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August 18, 2006

Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Re: Notice of Proposed Distribution Plan for Columbia Management Advisors, Inc., and Columbia Funds Distributor, Inc., Administrative Proceeding File Number 3-11814

Dear Ms. Morris:

The American Bankers Association (“ABA”)<sup>1</sup> welcomes the opportunity to provide comments on the proposed distribution plan (“proposed plan”) for the distribution of monies placed into a Fair Fund in connection with the administrative proceedings involving Columbia Management Advisors, Inc. and Columbia Funds Distributor, Inc. This particular Fair Fund distribution is just one of many distributions involving monies collected from mutual funds in connection with various enforcement actions brought by the Securities and Exchange Commission.

Our members include approximately 2,000 banks, savings associations and trust companies (hereinafter referred to collectively as “banks”) that serve as trustee or custodian to personal, charitable and employee benefit accounts holding assets in excess of \$16 trillion, a significant portion of which is invested in mutual funds.<sup>2</sup> Clearly, our members and their customers have significant interest in this and other mutual fund Fair Fund distributions.

Our concerns regarding the proposed plan are several:

- The plan does not take into account the complexities of omnibus accounts and thus may not fairly distribute monies rightfully owed to investors in those accounts.

<sup>1</sup> The ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership—which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks—makes ABA the largest banking trade association in the country.

<sup>2</sup> Source: Federal Deposit Insurance Corporation.

- The plan is confusing and does not detail how investors in personal and charitable trust accounts will recoup the monies that are rightfully theirs.
- Significant concerns remain with respect to the adequacy of recoupment of costs and distribution provisions provided in the proposed plan.
- Finally, we renew our earlier calls for uniformity in Fair Fund distribution plans.

## **DISCUSSION**

The proposed plan sets out a two-tier process:

- Where the aggregate amount of the distribution attributable to a particular omnibus account is \$1,000 or more, the account holder, *i.e.*, the bank, will be contacted in order to determine an appropriate method for distributing the funds to the underlying beneficial owners and, if the costs of identifying and distributing the funds to the underlying beneficial owners are less than the aggregate amount due, then the bank has the option of supplying all sub-account information necessary to the independent distribution consultant (“IDC”) for distribution; supplying the IDC with information sufficient to calculate beneficial owner distributions and deliver such distributions to the account holder, or performing all calculations necessary to make the distributions itself.
- Where the aggregate amount of the distribution is less than \$1,000 or the costs of identifying the underlying beneficial owners and distributing the monies to the owners outweigh the amount to be distributed, the bank account holder may refuse the distribution or apply any distribution technique that it believes is reasonable and consistent with its fiduciary, contractual or other legal obligations.

Information necessary to determine the underlying beneficial owner’s interest includes names, addresses, and daily or other periodic records reflecting each beneficial owner’s fund share balance during the relevant distribution period.

### **Accuracy of Distribution Amounts**

A key concern regarding the proposed plan is that it may not fairly and accurately recognize the true level of investment activity of the individuals covered. This concern arises because investment activity at a mutual fund under the proposed plan would reflect *net investment activity* only. For example, often a bank will open a single employee benefit plan omnibus account with the mutual fund’s transfer agent. In this situation, the transactions and holdings in the account at the transfer agent will only reflect net plan participant transactions for that particular employee benefit plan, *i.e.*, participant redemptions and purchases are netted before being transmitted to the fund transfer agent. The transactions and holdings

in the account will not, however, reflect the underlying beneficial owners' investment activity.

This problem is compounded for banks that open single omnibus accounts with the transfer agent for all employee benefit plan – and other – clients, as there is netting at the individual plan level *and* at the omnibus account level. Because the transfer agent accounts are net transactions, or even double-net transactions, the transactions and holding periods of the underlying individual beneficial owners are not fully reflected at the transfer agent level.

The ABA believes that before any determination of aggregate distribution amounts can be made, the IDC should consider full account activity and holdings at the individual beneficial owner level, including benefit plan participant level. To do otherwise would require banks and other intermediaries to accept distributions of funds that will in all likelihood disadvantage beneficial owners vis a vis direct shareholders in these mutual funds.

Furthermore, for those intermediary institutions that opt to perform all calculations necessary to make distributions to investors, the proposed plan lacks the detailed algorithm for determining loss and payment amounts. We, therefore, ask for further guidance on appropriate calculations.

### **Personal and Charitable Trust Accounts**

The proposed plan is confusing. The plan purports to describe how distributions to omnibus accounts and retirement accounts are to be made. Paragraph 7.6 governs distributions for omnibus accounts but specifically exempts from its coverage ordinary trusts, pension plans and 529 plans. Paragraph 7.7 states that retirement account intermediaries are required to distribute the monies received in accordance with their fiduciary and contractual obligations, and consistent with guidance issued by the Department of Labor (“DOL”). Presumably, this is a reference to the Field Assistance Bulletin 2006-01 issued by the DOL earlier this year, addressing, among other things, duties and responsibilities of IDCs, plan service-providers, and fiduciaries with respect to the allocation and distribution of mutual fund settlement proceeds to plans and plan participants. Clearly, paragraph 7.6 includes all bank custodial accounts, not covered by the Employee Retirement and Income Security Act. Because paragraph 7.6 specifically exempts trusts from its coverage, we are unclear which method of distribution will be used for those personal and charitable trust accounts that do not invest in mutual funds on a fully disclosed basis but rather invest in mutual funds through omnibus accounts.

### **Recoupment of Costs**

The proposed plan appropriately recognizes that account holders should recoup costs of commercially reasonable best efforts to identify and distribute funds to beneficial owners. Commercially reasonable best efforts should include additional staffing costs, either in terms of additional hiring of temporary staff

and/or paid overtime, as well as any systems or other costs necessary either to obtain data maintained by other service providers or to delegate to other service providers the responsibility for providing underlying beneficial owner information.

### **Distribution Period**

The proposed plan specifies that distributions shall be completed by the omnibus account holder within 180 days of receipt of the distribution funds or 180 days after the IDC has received the information necessary to make distribution from the omnibus account holder, unless the omnibus account holder demonstrates to the satisfaction of the IDC that good cause exists to extend that deadline. The ABA believes that 180 days may not be sufficient if:

- (1) omnibus account holders are unable to obtain the necessary beneficial owner information from other service providers;
- (2) other Fair Fund monies are distributed simultaneously; or
- (3) mutual funds begin to request information from banks and other intermediaries, as permitted under new Securities and Exchange Commission Rule 22c-2. Rule 22c-2 is scheduled to go into effect on October 16, 2006, although many industry participants, including the banking industry, have urged the Commission to delay the compliance effective date.

Furthermore, we note that bank intermediaries will incur greater costs and need more time to locate investors who have already taken a distribution or are no longer beneficiaries in a particular trust or custody account. In this regard, the ABA would like further guidance on whether a de minimus amount can be used to offset costs, returned to the account, or spread to the other beneficial owners if a participant cannot be located.<sup>3</sup>

### **Need for Uniformity**

Finally, we renew our earlier calls for uniformity in Fair Fund distribution plans. The banking industry has extensive experience with processing class action and other similar distributions to investors. We would be happy to meet with the Commission staff to discuss ways to improve the Fair Fund distribution process to ensure that all shareholders, regardless of whether their investments are held directly or through intermediaries, recoup monies rightfully owed to them.

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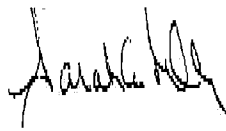
<sup>3</sup> Another option would be to escheat the funds to the appropriate state's unclaimed property account.

## CONCLUSION

In conclusion, the ABA appreciates the opportunity to provide its views on Columbia Management Advisors and Columbia Funds Distributor Fair Fund Plan of Distribution. Due to the rapid pace at which we anticipate the Commission will be issuing for comment other mutual fund Fair Fund proposed distribution plans, we hope that the Commission will consider comments made here as applying equally, where appropriate, to these other proposed distribution plans.

Please do not hesitate to contact the undersigned should you wish to discuss this matter further.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Sarah A. Miller". The signature is fluid and cursive, with a large initial "S" and "M".

Sarah A. Miller

cc: Peter H. Bresnan, Deputy Director, Division of Enforcement, SEC  
Lou Campagna, Chief, Fiduciary Interpretations and Regulations, DOL