

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

IN RE MUTUAL FUNDS	)	MDL-1586
INVESTMENT LITIGATION	)	
	)	Case No. 04-md-15862
Bank of America/Nations sub-track	)	
	)	
	)	

**[PROPOSED] REVISED FINAL ORDER AND JUDGMENT AS TO BANK OF  
AMERICA RELATED DEFENDANTS AND CERTAIN OTHER DEFENDANTS**

WHEREAS, beginning in September 2003, various putative class and derivative actions concerning alleged market-timing and late-trading activities were filed (the “Actions”) on behalf of shareholders of Nations Funds Mutual Funds and on behalf of the Nations Funds Mutual Funds (“Nations Funds”) against various defendants, including Bank of America Corporation, Banc of America Capital Management, LLC (“BACAP”) and Banc of America Securities, LLC (“BAS”); and

WHEREAS, certain subsidiaries of Bank of America Corporation — BACAP, BACAP Distributors, LLC, and BAS (the “Bank of America Respondents”) — settled regulatory investigations into alleged market-timing and late-trading activities with the Securities and Exchange Commission (“SEC”) in *In the Matter of Banc of America Capital Management, LLC, et al.*, SEC Admin. Pro. No. 3-11818 (Feb. 9. 2005), and the New York Attorney General’s Office (“NYAG”) in *In the Matter of Banc of America Capital Management, LLC, et al.* (Feb. 9. 2005); and

WHEREAS, in the negotiations leading up to the settlement of these investigations, at the request of the regulators, the Bank of America Respondents presented damages analyses to the regulators for trading by Canary Capital Partners, LLC; Canary Capital Partners, Ltd.; Canary Investment Management, LLC; and Edward Stern (collectively, the

“Canary Defendants”), TranSierra and certain introducing brokers in shares of Nations Funds based on the so-called “Delta NAV” and “net profit” methodologies for calculating “dilution” to fund shareholders; and

WHEREAS, to settle the regulatory investigations, the Bank of America Respondents agreed to pay \$375 million into a Fair Fund (the “Bank of America Fair Fund”) to be set up pursuant to Section 308 of the Sarbanes-Oxley Act and which is available to compensate, among others, affected shareholders and/or mutual funds — including mutual funds and/or the shareholders thereof that are unaffiliated with the Bank of America Respondents, such as Alliance, MFS, Janus, AIM, Invesco, RS and numerous others — pursuant to a distribution plan developed by an Independent Distribution Consultant (“IDC”) appointed pursuant to the SEC settlement order; and

WHEREAS, the Bank of America Respondents presented analyses to the IDC showing that, for the trading by the Canary Defendants, TranSierra and the introducing brokers into Nations Funds, the Delta NAV and net profit methodologies show dilution of approximately \$21.4 million and \$20.5 million, respectively; and

WHEREAS, plaintiffs’ counsel in the Actions met with the IDC both before and after reaching an agreement in principal to settle the Actions to discuss issues concerning market-timing and late-trading and to present their views on the damages resulting from such market-timing and late-trading; and

WHEREAS, plaintiffs’ counsel in the Actions, including class, fund derivative and ERISA counsel, presented damages analyses and arguments to the IDC for an allocation to the Nations Funds and the Nations Funds shareholders that substantially exceeding the dilution

damages calculated by the Bank of America Respondents using either the Delta NAV or net profit methodologies; and

WHEREAS, on December 15, 2005, Lead Plaintiff Retirement Design and Management, Inc, Plaintiff Simcha Lyons, Plaintiff Katrina McKoy and the ERISA Plaintiffs, Derivative Plaintiff Robert K. Finnell and the Nations Funds (collectively, the “Plaintiffs”), acting on behalf of themselves, the applicable Classes and the present shareholders of the Nations Funds, as the case may be, entered into a Stipulation of Settlement (the “Stipulation”) with the Bank of America Defendants, the Nations Defendants, and the ERISA Defendants;<sup>1</sup> and

WHEREAS, pursuant to the Stipulation, the Plaintiffs, the Bank of America Respondents, and the Independent Trustees of the Nations Funds agreed that if the distribution by the IDC was equal to or greater than \$60,000,000, then the Settlement would be effectuated; and

WHEREAS, as of February 4, 2010, the Stipulation was amended by the execution of the Agreement Amending Stipulation of Settlement (together with the Stipulation, the “Amended Stipulation”); and

WHEREAS, the distribution to Nations Funds shareholders from the Bank of America Fair Fund was approximately \$89 million, plus interest, which included approximately \$19 million for dilution damages and \$63 million in returned fees, transaction costs and interest,

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<sup>1</sup> The Bank of America Defendants are Bank of America, N.A., BACAP Distributors, LLC, Banc of America Capital Management, LLC, and Banc of America Securities, LLC. The Nations Defendants are Nations Funds Trust, Nations Master Investment Trust, Nations Separate Account Trust, William H. Grigg, James Ermer, Thomas F. Keller, Edmund L. Benson, III, James B. Sommers, Thomas S. Word, Jr., Charles B. Walker, Carl E. Mundy, Jr., William P. Carmichael, Minor M. Shaw, Dr. Cornelius J. Pings, and A. Max Walker. The ERISA Defendants are Bank of America Corporation, the Bank of America Corporation Corporate Benefits Committee, Kenneth D. Lewis, O. Temple Sloan, Jr., Paul Fulton, Meredith R. Spangler, Virgil Williams and Kathy S. Dugnan.

and which was substantially more than the \$60,000,000 threshold amount set forth in the Amended Stipulation; and

WHEREAS, the Amended Stipulation also provides additional benefits to the Nations Funds shareholders, including governance changes and the agreement to fund the costs of notice for the Canary Settlement; and

WHEREAS, pursuant to the Preliminary Approval Order, entered May 20, 2010 (the "Preliminary Approval Order"), the Court scheduled a hearing for October 21 and 22, 2010, at 10:00 a.m. (the "Final Settlement Hearing") to: (a) determine whether the proposed settlement of the Actions on the terms and conditions provided for in the Amended Stipulation is fair, reasonable and adequate, and should be approved by the Court; (b) determine whether the proposed classes should be certified for settlement purposes only; and (c) determine whether a judgment as provided for in the Amended Stipulation should be entered. The Court ordered that the Abbreviated Notice of Pendency and Proposed Settlement of Class, Derivative and ERISA Actions, Motion for Attorneys' Fees and Expenses and Settlement Hearing (the "Short Form Notice"), in substantially the form attached as Exhibit 1 to the Preliminary Approval Order, be mailed by first-class mail, postage prepaid, to all putative class members who could be identified through reasonable effort, including by using the address of each such person as set forth in the records of the Bank of America Respondents or the Nations Funds Trust (n/k/a Columbia Funds Series Trust) or their transfer agents or using names and address data for such individuals gathered in connection with the distribution of the Bank of America Fair Fund. The Court also ordered that the Notice of Pendency and Proposed Settlement of Class, Derivative and ERISA Actions, Motion for Attorneys' Fees and Expenses and Settlement Hearing ("Long Form Notice"), in substantially the form attached to the Preliminary Approval Order as Exhibit 2, be

posted on the website(s) established concerning this Settlement, and that a Summary Notice of Proposed Settlements in the *In re Mutual Funds Investment Litigation* and Settlement Fairness Hearing (the “Summary Notice”), in substantially the form attached to the Preliminary Approval Order as Exhibit 3, be published according to the global dissemination plan proposed in *In re Mutual Funds Investment Litigation*, MDL - 1586; and

WHEREAS, the Notices advised class members and present shareholders of the date, time, place and purpose of the Final Settlement Hearing. The Notices further advised that any objections to the Settlement were required to be filed with the Court and served on counsel for the parties by September 21, 2010; and

WHEREAS, the provisions of the Preliminary Approval Order as to notice were complied with; and

WHEREAS, on September 14, 2010, Plaintiffs moved for final approval of the Settlement, as set forth in the Preliminary Approval Order. The Final Settlement Hearing was duly held before this Court, at which time all interested persons were afforded the opportunity to be heard; and

WHEREAS, this Court has duly considered Plaintiffs’ motion, the affidavits, declarations and memorandum of law submitted in support thereof, and all of the submissions and arguments presented with respect to the proposed Settlement; and

NOW, THEREFORE, after due deliberation, IT IS ORDERED, ADJUDGED AND DECREED that:

1. This Judgment incorporates by reference the definitions in the Amended Stipulation, and all capitalized terms used herein shall have the same meanings as set forth in the Amended Stipulation.

2. This Court has jurisdiction over the subject matter of the Actions and over all parties to the Actions, including all members of the Classes (defined below) and present shareholders of the Nations Funds Mutual Funds.

3. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court hereby finally certifies, for settlement purposes only, the consolidated case as a class action (the “Securities Action”) and the “Nations Funds Class” consisting, collectively, of: (x) all shareholders who purchased or held shares of Nations Funds Mutual Funds at any time from September 8, 1998 to September 9, 2003, and (y) all beneficiaries, owners, beneficial owners, or principals of trusts, accounts, or other entities for which Bank of America, N.A. or any of its parents, subsidiaries, affiliates, predecessors, successors or assigns acted as trustee, fiduciary, or agent and that were directly or indirectly invested in Nations Funds Mutual Funds at any time from September 8, 1998 to September 9, 2003 (the “Fiduciary Subclass”). Excluded from the Nations Funds Class are the Canary Defendants and those persons or entities that timely and validly sought exclusion from the Nations Funds Class, as listed on Exhibit A hereto.

4. The Court finds, for the purposes of the Settlement only, that the prerequisites for a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the members of the Nations Funds Class are so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Nations Funds Class; (c) the claims of Lead Plaintiff, Retirement Design and Management, Inc., are typical of the claims of the Nations Funds Class that it seeks to represent and the claims of D.M. Griffith are typical of the claims of the Fiduciary Subclass that she seeks to represent; (d) Retirement Design and Management, Inc. and D.M. Griffith will fairly and adequately represent the interests of the Nations Funds Class and its Fiduciary Subclass; (e) the questions of law and

fact common to the members of the Nations Funds Class predominate over any questions affecting only individual members of the Nations Funds Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, Retirement Design and Management, Inc. and D.M. Griffith are finally certified as Class Representatives and the law firm of Labaton Sucharow LLP is finally appointed Class Counsel.

5. Pursuant to Rule 23(a) and (b)(1) of the Federal Rules of Civil Procedure, the Court hereby finally certifies, for settlement purposes only, the consolidated case pursuant to § 502 of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1132 (the “ERISA Action”), as a class action and a class consisting of all participants in the Bank of America 401(k) Plan or any predecessor plan at any time from October 9, 1997 to September 29, 2004 whose accounts included investments in the Nations Funds Mutual Funds or common or preferred stock of Bank of America or any of its predecessors (the “ERISA Class”).

6. The Court finds, for the purposes of the Settlement only, that the prerequisites for a class action under Rule 23(a) and (b)(1) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the members of the ERISA Class are so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the ERISA Class; (c) the claims of the named representative, Katrina McKoy, are typical of the claims of the ERISA Class she seeks to represent; (d) Katrina McKoy will fairly and adequately represent the interests of the ERISA Class; (e) the prosecution of separate actions by individual members of the ERISA Class would create a risk of (i) inconsistent or varying adjudications as to individual class members that would establish incompatible standards of conduct for the parties opposing the claims asserted in the ERISA Action; or (ii) adjudications as to individual class members that



would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede those persons' ability to protect their interests.

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, Katrina McKoy is finally certified as ERISA Class Representative and the law firm of Harwood Feffer LLP is finally appointed ERISA Class Counsel.

7. The notification provided for and given to the Nations Funds Class, the ERISA Class (collectively with the Nations Funds Class, the "Classes") and present shareholders of the Nations Funds Mutual Funds was in compliance with the Preliminary Approval Order, and said notification constituted the best notice practicable under the circumstances and is in full compliance with the notice requirements of due process, Federal Rules of Civil Procedure 23 and 23.1 and Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7).

8. Pursuant to Rules 23 and 23.1 of the Federal Rules of Civil Procedure, the proposed Settlement of the Actions on the terms and conditions set forth in the Amended Stipulation is in all respects fair, reasonable and adequate, in light of the benefits to the Releasing Parties, the Plaintiffs, the Classes and the present shareholders of the Nations Funds Mutual Funds, the complexity, expense and possible duration of further litigation against settling defendants, the risks of establishing liability and damages and the costs of continued litigation. This Court further finds the Settlement set forth in the Amended Stipulation is the result of arm's-length negotiations between experienced counsel representing the interests of the Releasing Parties, the Plaintiffs, the Classes, the present shareholders of the Nations Funds Mutual Funds and Released Parties.

9. The Amended Stipulation and the proposed Settlement are hereby approved as fair, reasonable, adequate, and in the best interests of the Releasing Parties, the Plaintiffs, the



Classes and the present shareholders of the Nations Funds Mutual Funds, and shall be consummated in accordance with the terms and provisions of the Amended Stipulation.

10. The Court has considered each of the objections submitted in this Bank of America/Nations Funds Sub-track and rejects each.

11. With respect to the objection submitted by attorney Theodore Bechtold, the Court further finds that neither the objector nor Theodore Bechtold had standing to raise the objection and it is wholly without basis.

12. The Consolidated Amended Class Action Complaint, the Amended Class Action Complaint for Violations of the Employee Retirement Income Security Act, and the Consolidated Amended Fund Derivative Complaint, which were all filed in the Bank of America/Nations Funds Sub-track and are all dated September 29, 2004; and the cases listed on Exhibit B that were transferred to this Court by the Judicial Panel on Multidistrict Litigation, are hereby dismissed in their entirety as to all Released Parties, other than the Canary Defendants, with prejudice, and without costs to any party, except as otherwise provided in the Amended Stipulation.

13. Upon the Effective Date, *D.M. Griffith v. Bank of America, N.A., et al.*, filed in the District Court for the District of Maryland as JFM 04-2668, and transferred to MDL No. 04-15862 as a related case by the Hon. Andre M. Davis, is hereby dismissed in its entirety with prejudice.

14. Upon the Effective Date and by operation of this Judgment, the Releasing Parties: (i) shall be conclusively deemed to have fully, finally and forever released, relinquished, and discharged all Released Claims against the Released Parties; (ii) shall be conclusively deemed to have covenanted not to sue the Released Parties in any action alleging any claim that is a

Released Claim; and (iii) shall forever be enjoined and barred from asserting the Released Claims against any Released Party in any action or proceeding of any nature. The foregoing shall occur regardless of whether such Releasing Parties have: (i) received one of the Notices; (ii) received distributions from the Bank of America Fair Fund created pursuant to Bank of America Respondents' settlement with the SEC; or (iii) filed an objection to the Settlement.

15. Upon the Effective Date, claims against defendants TranSierra, Trautman Wasserman & Co., Inc., Pritchard Capital Partners, LLC and Aurum Securities Corp. in the Securities Action shall be assigned to the Nations Funds Trust.

16. The Court further finds, pursuant to the Private Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. §78u-4 (c), and otherwise, that during the course of the Securities Action, the parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.

17. To the maximum extent permitted by law, including the PSLRA, upon the Effective Date, the Released Parties are hereby discharged from all claims for contribution, indemnification or any other claim against the Released Parties where the injury to the person bringing the claim is that person's liability to the Plaintiffs, any Class Member or the present shareholders of the Nations Funds Mutual Funds, by any non-settling defendant, whether such defendant is named now or named later, however styled, arising out of the Actions. Accordingly, to the maximum extent provided by law, including the PSLRA, the Court hereby bars all the claims referred to in this paragraph: (a) by any non-settling defendant, whether such defendant is named now or named later, against the Released Parties; and (b) by the Released Parties against non-settling defendant, whether such defendant is named now or named later.

18. Any final verdict or judgment obtained by or on behalf of the Releasing Parties, if any, against any non-settling defendant, whether such defendant is named now or named later, arising out of the Actions, shall be reduced by an amount equal to the greater of: (i) the amount paid to the Nations Funds shareholders and/or Nations Funds Mutual Funds pursuant to the IDC distribution plan as approved by the SEC; or (ii) the Released Parties' percentage of fault (relating only to excessive or short-term trading, market-timing or late-trading in the Nations Funds Mutual Funds).

19. Each Releasing Party, other than those listed in Exhibit A hereto, regardless of whether such Releasing Party has: (i) received one of the Notices; (ii) received distributions from the Bank of America Fair Fund created pursuant to Bank of America Respondents' settlement with the SEC; or (iii) filed an objection to the Settlement, is bound by this Judgment, including, without limitation, the release of claims as set forth in the Amended Stipulation.

20. This Judgment and the Amended Stipulation, and all papers related thereto are not, and shall not be construed to be, an admission by any of the Released Parties of any liability or wrongdoing whatsoever, and shall not be offered as evidence of any such liability or wrongdoing in this or any other proceeding.

21. The administration of the Settlement, and the decision of all disputed questions of law and fact with respect to the validity of any right of any person to participate in the Settlement, shall remain under the authority of this Court.

22. No member of the Classes or present shareholder of the Nations Funds Mutual Funds shall have any claim against any of the settling parties or their counsel based on the investments, costs, expenses, administration, allocations, payments and distributions, if any, that

are made substantially in accordance with the Amended Stipulation and the Settlement contained therein or further order of the Court.


23. In the event that the Settlement does not become effective in accordance with the terms of the Amended Stipulation, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Amended Stipulation and shall be vacated, and in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Amended Stipulation.

24. Without further order of the Court, the settling parties may agree to reasonable extensions of time to carry out any of the provisions of the Amended Stipulation.

25. Any Court order regarding the Plan of Allocation or any attorneys' fee and expense application shall in no way disturb or affect this Judgment and shall be considered separate from this Judgment.

26. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of the Settlement; (b) hearing and determining applications for attorneys' fees, costs, interest and reimbursement of expenses in the Actions; and (c) all settling parties hereto for the purpose of construing, enforcing and administering the Settlement. There is no just reason for delay in the entry of this Judgment and immediate entry by the Clerk of the Court is expressly directed.

Dated: October 25, 2010

  
Honorable J. Frederick Motz  
UNITED STATES DISTRICT JUDGE