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]

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[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.

1.3. The Fair Fund established by the Order differs from the fair funds established with respect to other mutual fund families that have settled with the Commission. Like the other settlement funds, the Fair Fund in this proceeding addresses trading in the funds for which the Respondents served as adviser and distributor (the "Nations Funds"); it also addresses, however, trading in many other fund families, where such trading was found to have been facilitated by respondent BAS, a registered broker-dealer.

1.4. The preponderance of this trading through BAS was in mutual fund families that have reached their own settlements with the Commission with respect to market timing and/or late trading allegations and thus have established their own fair funds. Mutual funds in such families, which include, for example, the mutual funds advised by Alliance Capital Management, L.P. (the "Alliance Funds"), Invesco Funds Group, Inc. (the "Invesco Funds"), AIM Advisors, Inc. (the "AIM Funds"), Massachusetts Financial Services Co. (the "MFS Funds") and Janus Capital Management LLC (the "Janus Funds"), are referred to in this Distribution Plan as the "Settling Funds." Some of the trading through BAS was also in fund families that have not entered into settlements with the Commission and thus have not established their own fair funds. Mutual funds in such fund families are referred to in this Distribution Plan as "Nonsettling Funds." The Settling Funds and the Nonsettling Funds are referred to collectively as the "Unaffiliated Funds."

II. Distribution Methodology—In General

2.1. The methodology for the distribution of the money in the Fair Fund involves two bases for allocation. First, it is designed to provide compensation for dilution and related harm to contemporaneous long term shareholders arising from the trading identified in the Order in the various funds identified in Tables 2 through 4. The term "contemporaneous," as used in this Distribution Plan, refers to those persons or entities who were fund shareholders at the time of the trading identified in the Order, regardless of whether such persons continued to hold fund shares thereafter. Although the duration of such trading varied from fund to fund, in general the trading in question occurred during the period from 2000 through mid-2003.

2.2. The trading at issue is attributable to specified traders: Canary Capital Partners, LLC and related entities ("Canary"), TranSierra Capital, LLC ("TranSierra"), and certain introducing brokers with significant mutual fund market timing clients (the "Introducing Brokers") who traded through BAS. *See* Order ¶¶29-54; 82-92.

2.3. In determining dilution and related harm, the effects of all of the trading by these firms have been assessed; no such trading has been excluded.

2.4. The methodology for determining dilution and related harm from such trading attempts to estimate, on a daily basis over the course of that trading, the extent to which a fund's net asset value ("NAV") would have been greater or less than the actual NAV had that trading not occurred. That difference (where positive) is the estimate of the dilution and related harm to the contemporaneous holders of the fund on each of the days on which such trading occurred. The sum of those daily increments (both positive and negative) represents the aggregate harm to each fund's shareholders during the period in which timing trading occurred.[4]

2.5. The second basis for allocating the Fair Fund in this proceeding involves return, to contemporaneous long term holders of Nations Funds in which the trading identified in the Order occurred, of advisory and administrative fees paid to BACAP and BACAP Distributors by those funds during the periods in which that trading occurred. Order ¶¶62-63. BACAP has acted as a fiduciary for the Nations Funds. Order ¶5. Where an advisor grants timing capacity in the funds that it advises, such a return of fees can be an appropriate use of the settlement proceeds in the fair funds. *See, e.g., In the Matter of Janus Capital Management LLC.*, File No. 3-11590, *Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 203(e) and 203(k) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order*, Investment Advisers Act Release No. IA-2277 (Aug. 18, 2004), ¶33.

2.6. The aggregate results of the application of the foregoing principles to both the Nations Funds and the Unaffiliated Funds are summarized in Table 1. The methods of calculation of each eligible contemporaneous shareholder's share of the Fair Fund are intended to result in a payment from the Fair Fund to each such shareholder that restores the impaired value of such shareholder's investment in a particular fund. The methods of calculation are intended to fairly estimate the impaired value that each investor has suffered and make a payment in that amount. In the view of the IDC, these methods of calculation are fair and reasonable in the context of this case, and result in a fair and reasonable allocation of the Fair Fund.

III. Estimation of Dilution and Related Harm to Contemporaneous Shareholders

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[4] There may be instances of accounts for which the effect of timer trading was beneficial (and for which harm-based compensation would be inappropriate). Because of this possibility, it may also be the case that the other account holders' share of estimated harm would in the aggregate exceed the aggregate amount estimated for the fund as a whole. For the Nations Funds, at least, it appears that such instances are both unusual and small in scope, and are not likely to have a substantial effect on the ultimate distribution.

A. *Estimating Dilution*

3.1. The starting point in estimating the dilution arising from timer trading is a determination of the net gains realized through that trading. Each timer's purchases and sales are formed into buy-sell pairs using a last-in, first out ("LIFO") methodology.[5]

3.2. For any given mutual fund, if the funds a timer uses to purchase fund shares ("timer funds") were never invested in risky portfolio assets by the portfolio manager, timer net gains would accurately measure dilution to contemporaneous shareholders. To the extent, however, that timer funds were invested in risky assets, dilution may diverge from timer net gains. Accordingly, it is necessary to estimate the extent to which portfolio managers invested in (and sold) portfolio assets in response to timer investment (and sales).[6]

3.3. For each buy-sell pair, the mutual fund's incremental investment in risky assets (*i.e.*, assets with unpredictable future returns) is estimated by assuming that a constant fraction of the timer funds is invested in risky assets each day until either the timer funds are invested or the timer's shares are redeemed. When the timer's shares are redeemed, the portfolio manager is assumed to sell risky assets at the same rate to fund the redemption.[7]

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[5] Because of the focus on the actual dilutive impact on fund shareholders, aggregate timer gains and losses in each individual fund are netted through the period in which timer trading occurred.

[6] *See* Greene, Jason T. and Ciccotello, Conrad S., "Mutual Fund Dilution from Market Timing Trades" (September 27, 2004).

[7] To implement this approach it was necessary to estimate the constant fraction of timer funds that are invested each day by the portfolio manager (i.e. the investment rate). To do this estimation a regression analysis was used. Regression analysis is a statistical procedure commonly used by statisticians and economists to find the relationship between two variables. Here, regression analysis was used to find the relationship between the flow of timer money and the amount of risky assets purchased or sold by the portfolio manager. Since this relationship may vary by fund, whenever possible a separate regression was performed for each fund. In cases where it was not possible to perform a separate regression (due to lack of information specific to a particular fund), a weighted average of the estimates of funds with available data was used.

A regression analysis can be set up (or "specified") in many different ways. For example, one might look at the relationship between investment today and flow today. Alternatively, one might look at the relationship between investment today and flow today and yesterday (under the assumption that it takes time to invest money so yesterday's flow also influences today's investment). Many different specifications were tried and the specification that produced the highest investment rate was used.

The regression analysis used data on flows of money into the Nations Funds and the portfolio manager investments for the Nations Funds (this data was also used to calculate transaction costs). To ensure typical portfolio manager behavior was being estimated, extreme observations (also called outliers) were removed from this data prior to running the regression analysis. In

3.4. To illustrate, take the case where a timer buys 10 fund shares for $100 on day 1, sells those 10 shares on day 4 for $110, and the estimated daily average investment rate is 10 percent per day. The model assumes the portfolio manager invests $10 per day in risky assets on days 2 through 4. Consequently, before the redemption on day 4, the fund holds $30 of the timer funds in risky assets and $70 in cash; and immediately after the redemption on day 4, the fund holds $30 of the timer funds in risky assets and has a cash deficit of $40 (= $70 - $110). On days 5 through 14, the portfolio manager is assumed to sell $40 of risky assets at the rate of $4 per day to offset the cash deficit and return the fund to its previous cash level.

3.5. To estimate the effect of the incremental investment in risky assets, the fund's profits and losses on the incremental investment are estimated for each day, and the total effect is the sum of the daily profits and losses. The effect of the incremental investment each day is estimated as the fund's return that day multiplied by the incremental investment in risky assets that day. For example, continuing the previous illustration, the fund's investment in risky assets is $20 higher on day 3 than it would have been absent the timing activity. If the fund's return on day 3 was 1 percent, then the investment of the timer funds benefited the fund's shareholders that day by $0.20 (= $20 * .01); and if the fund's return on day 3 was -2 percent, then the timing activity harmed the fund's shareholders that day by $0.40 (= $20 * .02).

3.6. Last, the effects of all incremental investments are summed and added to the total net profits made by the timers ($10 in this example) to arrive at an estimate of the total dilution harm to shareholders from the timing activity.[8]

B. Estimating Transaction Costs Related to Timer Trading

3.7. The Order states that timer trading may have adversely affected the funds' NAV's in an additional way, aside from dilution. (Order ¶19). To the extent that timer investment and disinvestment resulted in excess portfolio purchases and sales, the funds may have incurred transaction costs that reduced their NAV's. Such transaction costs can be estimated by comparing estimated transaction costs due to the funds' actual inflows and outflows to the estimated transaction costs that would have occurred had there been no timing activity. The difference between the two estimates of transaction costs is taken as the incremental transaction cost attributable to the timing activity.

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addition, it was assumed that at least 1% of timer funds was invested each day even if the regression suggested a lower amount.

[8] Timer trading involved in this proceeding largely involved very short holding periods, often just one day. Therefore, the effect of investment in and disinvestment of risky portfolio assets due to flows of timer funds is in this case quite small. In the aggregate, dilution using this cash investment model differs from timer net gains by about 2%.

3.8. For Nations Funds for which the pertinent data are available, incremental transactions in response to a given inflow or outflow are modeled by assuming that the portfolio manager invests (or disinvests) in risky assets at the estimated daily average investment rate until the flow is completely invested (or disinvested). For each inflow or outflow, this produces a series of daily portfolio manager investments or disinvestments. To get the net portfolio manager investment or disinvestment on any given day, all portfolio manager investments and disinvestments on that day due to all inflows and outflows are summed. In other words, where there is investment due to previous inflows and disinvestment due to previous outflows, the investments and disinvestments are netted against each other for that day. Investments and disinvestments are not netted against each other across days.

3.9. Transaction costs are estimated from the daily series of net investments by multiplying the net investment or disinvestment on each day by the transaction cost per dollar of investment or disinvestment. Total transaction costs are the sum of the daily transaction costs.

3.10. Transaction costs vary by fund type and time period. Funds are classified into five fund groups based on their Morningstar classification: U.S. Large-Cap, U.S. Small-Cap, International, Municipal Bond and Other Bond. (When a fund's category cannot be identified, the U.S. Small-Cap classification is used.) Transaction costs (expressed in basis points) for U.S Large-Cap, U.S. Small-Cap and International funds are equity trading costs calculated by Plexus Group, Inc. using Plexus Asset Manager client data, and are the sum of "commissions" and "impact costs." Bond fund transaction costs (expressed in basis points) are average trading costs for institutional corporate bonds calculated in Schultz, Paul, 2001, "Corporate Bond Trading Costs: A Peek Behind the Curtain," *The Journal of Finance* 56, 677–698 at 677.

C. *Interest*

3.11. In order to make compensation on an equivalent basis for losses spread over time, and to provide appropriate compensation to long-term fund shareholders, this Distribution Plan contemplates an adjustment for the time value of the estimated harms. The methodology incorporated in this Distribution Plan therefore builds in a component of interest on estimates of harm, accruing from the time of dilution harm through the date of payment into the Fair Fund. The rate of interest was selected to approximate Bank of America's cost of unsecured borrowing,[9] and is estimated by reference to the Merrill Lynch index of 1-3 year A-rated corporate debt over the course of the period in which timer trading occurred.

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[9] *See* Knoll, Michael S. and Colon, Jeffrey M. Colon Miguel, "The Calculation of Prejudgment Interest" (May 31, 2005).

IV. Allocation to Contemporaneous Nations Funds Shareholders

4.1. Applying the foregoing analysis to timer trading in the Nations Funds results in an estimated allocation to contemporaneous holders of those funds of approximately $19.0 million in respect of dilution and $0.5 million in respect of transaction costs (as more fully set forth in Table 2).[10] In addition to those amounts, the distribution to such holders includes net advisory and administration fees earned by BACAP from the affected funds during the periods in which timer trading in those funds occurred. That additional amount is approximately $63.4 million, which will be distributed among the Nations Funds contemporaneous shareholders in proportion to their holdings during the periods affected by timer trading. Finally, the inclusion of interest on these amounts results in a total distribution to Nations Funds shareholders of approximately $89.7 million.[11]

V. Allocation to Holders in Unaffiliated Fund Families

5.1. The same methodology described earlier for estimating dilution and related harm is used to arrive at an estimate of such harm to contemporaneous shareholders of the Unaffiliated Funds. To arrive at this estimate requires the adoption of assumptions about portfolio manager investment and disinvestment in response to timer fund flows, and the estimated response derived from Nations Funds portfolio management is used in the estimate of dilution for the Unaffiliated Funds.[12]

[10] For Nations Funds where data on total flows are not available, transaction costs are estimated using the weighted average ratio of transaction costs to timer buys and sells for the Nations Funds for which data are available.

[11] Due to the relatively small amounts involved, and applying the criteria described in paragraph 6.8 of this Distribution Plan, distributions relating to the Nations Bond Fund, the Nations Government Securities Fund and the Nations Short-Term Income Fund will be paid directly to the funds themselves, rather than to contemporaneous shareholders. Application of the criteria described in paragraph 6.8 of this Distribution Plan may also result in payments to one or more other funds rather than contemporaneous shareholders.

[12] The aggregate dilution calculation is not particularly sensitive to the assumptions concerning daily average investment rates. Even if that rate were doubled, the aggregate dilution calculation remains essentially unchanged.

5.2. Estimating transaction costs for the Unaffiliated Funds is affected by the fact that the IDC did not have access to data for (i) inflows and outflows in those funds or (ii) investment and disinvestments by portfolio managers for those funds. Moreover, even if those data had been available to the IDC, given the number of funds involved it would be impractical to generate transaction cost models for each of the numerous affected funds.

5.3. This Distribution Plan therefore applies a measure of general application in estimating transaction costs in the Unaffiliated Funds. That measure flows from two sources for which the IDC had pertinent data. The first is the transaction cost model developed for the Nations Funds, where transaction costs were approximately 2.4% of dilution. The second source is a similar analysis of transaction costs in the Columbia Funds (where timer trading was partly known to the funds' advisers, but to a significant extent was not). In the latter situation, transaction costs ranged from approximately 6% to 10% of dilution, depending upon assumptions used about daily average investment rates. Taking these data points into consideration, and noting the ratios of transaction costs to dilution calculated by other IDCs, this Distribution Plan measures transaction costs in Unaffiliated Funds at 10% of estimated dilution.

5.4. For Nonsettling Funds, the result of this approach is a total distribution of $42.2 million, to compensate for harm arising from dilution and related transaction costs, plus interest. (*See* Table 4).

5.5. The treatment of Settling Funds is somewhat different, since their contemporaneous shareholders will likely also be compensated through the fair funds established by their respective advisers. Much of the timer trading through BAS covered by the Order in this proceeding is also covered by the orders in those other proceedings. For example, Alliance, which has a $250 million open ended fair fund, was found in the Commission order in that matter to have given Canary a capacity agreement. *In re Alliance Capital Management, L.P.*, Investment Advisers Act Release No. IA-2205 (Dec. 18, 2003), ¶¶46-52. Canary traded in the Alliance funds through BAS. Likewise, MFS, which has a $225 million fair fund, was found in the Commission order in that matter to have allowed frequent trading in eleven funds. *In re Massachusetts Financial Services Co., et al.*, Investment Advisers Act Release No. IA-2213 (Feb. 5, 2004), ¶9. Almost all of the trading by Canary and the Introducing Brokers through BAS into MFS was in those eleven funds.

5.6. The methodology contemplated in this Distribution Plan would treat allocations to Settling Funds holders in precisely the same way as distributions to Nonsettling Fund holders, as described above. In other words, the allocation contemplated under this Plan allocates 100% of estimated dilution and transaction costs plus interest arising from trading in the Settling Funds identified in the Order. The total of such allocations is approximately $213.1 million (see Table 3).

VI. Administration of the Distribution

A. Allocating the Distributions Among Contemporaneous Shareholders.

6.1. Application of the methodology described above will permit the calculation of a distribution amount, by date, for each of the funds affected by the identified timer trading. In turn, an effort will be made to identify each holder of shares in one or more of those funds during the period affected by timer trading, and to determine that holder's appropriate allocation of the Fair Fund. There are a number of difficulties, however, in simply directing payment of those amounts to those holders. The balance of this Distribution Plan addresses these and other aspects of implementation and administration of the Plan.

6.2. This Fair Fund is not being distributed according to a claims-made process, so the procedures for providing notice and for making and approving claims are not applicable.

6.3. Under the Distribution Plan, there will be no distribution to any of the persons (Canary, TranSierra, or the clients of the Introducing Brokers) who engaged in the trading covered by the Order. The aggregate of amounts excluded on this basis in each fund will be added to the total available for distribution, increasing proportionally the distribution in respect of that fund.

6.4. Returns on the Fair Fund that have accrued since its establishment in February 2005 through the date of approval of the Distribution Plan will be allocated in proportion to the allocation otherwise contemplated under the Plan. As of May 31, 2007 net interest returns that have accrued to the Fair Fund were $26.1 million. In the situation where the distribution to contemporaneous holders of a Settling Fund is to be coordinated with the distribution to be made by the other IDC, the accrual will be cut off on the date on which the plan of distribution for that fund is approved by the Commission, and any subsequent accrual on the distributable amount will be allocated to the holdback amount described in paragraph 6.13 below.

6.5. In any given fund there will be holders identified for whom the estimated distribution is so small that it would be impractical and ineffective to send a check. In general, no distribution of less than $10 will be made. Three steps will be taken, however, to minimize the number of such *de minimis* situations, and maximize the number of individual holders who will be receiving a distribution: (i) an effort will be made to identify, by common social security number or other administratively feasible mechanism, instances in which distribution amounts attributable to an individual shareholder in multiple affected funds can be aggregated into a single amount in excess of $10; (ii) an effort will be made to combine distributions with those by IDCs for other Settling Funds (see paragraph 6.10 below); and (iii) other accounts for which the distribution would amount to less than $10 will be aggregated, with the resulting sum distributed in $10 units to the holders of those accounts, in descending order of attributable dilution harm.

B. Distributions to Omnibus Accounts, Nonsettling Funds, Network Level Accounts, and Retirement Accounts.

6.6. (a) For distributions with respect to omnibus accounts (but not for ordinary trusts, pension plans and 529 plans), it will be necessary to evaluate the cost associated with commercially reasonable best efforts to identify and distribute funds to contemporaneous beneficial owners.

(b) If the aggregate amount of the distribution attributable to a particular omnibus account is $1,000 or more, the account holder will be contacted in order to determine an appropriate method for distributing the funds to contemporaneous beneficial owners holding through the omnibus account. Unless the account holder agrees to distribute the funds to beneficial owners at its own expense, in accordance with the specifications supplied by or on behalf of the IDC, the account holder will be asked to estimate the costs of commercially reasonable efforts to identify and distribute funds to the beneficial owners.

(c) If the aggregate amount of the distribution with respect to an omnibus account exceeds such costs, the omnibus account holder will be asked to elect, within 45 days after notice of the proposed distribution, whether to (i) supply to the IDC the sub-account information necessary for the IDC to distribute funds to the beneficial owners, (ii) supply such information to the IDC, who will calculate the amount of distributions to beneficial owners so that the account holder can make such distributions itself, or (iii) distribute the funds itself, using specifications supplied by or on behalf of the IDC as necessary to determine the appropriate allocation of the funds among contemporaneous beneficial owners holding through the omnibus account. The omnibus account holder may elect more than one of these options and apply them differently in respect of different categories of beneficial owners (such as open accounts and closed accounts). In any of these three cases, Respondents will reimburse the omnibus account holder for the reasonable out of pocket costs of gathering and supplying the necessary sub-account information. If the omnibus account makes no election within the time specified in this subparagraph, it will be deemed to have elected to proceed under subparagraph (i) of this paragraph. If and to the extent that the omnibus account holder elects to proceed under subparagraph (c)(i) or (c)(ii), the holder shall submit the specified information to the IDC within 90 days after notice of the proposed distribution.

(d) If the omnibus account holder elects to proceed under subparagraph (c)(ii) or (c)(iii), the account holder may either send a check to the beneficial owner or, if the beneficial owner has a current sub-account, credit that sub-account. Except where the omnibus account holder credits current sub-accounts in lieu of sending checks, it will be required to develop and execute a program similar to the one described in paragraph 7.5(ii) for dealing with individual distributions of less than $10.

(e) If the aggregate amount of the distribution attributable to a particular omnibus account is less than either (a) $1,000 or (b) the costs of commercially reasonable efforts to identify and distribute funds to contemporaneous beneficial owners, the omnibus account holder will be given the choice of refusing the distribution or applying any distribution technique, at its own expense, that the account holder, in the exercise of its reasonable discretion, deems to be consistent with its fiduciary, contractual or other legal obligations. If the omnibus account holder refuses the distribution, the otherwise distributable amount will be added to the holdback described in paragraph 6.13.

(f) For purposes of this paragraph, "commercially reasonable best efforts" to identify and distribute funds to beneficial owners in omnibus accounts involve assembly, in appropriate format, of (i) names, addresses and other necessary identifying information for beneficial owners, and (ii) daily records or opening account data and subsequent transaction data (or, if such data are either unavailable or available only at a cost that would otherwise result in the application of the previous subsection, the most extensive records (monthly, quarterly or yearly) that are available) necessary to determine each such owner's fund share balance during the period to which the distribution in question relates. The foregoing information provided by omnibus account holders shall be maintained confidentially and held exclusively by Rust Consulting, Inc. ("Rust," or the "Fund Administrator" appointed pursuant to paragraph 6.14 of this Distribution Plan), and Respondents shall not have access to that information. Respondents and the Fund Administrator shall maintain records of efforts made to obtain the cooperation of omnibus account holders, and of the responses to these efforts.

(g) If the distribution to an omnibus account holder is less than the payments to beneficial owners calculated in accordance with the specifications supplied by the IDC (due to netting at the omnibus account level), the amounts to be distributed to beneficial owners will be proportionally reduced.

(h) Distributions with respect to omnibus accounts shall be completed within 180 days after receipt by the omnibus account holder of funds from this Plan (or, within 180 days after receipt by the IDC of the information specified in subparagraph (c)(i), if applicable), unless the account holder demonstrates to the satisfaction of the IDC that good cause exists to extend that deadline. Omnibus account holders seeking to alter the procedures specified in this paragraph 6.6 may apply to the Fund Administrator for permission for such alteration within 90 days of receiving notice of the proposed distribution from the Fund Administrator, and the IDC will rule on such applications within 60 days after their submission to the Fund Administrator. The IDC may grant such applications if the requested alteration would not materially affect the distribution of funds to the contemporaneous beneficial owners. Paragraph 6.12 of this Plan shall apply to distributions made by omnibus account holders to beneficial owners, and the amount of undeliverable or unclaimed payments shall be returned to the Fund Administrator promptly after conclusion of the six month period specified in paragraph 6.12.

6.7. (a) *Retirement Accounts.* Plan administrators of retirement accounts shall be required to distribute the monies received under this Plan in accordance with their fiduciary and contractual obligations, and consistent with guidance issued by the Department of Labor, if any. "Retirement accounts" as used in the Plan means any account of an employee benefit plan, as such plans are defined in section 3(3) of ERISA, which is not an Individual Retirement Account, whether or not the plan is subject to Title I of ERISA.[13] Plan administrators of retirement accounts may distribute the monies received under this Plan to plan participants in accordance with such participants' account balances during the period to which the distribution in question relates, using balance information on a daily, monthly, quarterly or yearly basis.

(b) *Network Level Accounts.* Networking firms associated with network level accounts (*i.e.,* an account that represents one underlying owner but for which name, address and other necessary identifying information may be maintained by an intermediary) shall distribute the monies received under this Plan to the underlying owners of such accounts, and will be asked to elect, within 45 days after notice of the proposed distribution, one of the following two options for completing such distributions: (i) supplying to the IDC the information necessary for the IDC to distribute funds to the underlying owners, or (ii) distributing the funds themselves, using specifications supplied by or on behalf of the IDC as necessary to determine the appropriate allocation of the funds among contemporaneous underlying owners. In either option, Respondents will reimburse the networking firm for the reasonable out of pocket costs of gathering and supplying the information necessary to distribute funds to the underlying owners of the network level account. The networking firm may elect more than one of these options and apply them differently in respect of different categories of underlyiing owners (such as open accounts and closed accounts). If the networking firm makes no election within the time specified in this subparagraph, it will be deemed to have elected to proceed under subparagraph (i) of this paragraph. Distributions with respect to network level accounts shall be completed within 180 days after receipt by the networking firm of funds from this Plan (or within 180 days after receipt by the IDC of the information specified in subparagraph (i), if applicable). Paragraph 6.12 of this Plan shall apply to distributions made by networking firms to underlying owners of network level accounts, and the amount of undeliverable or unclaimed payments shall be returned to the Fund Administrator promptly after the conclusion of the six month period specified in paragraph 6.12.

C. Distributions to Nonsettling Funds.

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[13] Distributions with respect to Individual Retirement Accounts are governed by Part VI(A) of this Plan.

6.8. For distributions with respect to Nonsettling Funds, it will be necessary to evaluate the cost associated with commercially reasonable best efforts (as defined in paragraph 6.6) to identify and distribute funds to beneficial owners (including beneficial owners in omnibus accounts in such funds). Where the amount to be distributed in respect of a Nonsettling Fund is less than $1,000,000 (exclusive of interest), the amount will be paid to the fund itself in the absence of compelling circumstances suggesting a contrary approach. Even where the amount to be distributed (exclusive of interest) exceeds $1,000,000, it may be appropriate to distribute the money to the fund itself. Factors to be taken into account in determining whether the distribution should be to the fund itself, rather than to its contemporaneous shareholders, include: estimated costs of the distribution; total assets of the fund; the number of shareholder accounts in the fund; the amount to be distributed; the extent of turnover among holders of the fund during the period in which the trading at issue occurred; the number of shareholders whose distribution would be less than the *de minimis* amount prescribed in paragraph 6.5 above; availability of account data; and the potential for economies of scale if other funds in the same family are to receive a distribution. The IDC, subject to the concurrence of the Commission's staff, will retain the discretion to choose the appropriate disposition of funds in the case of a Nonsettling Fund. If the IDC determines that a distribution should be paid to a Nonsettling Fund, that fund will have the choice of refusing the distribution, allocating the distribution to its own portfolio assets, or, at its expense, applying any distribution technique that the fund, in the exercise of its reasonable discretion, deems to be consistent with its fiduciary, contractual or other legal obligations. Where the amount otherwise distributable to a Nonsettling Fund is less than $50, or where the Nonsettling Fund refuses the distribution, the amount of the distribution will be added to the holdback described in paragraph 6.13.

D. Distributions to Settling Funds.

6.9. Distributions in respect of Settling Funds will be handled somewhat differently than in the case of Nonsettling Funds. In the interest of minimizing administrative costs and avoiding the confusion to shareholders associated with multiple and roughly concurrent distributions on account of the same trading, the preferred approach is to distribute funds directly to the IDC for the Settling Fund, so that the IDC can combine the two distributions, or to a bank (or other check-writing entity) that would combine the distributions. Thus, for example, a long term shareholder of the Alliance Technology Fund whose allocation from this Fair Fund would be $8 and whose allocation from the Alliance fair fund would be $7 would, instead of receiving nothing, receive a distribution, through cooperation with the Alliance IDC, of $15. In such a joint distribution, the administrative costs of the distribution would be shared by Respondents in this proceeding and respondents in the other proceedings in an equitable manner under the circumstances, either as agreed to by the Respondents or, absent such agreement, by the pertinent IDCs.

6.10. In view of these considerations, this Distribution Plan contemplates the following categories of treatment of Settling Funds:

(a) *Coordinated Distributions.* Where the IDC for the Settling Fund is making a distribution to contemporaneous holders of the fund and such holders overlap with the holders to whom a distribution is contemplated under this Distribution Plan, the aggregate amount of such distribution under this Plan will be transmitted to the Commission for deposit in the Fair Fund for the Settling Fund for distribution using one of two approaches, subject to further coordination and consultation with the other IDCs and the staff of the Commission. Under the first approach, which may be used where the distributions under this Plan to a particular fund are correlated with the distributions to that fund under the other IDC's plan, the other IDC will proportionally increase his distributions. Alternatively, where the distributions are not correlated, the other IDC can combine the allocations (by day, quarter or other period) to that particular fund with the allocations to that fund under the other IDC's plan. If the latter approach is employed, in supplying to the other IDC the allocations within a fund, any negative sub-period allocations will be netted against the positive allocations nearest in time.

(b) *Distribution Under this Plan Only.* In the situation where this Distribution Plan contemplates a distribution to contemporaneous holders of a Settling Fund to whom the IDC for that Settling Fund is not making a distribution, the distribution will be made to the contemporaneous holders using account data supplied by the Settling Fund in question, or will be paid to the fund itself, subject to the considerations described in paragraph 6.8 above relating to distributions in respect of Nonsettling Funds.

6.11. All of the IDCs for the Settling Funds with respect to which this Distribution Plan contemplates a distribution to contemporaneous shareholders have indicated their willingness to participate in a coordinated distribution, although the precise mechanisms for such coordinated distributions will have to be developed as the distribution plans are implemented. Appendix B summarizes the treatment under this Plan of allocations in respect of the Settling Funds, and in particular it identifies which of those funds is to receive a distribution under this Plan through the IDC for its fair fund.

E. Unclaimed Distributions.

6.12. In situations in which distributions are unclaimed (checks not cashed), or persons to whom a distribution would otherwise be made cannot be identified or located, the distributable amounts will be paid to the fund to which the distribution relates. All distributions will be on terms providing that checks not cashed within six months after distribution shall be void, and the issuing financial