

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-11530

In the matter of)
)
)
BANC ONE INVESTMENT)
ADVISORS CORPORATION)
)
and)
)
MARK A. BEESON,)
)
Respondents.)

MODIFIED PLAN OF DISTRIBUTION

OVERVIEW

This Plan of Distribution (the “Plan”) proposes a methodology for distributing to investors \$50 million, plus accumulated interest, paid by Banc One Investment Advisors Corporation (“BOIA” or “Respondent”) in settlement of administrative proceedings addressing market-timing of mutual funds advised by BOIA.¹

On June 29, 2004, BOIA consented to the entry of an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the “Order”), without admitting or denying the Order’s findings. The Order found, among other things, that BOIA allowed excessive short-term trading in certain One Group Mutual Funds (“One Group”) from June 1999 through May 2003 that was inconsistent with fund prospectuses and potentially harmful to One Group shareholders.

The Order required, among other things, that BOIA pay disgorgement of \$10 million and civil penalties of \$40 million, for a total payment of \$50 million, and establish a Fair Fund under Section 308(a) of the Sarbanes-Oxley Act to provide for the ultimate distribution of funds to investors. The Order further required that BOIA retain “the services of an Independent Distribution Consultant not unacceptable to the staff of the Commission and a majority of the independent members of the One Group Board of

¹ As of June 29, 2004, BOIA was an Ohio corporation, headquartered in Columbus, Ohio, that was registered with the Commission as an investment adviser on November 22, 1991. BOIA was a wholly owned subsidiary of Bank One, National Association (Ohio), which in turn was a wholly owned subsidiary of Bank One Corporation (“Bank One”), a multi-state bank holding company headquartered in Chicago, Illinois. BOIA provided discretionary investment management services to individuals and companies, including the One Group family of mutual funds, Bank One’s mutual-fund complex. Since the entry of the Order, Bank One and JPMorgan Chase & Co. have merged and their organizational structures have not survived the merger in their entirety. The changes in structure caused by the merger do not, however, affect the analysis, operation or implementation of the Plan.

Trustees” and that it “cooperate fully with the Independent Distribution Consultant and shall provide the Independent Distribution Consultant with access to its files, books, records, and personnel as reasonably requested for the review.”² The Order also directed that “BOIA shall require that the Independent Distribution Consultant develop a Distribution Plan for the distribution of all of the disgorgement and penalties to be paid by BOIA pursuant to this Order, and any interest or earnings thereon, according to a methodology developed in consultation with BOIA and acceptable to the Staff of the Commission and the independent Trustees of the One Group funds.”³ The Respondent has agreed to pay all costs associated with the administration of the Distribution Plan, including any tax liability and tax compliance costs for the Qualified Settlement Fund (“QSF”).⁴

In accordance with the Order, Respondent has retained Professor Joseph A. Grundfest, a professor of law at Stanford Law School and a former SEC commissioner, as the Independent Distribution Consultant (“IDC”). This submission constitutes the Plan of Distribution required by the Order. The Plan is subject to approval by the Commission and the Commission will retain jurisdiction over the implementation of the Plan.

ADMINISTRATION OF THE PLAN

Appointment of an Administrator for the Fair Fund

The Commission’s Order requires that the IDC submit a Plan for the “administration and distribution of disgorgement and penalty funds pursuant to Rule 1101 of the Commission’s Rules of Practice.”⁵ Rule 1105(a) of the Commission’s

² Order at ¶34.

³ Id.

⁴ See also footnotes 14 and 16.

⁵ Order at ¶ 34.

Rules of Practice (“Rules”) provides that the Commission “shall have discretion to appoint any person ... as administrator of a plan of disgorgement or a Fair Fund plan and to delegate to that person responsibility for administering the plan.” Accordingly, the IDC proposes that the Commission appoint Boston Financial Data Services, Inc. (“BFDS”) to serve as the administrator of the Fair Fund (“Fund Administrator”).

BFDS, founded in 1973, is a third-party service provider that provides transfer agency services to over 145 fund companies. Under the supervision of the IDC, BFDS’s responsibilities will include, among other things: overseeing administration of the Fair Fund, obtaining accurate mailing information for shareholders, preparing accountings, providing information necessary to accomplish the income tax compliance, ruling and advice work assigned to any Tax Administrator appointed by the Commission, distributing money from the Fair Fund to shareholders in accordance with this Plan, and setting up and staffing a call center to address shareholder questions or concerns regarding the distribution. The IDC and BFDS currently have an agreement in place requiring BFDS to perform certain tasks in preparation for the forthcoming distribution of the Fair Fund. To date, BFDS has successfully met its obligations under the agreement and the IDC believes that BFDS will perform satisfactorily as the Fund Administrator.

Because BFDS is not a “Commission employee,” Rule 1105(c) requires that “the administrator shall ... obtain a bond in the manner prescribed in 11 U.S.C. 322, in an amount to be approved by the Commission,” but that “the Commission may waive posting of a bond for good cause shown.” The IDC proposes that the bond requirement for BFDS be waived.

Good cause exists to waive posting of a bond, because BFDS maintains sufficient insurance coverage against loss. BFDS maintains, and will maintain until termination of the Fair Fund, a Financial Institutions Bond, a Computer Crime Policy and Errors and Omissions insurance. The Financial Institutions Bond provides protection against, among other things, employee dishonesty, and forgery or fraudulent alteration of securities and negotiable instruments. The Computer Crime Policy provides protection against, among other things, computer systems fraud, transfer fraud and destruction of data or programs by hackers or viruses. The Errors and Omissions insurance protects against errors and omissions committed by employees in the course of their performance of professional services. The insurance policies maintained by BFDS have been provided to the assigned Commission Staff for review and have been deemed “not unacceptable.” Under the Plan, \$55,000,000 is the maximum amount that will be under BFDS’ custody and control.

The IDC also proposes that the Fair Fund assets be held during the check-cashing period at Eastern Bank, a Massachusetts Chartered Mutual Bank (“Eastern Bank”). Eastern Bank maintains a Financial Institutions (FI) Bond including errors and omissions coverage. The primary insurers are St. Paul Mercury Insurance Co., a member of the St. Paul Travelers Companies which, as of their most recent renewal, was rated A+ by A.M. Best, and Federal Insurance Company (Chubb), a member of the Chubb Group of Insurance Companies which, as of their most recent renewal, was rated A++ by A.M. Best. Eastern Bank annually assesses the adequacy of its policy limits through extensive analysis of historical loss data, exposure to loss and internal company controls. Eastern Bank’s limits are reviewed annually by its Board of Directors.

Control of the Fair Fund

Pursuant to the Order, on July 16, 2004, BOIA paid a total of \$50 million into an escrow account at Citibank, N.A. to be invested in short-term United States Treasury Securities with maturities not to exceed six months. On September 29, 2005, the SEC issued an Order Directing Escrow Agent To Transmit Funds (the “September 29 Order”) which directed that, upon the maturity of the securities held in the escrow account, the Escrow Agent, Citibank, N.A., transfer the monies in the escrow account to the Office of Financial Management at the SEC. Accordingly, on January 12, 2006, in accordance with the September 29 Order, the Escrow Agent wired the monies to the SEC.

The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Fair Fund is currently deposited at the U.S. Treasury Bureau of Public Debt (“BPD”) and will remain there until released in accordance with Step Fourteen below. This Fair Fund will not receive additional funds, other than the interest from the funds on deposit at the BPD.

The Fair Fund constitutes a QSF under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. §468B(g), and related regulations, 26 C.F.R. §§1.468B-1 through 1.468B-5. Upon approval of the Plan, BFDS shall establish an account at Eastern Bank in the name of and bearing the Taxpayer Identification Number of the QSF. Following approval of the Plan, and the IDC’s satisfaction of the requirements of Step Fourteen below, the Commission Staff shall cause the balance in the Fair Fund to be deposited in the account established by BFDS at Eastern Bank. If appropriate, the release of funds to the account established by BFDS shall be staged in order to assure that neither BFDS nor Eastern Bank, at any time, have access to monies belonging to the Fair Fund in excess of

their applicable insurance coverage. The QSF account shall be invested in direct obligations of the United States Government of a type and term necessary to meet the cash requirements of the payments to investors, tax obligations and fees. BFDS shall be the signer on the QSF account, subject to the continuing jurisdiction and control of the Commission.

Tax Obligations Of The Fair Fund

The IDC and BFDS shall authorize Eastern Bank to provide account information to Damasco & Associates, appointed by the Commission as the Tax Administrator of the Fair Fund (“Tax Administrator”), pursuant to the March 10, 2006 Order Appointing Tax Administrator (Release No. 53468, Admin. Proc. File No. 3-11530). The IDC and BFDS will cooperate with the Tax Administrator in providing information necessary to accomplish the income tax compliance, ruling and advice work assigned to the Tax Administrator by the Commission. Respondent shall provide the Tax Administrator with funds to pay tax liability and tax compliance costs. BFDS shall authorize Eastern Bank to provide duplicate bank statements for the QSF account directly to the IDC, the Tax Administrator and Robert J. Burson, Senior Associate Regional Director, Securities and Exchange Commission, 175 West Jackson Blvd., Chicago, IL 60604.

Neither the IDC nor BFDS will provide tax advice to any investors receiving distributions from the Fair Fund. In the event that the Internal Revenue Service issues guidance regarding the distribution, access to that guidance will be provided along with the other information to investors described in Step Fifteen below.

Limitation on Liability

The IDC and the Fund Administrator, and/or each of their designees, agents and assistants, shall be entitled to rely on any Orders issued in this proceeding by the Commission, the Secretary by delegated authority, or an Administrative Law Judge, and may not be held liable to any person other than other than the Commission or the QSF for any act or omission in the course of administering the Fair Fund, except upon a finding that such act or omission is caused by such party's gross negligence, bad faith or willful misconduct, reckless disregard of duty, or reckless failure to comply with the terms of the Plan. This paragraph is an expression of the IDC's and the Fund Administrator's standard of care and is not intended, nor should it be deemed to be, a representation to or an indemnification of the IDC or the Fund Administrator or their designees, agents and assistants by the Commission or the QSF, nor should this paragraph preclude the Commission or the QSF from seeking redress from IDC or the Fund Administrator in accordance with the rules and regulations of the Commission and the QSF.

DISTRIBUTION PLAN AND PROCEDURES

The Order requires that the IDC develop a Plan that "provide[s] for investors to receive, in order of priority, (i) their proportionate share of losses from market-timing, and (ii) a proportionate share of advisory fees paid by funds that suffered such losses during the period of such market timing."⁶ Investors eligible to receive a share of the Fair Fund are those investors who held shares in the following mutual funds in which market timing occurred, on the days on which such market timing occurred, during the period from June 1999 through May 2003, except the identified timers referred to in

⁶ Order at ¶ 34.

paragraphs 3 and 4 of the Order: One Group Mid Cap Growth Fund; One Group Large Cap Growth Fund; One Group Diversified Equity Fund; One Group Mid Cap Value Fund; One Group Large Cap Value Fund; One Group Diversified Mid Cap Fund; One Group Small Cap Value; One Group Diversified International Fund; One Group International Equity Index Fund; One Group Small Cap Growth Fund; and One Group Equity Income Fund.

The methods of calculation of each eligible investor's share of the Fair Fund are intended to result in a payment to each eligible investor that restores the impaired value of the investor's investment in the affected mutual funds. In the view of the IDC, empirical analysis of the timing transactions at issue in this proceeding indicates that, on the specific facts of this case, the profits measure of dilution constitutes a fair and reasonable technique for calculating the losses caused by the trading described in the Order. Under the profits method, the harm to investors in mutual funds on any day that trading occurs is measured by the actual profits of the market timers on the same day. Profits and losses will be netted for investors within each fund, but not across funds. No adjustment for transactions costs is necessary because, on the specific facts of this case, such an adjustment would not be likely to have a significant effect on the distribution to investors. However, it is appropriate to adjust for the time value of money by compounding individual distributions at the six-month Treasury bill rate.

In addition, the Order contemplates that the entire Fair Fund, which is fixed at \$50 million plus accumulated interest, be distributed to investors. To achieve this result, the IDC has developed an Allocation Algorithm which, when applied as described below, will calculate the percentage share of the Fair Fund that should be distributed to each

investor who was harmed by the market timing that the Commission found wrongful. The Allocation Algorithm is based on the profits method and adjusts for the time value of money.⁷ The \$50 million plus accumulated interest exceeds the amount of dilution, as calculated through the profits method. Thus, investors will receive an amount more than the dilution directly attributable to market timing. Based on the facts of this case, the additional recovery will compensate investors consistent with the terms of the Order.

This Plan provides that the calculation of amounts to be distributed to investors will be based on records obtained from BOIA and certain other entities that are shareholders of record. Accordingly, investors need not submit a claim in order to be considered for a distribution, and no claims procedure will be implemented.

The analysis in this Plan applies only to the specific facts of this case. Nothing herein should be construed as expressing any view regarding any other set of facts or any other matter that might come before the Commission. The process of calculating the distributions to be made and of actually causing those distributions to occur will be implemented through a twenty-five step process.

Step One. The Respondent, subject to the IDC's supervision and in cooperation with BFDS, will compile a Provisional Database that contains all relevant data in Respondent's custody and control for accounts that held shares of mutual funds in which the market timing described in the Order occurred, on the dates on which market timing occurred.

This Provisional Database will include account data for three types of accounts: direct accounts, transparent omnibus accounts, and opaque omnibus accounts. A direct

⁷ The IDC shall provide a detailed description of his methodology underlying the Allocation Algorithm upon request.

account is an account where the identity of the account holder is known to Respondent and is not an omnibus account held by a broker or other financial intermediary. An omnibus account is an account in which a financial institution serving as an intermediary is the shareholder of record and holds securities on behalf of the actual beneficial owners. An omnibus account is transparent if Respondent has access to records identifying the actual beneficial owners and is opaque if Respondent does not have access to such records. The Provisional Database will also include information relating to known closed accounts. The Provisional Database will contain information sufficient to allow computation of the Allocation Algorithm for all investors who are known to the Respondent, including holdings for each mutual fund at issue for each day on which the market timing at issue occurred.

Step Two. Under the IDC's direction, the Provisional Database will be validated for accuracy.

Step Three. Under the IDC's direction, the Allocation Algorithm will be applied to the Provisional Database to generate a set of provisional distribution ratios and corresponding provisional distribution amounts. The distribution amounts are provisional in that they will be adjusted in Steps Four through Twelve below. All provisional distributions that might be made to identified timer accounts, referred to in paragraphs 3 and 4 of the Order, will be set to zero throughout the distribution process.

Step Four. Under the IDC's direction, the calculations will be validated for accuracy.

Step Five. Under the IDC's direction, the Respondent and BFDS will categorize all omnibus accounts according to whether they are opaque or transparent. The

Respondent and BFDS will identify all known opaque omnibus accounts with provisional distributions of \$1,000 or more.

Step Six. Under the IDC’s direction, the categorization of the accounts will be validated for accuracy.

Step Seven. Not later than thirty days after Commission approval of the Plan, Respondent and BFDS will, subject to IDC supervision, approach all known opaque omnibus intermediaries with provisional distributions of \$1,000 or more. Respondent, BFDS and the IDC will exercise commercially reasonable best efforts to cause those intermediaries to provide all data necessary to allow those intermediaries’ accounts to be treated as though they are transparent accounts held at Respondent.⁸ BFDS will request address information for all underlying shareholders of the omnibus accounts because such information will be necessary to implement the distribution process as described below.⁹ Omnibus account holders might consider the information necessary to achieve this result commercially sensitive. The data will therefore be maintained exclusively by BFDS subject to appropriate assurances of confidentiality, and Respondent will not have access to those data. Respondent will stand ready to reimburse opaque omnibus account holders for commercially reasonable expenses incurred in gathering and providing the necessary data, subject to the limitation that the amount of reimbursement will not exceed

⁸ In considering whether efforts are “commercially reasonable,” the IDC shall consider whether it is advisable to re-key data that are not in machine-readable form and consider the costs and benefit of such procedure.

⁹ The requested data will relate only to the first generation of account holders (that is, account holders whose beneficial interest is apparent from the records of the intermediary). In cases where account holders in omnibus accounts are themselves omnibus accounts, BFDS will not seek account holder information relating to the beneficiaries of such omnibus accounts.

the aggregate amount of the provisional distribution.¹⁰ Respondent and BFDS will maintain records of efforts made to obtain the cooperation of opaque omnibus holders and of the responses to these efforts.

Step Eight. Not later than 90 days after Commission approval of the Plan, and after the expenditure of reasonable efforts to obtain these data from opaque omnibus account holders, where all determinations as to reasonableness will be made by the IDC, the data obtained from the omnibus account holders will be combined with the data contained in the Provisional Database to create the Consolidated Master Database.

Step Nine. Under the IDC's direction, the Consolidated Master Database will be validated.

Step Ten. Under the IDC's direction, the Allocation Algorithm will be applied to the Consolidated Master Database to generate provisional distributions.

Step Eleven. Under the IDC's direction, the calculations will be validated.

Step Twelve. Under the IDC's direction, a *de minimis* distribution amount will be set at \$10. In order to implement this *de minimis* distribution amount, Respondent and BFDS will apply the Gross-Up Algorithm. The Gross-Up Algorithm requires that the provisional distributions be ranked in descending order of the size of the provisional distribution. Respondent and BFDS will then calculate the total amount of the provisional distributions of less than \$10 (the "Aggregate *de minimis* Distribution"). Respondent and BFDS will then provisionally redistribute the Aggregate *de minimis* Distribution in sequence to the accounts with the largest provisional distributions less than \$10, sequentially assigning a distribution of \$10 to each account until the Aggregate *de*

¹⁰ For a discussion of the treatment of opaque omnibus accounts that decline to provide the necessary data or for whom expenses of gathering and providing the necessary data are viewed as not being commercially reasonable, see the discussion at Step Fifteen below.

minimis Distribution is depleted. The Gross-Up Algorithm will thus leave unchanged all provisional distributions of \$10 or more, and cause certain account holders with provisional distributions of less than \$10 to receive distributions that have been grossed up to \$10. This procedure will also cause the de facto *de minimis* provisional distribution amount to be less than \$10. The distribution amounts determined by the application of the Allocation Algorithm combined with this Gross-Up Algorithm are, subject to validation in the next step, the Final Distribution Amounts.

Step Thirteen. Under the IDC's direction, these calculations will be validated for accuracy.

Step Fourteen. BFDS will implement an address identification process for all transparent accounts, whether the account is originally a BOIA account or whether the account information is provided by a cooperating omnibus provider. BFDS will compare all addresses for open registered account holders to the current data files at DST¹¹ for any changes and updates that may have occurred after the original file was created by DST for Bank One in March of 2004. The master database will then be updated to reflect any new address information. BFDS will send all addresses for closed accounts to InfoAge, a research firm, in order to attempt to obtain a valid, current address. In order to increase the quality of this information, BFDS will conduct the InfoAge search on a date as close to the mail date as is commercially reasonable. InfoAge uses a name, past address, phone number or Social Security number to obtain current addresses. The master database will then again be updated with the new address information.

¹¹ DST is a publicly traded information processor that, among other services, provides mutual fund shareowner and unit trust recordkeeping systems.

In order to distribute the funds, the IDC will submit a validated list of payees and the payment amounts, with personal identifying information redacted, to the assigned Commission Staff, who will obtain authorization from the Commission to disburse pursuant to Rule 1101(b)(6). The payees and amounts will be validated at the IDC's direction. The validation will state that the list was compiled in accordance with the Plan and provides all information necessary to make disbursement to each distributee. Unless otherwise directed by the Commission, the Commission Staff will direct the release of funds to the bank account established by the Fund Administrator (the "Escrow Account") based upon the validated list and representation by the Fund Administrator that the checks/wires will be issued within five business days.

Step Fifteen. BFDS or Respondent will cause a check to be mailed or will cause an electronic credit to be provided to all identified accounts within five business days of receiving custody of the Fair Fund. For those payees receiving checks, BFDS will mail the check to the payee's last known address as determined in Step Fourteen above. All checks shall bear a stale date 90 days from the date of issue. The IDC shall require the use of a positive payment system to honor checks as they are presented for payment, consistent with the limitations as to date and time. The electronic credits will be made only to cash equivalent accounts (e.g., money market accounts). All payments shall be preceded or accompanied with a communication that: (a) may, as appropriate, describe tax reporting and other related tax matters; (b) shall state that checks will be void after 90 days; (c) shall provide a contact to be used in the event of any questions regarding the distribution; (d) indicates that the checks or electronic credits are distributions from the

Fair Fund; and (e) shall request that any recipient who is an omnibus or collective account holder contact BFDS for further instructions.

All omnibus account holders who contact BFDS will receive a further communication that describes steps the recipient should take in light of its status as an omnibus or collective account holder.¹² For omnibus accounts held at registered broker dealers that receive distributions of more than \$1,000, these options are:

(a) Distribution of the proceeds to beneficiaries in the ratios that would be determined through the application of the distribution algorithm described in this Plan. Account holders who elect this alternative will be provided with information sufficient to allow the coding of the necessary computer algorithm. The account holders electing this alternative must certify in writing to the IDC that they will distribute the proceeds to beneficiaries in accordance with this Plan, or they will not receive any proceeds.

(b) Provision of all necessary data to BFDS so that BFDS could apply the distribution algorithm described in this Plan to the amount that has already been set to be distributed to that account. Any recipient who elects this option would have to notify BFDS within thirty days of the mailing of the letter describing these alternatives, and would have to provide the necessary data in machine-readable form within a reasonable time period.¹³ Under this option, BFDS would perform the required calculations but the

¹² The omnibus communication is necessary because there may be opaque omnibus accounts within the omnibus accounts that are disclosed to the IDC and BFDS, even after the outreach effort described above. Also, there may be omnibus account holders who have declined the opportunity to cooperate by providing the necessary account and address information.

¹³ This alternative would not be available for accounts with distributions of less than \$1,000 and would as a practical matter be available only for accounts that the IDC failed to recognize as being opaque omnibus accounts and that have distributions in excess of \$1,000.

recipient would remain responsible for the actual distribution.¹⁴ The account holders electing this alternative must certify in writing to the IDC that they will distribute the proceeds to beneficiaries in accordance with this Plan.

(c) Return the check or the credit to BFDS or simply elect not to cash the check. Either alternative will cause those funds to be added to the Residue Account described below.

For all other omnibus account holders, these steps would include:

(a) Application of any distribution technique that the recipient, in the exercise of its reasonable discretion, deems to be consistent with its fiduciary or other legal obligations.

(b) Distribution of the proceeds to beneficiaries in the ratios that would be determined through the application of the distribution algorithm described in this Plan. The account holders electing this alternative must certify in writing to the IDC that they will distribute the proceeds to beneficiaries in accordance with this Plan, or they will not receive any proceeds. Account holders who elect this alternative will be provided with information sufficient to allow the coding of the necessary computer algorithm.

(c) Provision of all necessary data to BFDS so that BFDS could apply the distribution algorithm described in this Plan to the amount that has already been set to be distributed to that account. Any recipient who elects this option would have to notify

¹⁴ As a general matter, with regard to requests from recipients that the Respondent bear the expenses associated with further distributions, the IDC will cooperate with all such requests as reasonable, and on a case by case basis, subject to the limitation that the IDC will not, absent extraordinary circumstance, agree to an arrangement that would require the expenditure of an amount that is reasonably calculated to exceed the amount of the distribution. These costs will be limited to the costs incurred by working through BFDS. Research or other costs incurred at the omnibus account holders will be considered reimbursable only to the extent that those costs are commercially reasonable.

BFDS within thirty days of the mailing of the letter describing these alternatives, and would have to provide the necessary data in machine-readable form within a reasonable time period.¹⁵ Under this option, BFDS would perform the required calculations but the recipient would remain responsible for the actual distribution.¹⁶ The account holders electing this alternative must certify in writing to the IDC that they will distribute the proceeds to beneficiaries in accordance with this Plan.

(d) Return the check or the credit to BFDS or simply elect not to cash the check.

Either alternative will cause those funds to be added to the Residue Account described below.

For all non-IRA retirement accounts, other than salary reduction-only 403(b) accounts (“NRAs”):

- (a) BFDS, upon completing its final calculation of the amount to be distributed to each eligible accountholder and associated validations, will use best efforts to identify and mail notice to each NRA accountholder entitled to a distribution of \$1,000 or more of its distribution amount. Such notice will be sent via the United States Postal Service to the eligible accountholders’ last known address of record¹⁷;
- (b) BFDS shall use best efforts to make payments to NRAs after other eligible accountholders in order to allow as much time as practicable under the Plan for such NRA

¹⁵ This alternative would not be available for accounts with distributions of less than \$1,000 and would as a practical matter be available only for accounts that the IDC failed to recognize as being opaque omnibus accounts and that have distributions in excess of \$1,000.

¹⁶ As a general matter, with regard to requests from recipients that the Respondent bear the expenses associated with further distributions, the IDC will cooperate with all such requests as reasonable, and on a case by case basis, subject to the limitation that the IDC will not, absent extraordinary circumstance, agree to an arrangement that would require the expenditure of an amount that is reasonably calculated to exceed the amount of the distribution. These costs will be limited to the costs incurred by working through BFDS. Research or other costs incurred at the omnibus account holders will be considered reimbursable only to the extent that those costs are commercially reasonable.

¹⁷ Returned mail will be handled using the same process as for all other mailings, as set forth in Step Seventeen.

accountholders to determine a distribution methodology and, as appropriate, notify the plan fiduciary of the same.

- (c) The record holder shall distribute the funds in accordance with its fiduciary, contractual, and/or legal obligations, and consistent with guidance issued by the Department of Labor, if any.

Subject to the foregoing:

- (i) a service provider (other than a plan sponsor) may allocate the proceeds it receives pursuant to the Plan among the non-IRA retirement plans (“NRPs”) according to average share or dollar balance of the NRPs’ investment in the One Group Funds during the relevant period; and

- (ii) proceeds attributable to a particular NRP may (1) be allocated to current participants *pro rata* based upon their current total balance in the affected NRP, or (2) to the extent permitted by the NRP, be used to pay reasonable expenses of administering the NRP.

No money shall be distributed pursuant to the Distribution Plan prior to the receipt of the Ruling by the IRS in connection with the Private Letter Ruling currently being sought by the Tax Administrator (the “IRS Ruling”).

In the event that the IRS Ruling does not require reporting of any distributions made pursuant to the Distribution Plan, and provided that the Commission has approved the Distribution Plan, the period for omnibus outreach has expired, and that the Fund Administrator has completed its final calculation of the amount to be distributed to each eligible accountholder and associated validations, the Fund Administrator will use its best efforts to: (i) start the distribution within two weeks of the date of its receipt of the IRS Ruling, and (ii) complete the distribution within four months of the transfer of the final payment population to the Escrow Account.

In the event the IRS Ruling requires reporting of all or a portion of the distributions made pursuant to the Distribution Plan, and provided that the Commission has approved the Distribution Plan, the period for omnibus outreach has expired, and the Fund Administrator has completed its final calculation of the amount to be distributed to each eligible accountholder and associated validations, the Fund Administrator will use its best efforts to: (i) start the distribution within two weeks of the deadline for returning any back-up withholding or other tax forms from eligible investors required by the IRS Ruling, and (ii) complete the distribution within four months of the transfer of the final payment population to the Escrow Account.

Step Sixteen. Customer support and communications programs to be administered by BFDS will go live at the time the first distribution occurs. BFDS will provide a toll free number and a website to the public. The Commission retains the right to review and approve any material posted on the website. Disputes will be handled by the customer support staff and reviewed as necessary by the IDC, whose determination shall be final.

Step Seventeen. Returned mail and checks will be handled as follows:

(a) All mail returned by the United States Postal Service (“USPS”) for which a new forwarding address has been provided by the USPS will be immediately repackaged and sent to the new address. The master database will be updated with the new address.

(b) All mail returned by the USPS for the first time, without a new forwarding address, will be coded as returned mail, the check will be voided, and current account information forwarded to InfoAge for address research. If a new address is found, that address will be updated to the master database and a new check will be issued. If no new

address is found, the original check will remain voided. Additional efforts to identify the addresses of recipients will be conducted as is commercially reasonable in the view of the IDC, where the costs of further research and the amount to be distributed will be considered, subject to an initial rebuttable presumption that the additional costs of distribution will not exceed the amount to be distributed.

(c) All mail returned by the USPS from a second attempt mailing, for which a new forwarding address has been provided by the USPS, will be immediately repackaged and sent to that new address. The master database will be updated with the new address.

(d) All mail returned by the USPS from a second attempt mailing, without a new forwarding address, will be coded as returned mail and the check will be voided.

Additional efforts to identify the addresses of recipients will be conducted as is commercially reasonable in the view of the IDC, where the costs of further research and the amount to be distributed will be considered, subject to an initial rebuttable presumption that the additional costs of distribution will not exceed the amount to be distributed.

Step Eighteen. Under the IDC's direction, Steps Fifteen through Seventeen will be validated.

Step Nineteen. The IDC shall declare the implementation of the Distribution Process complete 120 days after completing the last mailing required pursuant to the protocol described in Step Seventeen. This 120-day period constitutes the 90-day period during which the check is valid plus a 30-day grace period.

Step Twenty. The value of all checks not cashed, returned distributions, distributions to account holders who cannot be identified, or interest accrued on these

accounts after the end of this 120-day period will be contributed to or remain in the Residue Account at Eastern Bank.

Step Twenty-One. Under the IDC's direction, the balance in the Residue Account will be validated.

Step Twenty-Two. Under the IDC's direction, BFDS will allocate the Residue Account among the eleven affected funds in the same ratio as would be calculated through the application of the distribution algorithm, without regard to the gross-up protocol.

Step Twenty-Three. Under the IDC's direction, the Residue Account allocation calculations and distributions into the fund will be validated.

Step Twenty-Four. Under the IDC's direction, BFDS will transfer funds from the Residue Account to the affected funds. All funds, including accrued interest as of the date of the implementation of this step will then be fully distributed.

Step Twenty-Five. The IDC will declare that the distribution is concluded. BFDS will file within 30 days an accounting with the Commission as required by Rule 1105(f).¹⁸ The Fair Fund shall terminate effective June 30, 2007 or 30 days after the final distribution to shareholders and the resolution of uncashed or unclaimed checks as described above, whichever is later. Prior to the termination of the Fair Fund, the Respondent shall cooperate with the Tax Administrator to make adequate accommodation for tax liability and for the costs of tax compliance. Upon termination as defined in this paragraph, all undistributed assets remaining in the Fair Fund shall be remitted to Treasury.

¹⁸ In addition, while the distribution is ongoing, BFDS will file an accounting during the first ten days of each calendar quarter, or as otherwise directed by the Commission. BFDS will submit a final accounting for approval of the Commission, as required by Rule 1105(f).

For good cause shown, the Commission's Staff may extend any of the procedural dates set forth in this Plan.

The IDC will inform the Commission Staff of any material changes in the Plan, and will obtain approval from the Commission prior to their implementation. If material changes are required, this Plan may be amended upon the motion of the Respondent, the Fund Administrator or upon the Commission's own motion.

Submitted on February 20, 2007

By: _____/s/_____
Joseph A. Grundfest
IDC for Banc One Investment Advisors
Corporation