

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-11940

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In the Matter of	:	
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HUNTINGTON BANCSHARES, INC.,	:	
THOMAS E. HOAGLIN,	:	<b>MODIFIED</b>
MICHAEL J. MCMENNAMIN, and	:	<b>DISTRIBUTION PLAN</b>
JOHN VAN FLEET, CPA	:	
	:	
Respondents.	:	
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**I. INTRODUCTION**

1. This Modified Distribution Plan (“Modified Plan”) concerns the \$8,634,485.29 paid by Huntington Bancshares, Inc., (“Huntington”), Thomas E. Hoaglin, Michael J. McMennamin, and John Van Fleet to the Securities and Exchange Commission (the “Commission”) on June 8, 2005 in the settled administrative proceeding captioned In the Matter of Huntington Bancshares, Inc., et al. (Administrative Proceeding File No. 3-11940), and in the related U.S. District Court case SEC v. Huntington Bancshares, Inc., et al., Civil Action No. 2:05CV538 (S.D. Ohio).
  
2. On June 2, 2005, the Commission filed a settled civil action and issued an Order in a settled administrative proceeding against Huntington, its CEO, Thomas Hoaglin, its former CFO, Michael McMennamin, and its former controller, John Van Fleet ("Respondents"). In the administrative proceeding, the Commission

charged that Huntington overstated both its 2001 operating earnings by \$11.4 million and its 2002 operating earnings by \$12.8 million to meet analysts' expectations and management bonus targets. To settle this matter, Huntington agreed to pay disgorgement of \$1 and a civil penalty of \$7.5 million, while the three individuals agreed to pay disgorgement, pre-judgment interest, and civil penalties totaling \$1,134,484.29. By Commission Order, such monies, which collectively total \$8,634,485.29, were paid to the Office of Financial Management ("OFM") and used to create a Fair Fund pursuant to Section 308 of the Sarbanes-Oxley Act of 2002 and Rule 1100 *et seq.* of the Commission's Rules on Fair Fund and Disgorgement Plans (the "Rules"). The Fair Fund has been deposited at the Bureau of Public Debt for investment in government obligations. Other than interest from those investments, it is not anticipated that the Fair Fund will receive additional funds.

3. Pursuant to a Commission Order dated March 16, 2006, Nancy R. Grunberg, Esq., of the law firm Venable LLP (the "Fund Administrator" or "Administrator") was appointed to act as Fund Administrator of the Fair Fund. The Fund Administrator is responsible for, among other things, overseeing the administration of the Fair Fund, obtaining accurate mailing information for shareholders, preparing accountings, cooperating with the tax administrator in providing information necessary to accomplish income tax compliance, distributing money from the Fair Fund to shareholders in accordance with this Plan, and setting up a mechanism for addressing shareholder questions or concerns regarding the distribution.

## **II. PROPOSED MODIFIED DISTRIBUTION PLAN**

4. The Distribution Plan proposed on December 29, 2005 and approved by Commission Order on March 16, 2006 (the “Original Plan”), states that within 90 days after approval of the Plan, the Fund Administrator shall seek to amend the Plan to specify the procedures to be used to distribute the Fund. Accordingly, the Fund Administrator now proposes this Modified Distribution Plan (the “Modified Distribution Plan” or “Modified Plan”), which is intended to supplement the Original Plan.
5. The general purpose of the Modified Plan is to equitably allocate the Fair Fund among investors who: 1) purchased Huntington common stock from January 18, 2002 through 4 p.m. eastern standard time on June 26, 2003; 2) sold any portion of those shares between 4 p.m. eastern standard time on June 26, 2003 and 4 p.m. eastern standard time on July 3, 2003; and 3) suffered a net realized loss as a result. The Administrator will take steps to identify and contact all potential claimants, verify each potential claimant’s right to receive a pro-rata share of the Fair Fund, calculate each claimant’s distribution amount, and distribute the Fair Fund to those claimants whom the Administrator determines to be eligible.

## **III. MODIFIED PLAN**

### **A. DEFINITIONS**

6. “Claimants” shall mean those individuals and entities, or their lawful successors, except for Respondents, who purchased shares of Huntington common stock from January 18, 2002, through 4 p.m. eastern standard time on June 26, 2003 (“Relevant Purchase Period”), sold any portion of those shares between 4 p.m.

eastern standard time on June 26, 2003, and 4 p.m. eastern standard time on July 3, 2003 (the “Relevant Sale Period”), and suffered a net realized loss as a result (“Net Realized Loss”). Claimants must have a Net Realized Loss of at least \$25 in order to receive a distribution from the Fair Fund. Such losses will be computed in nominal terms, with no adjustments for opportunity costs, inflation or risk. Investors who purchased and sold derivatives, such as options and futures, and investors who lost money on short sales, are excluded from the definition of Claimants.

7. “Eligible Claimants” are those Claimants that the Administrator has determined to be entitled to receive distributions from the Fair Fund.
8. “Distributions” shall mean the payments made to Eligible Claimants from the Fair Fund as approved by the Commission.

#### **B. IDENTIFICATION OF CLAIMANTS**

9. Upon approval of the Modified Plan by the Commission, the Administrator shall use reasonable efforts to locate potential Claimants, primarily through a review and analysis of data provided to the Administrator by Commission staff reflecting investor sales of Huntington common stock during the Relevant Sale Period. The Administrator will seek to contact those potential Claimants, inform them of the eligibility requirements for participation in the Fair Fund, and explain how to make a claim. The Administrator also will publish notices describing the Fair Fund and eligibility requirements for participation once a week for three consecutive weeks in *The Wall Street Journal*, *Investors Business Daily*, and *The Columbus Dispatch*. The notices will run once a week for a total of three weeks.

Finally, the Administrator will provide notice of the Fair Fund via an electronic link at <http://huntingtonadministrator.venable.com> (the “Website”). The Website will provide a copy of the Original and Modified Distribution Plans, eligibility requirements for participation in the Fair Fund, a claim form, and the deadline for filing claims.

10. Analysis of the investor trading data obtained from the Commission staff, the public notice campaign, and the Website shall constitute reasonable efforts by the Administrator to identify potential Claimants and notify them of the Fair Fund. Where the Administrator deems necessary, after consultation with the Commission staff, the Administrator may modify the distribution procedure to effectuate the general purpose of this Plan.

### **C. NOTIFICATION AND VERIFICATION OF ELIGIBILITY**

11. The Administrator shall provide written notice by first class mail, postage prepaid, to persons and/or entities that have been identified as potential Claimants informing them about the Fair Fund. The notice shall generally describe the distribution process as set forth in the Original and Modified Distribution Plans, explain how to obtain a copy of the Plans by written request or from the Website, and provide a claim form prepared by the Administrator. To the extent the Administrator is able to identify third parties such as brokerage firms or investment advisors that purchased or sold Huntington common stock on behalf of their customers or investors, the Administrator will request that those entities notify such customers or investors about the Fair Fund.

12. All claims, which must be in writing, shall be accompanied by such documentary evidence as the Administrator deems necessary or appropriate to substantiate the claim including, but not limited to, brokerage account statements, trade confirmations, canceled checks or wire transfer confirmations. The claims period shall be 90 days from the date of the first mailing or the first publication of notice, unless extended by the Administrator. No claim shall be accepted after such date. The Administrator shall review all claim submissions and determine the eligibility of each submitting Claimant to participate in the Fair Fund.
13. Within 45 days after the close of the claims period, the Administrator shall notify, in writing, all parties whose claims were rejected by the Administrator for participation in the Fair Fund. The Administrator shall advise each party in writing regarding the basis for rejection of their claim. Any party that seeks reconsideration of the denial must so advise the Administrator within 15 days from the postmark date of the initial denial of the claim. Following subsequent review, the Administrator shall notify such party in writing of the Administrator's final decision, which shall be non-appealable.

#### **D. CALCULATION OF DISTRIBUTION AMOUNTS**

14. Once the Claimants' eligibility for participation in the Fair Fund has been determined, the Administrator will determine the *pro-rata* share of the Fair Fund to which each Eligible Claimant is entitled by calculating each Eligible Claimant's Net Realized Loss as a percentage of the total Net Realized Losses for all Eligible Claimants. An Eligible Claimant's *pro-rata* share may not exceed its Net Realized Loss.

15. The Administrator shall notify each Eligible Claimant, in writing, regarding the distribution to which it is entitled and the basis for such computation. If an Eligible Claimant disputes the amount, the Eligible Claimant must so advise the Administrator in writing within 15 days from the postmark date of the notification and explain the basis for objection. Following subsequent review, the Administrator shall notify such Eligible Claimant in writing of the Administrator's final decision regarding the distribution amount, which shall be non-appealable.

#### **E. DISTRIBUTION OF FUNDS**

16. The Administrator shall set aside a portion of the Fair Fund to pay administrative fees and expenses incurred, or likely to be incurred, in distributing the Fund (the "Reserves"). The Administrator shall distribute the balance of the Fair Fund, minus Reserves, among the Eligible Claimants on a *pro-rata* basis as determined by the Administrator as described above.

17. Within 180 days after approval of this Modified Distribution Plan, the Administrator shall submit a list identifying each Eligible Claimant and their corresponding Distribution amounts to the Commission for approval in accordance with Rule 1101(b)(6) of the Rules. Upon the issuance of an Order by the Commission authorizing payments from the Distribution Fund, the Administrator shall coordinate with OFM as set forth in the Original Plan to ensure timely mailing of the distribution checks to Eligible Claimants.

18. All payments shall be preceded or accompanied by a communication that includes, as appropriate: (a) a statement explaining the distribution; (b) relevant

tax reporting information; (c) a statement that checks will be void 180 days after issuance; and (d) the name of a person to contact regarding any questions about the distribution. Distribution checks, on their face, or in the accompanying mailing, shall clearly indicate that the money is being distributed from an SEC Fair Fund.

19. In cases where the Eligible Claimant is unable to endorse the distribution check as written (*e.g.*, name changes as a result of divorce, IRA Custodian changes, or recipient is deceased) and the Eligible Claimant or their lawful representative requests the re-issuance of a distribution check in a different name, the Fund Administrator will request, and must receive, documentation to support the requested change. The Fund Administrator will review the documentation to determine the authenticity and propriety of the change request. If such change request is properly documented, the Administrator will reissue an appropriately redrawn check to the requesting party.
20. The Administrator will provide to each Eligible Claimant an Internal Revenue Service Form 1099 reflecting the amount distributed to such Eligible Claimant pursuant to the Distribution Plan.
21. The Fair Fund shall terminate effective June 30, 2007, or 90 days after all funds have been distributed to Eligible Claimants, the issue of uncashed or unclaimed funds has been resolved, or the final accounting by the Fund Administrator has been submitted and approved by the Commission, whichever is later. Prior to termination of the Fair Fund, the Fund Administrator shall cooperate with the Fund's Tax Administrator, Damasco & Associates, to ensure that adequate



Reserves are maintained for tax liability and the costs of tax compliance. Upon termination of the Distribution Fund, all undistributed assets remaining in the Fair Fund, minus any Reserves for tax liability and tax compliance costs, shall be remitted to the United States Treasury.