we believe the Commission should require the Plan to contain procedures requiring that Fund Administrators provide indemnities to Account Carrying Firms in applicable written agreements related to the provision of client data with the same standard of care referred to above. Again, we believe that the Commission's Rule 1101(b)(6) would allow for an indemnity to be included in the Plan.

Very truly yours,
William Bridy
Managing Director
Merrill Lynch & Co., Inc.