

Via E-mail



Date: June 13, 2007

Nancy M. Morris, Secretary  
Office of the Secretary  
United States Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Re: Admin. Proc. File No. 3-11696

Dear Ms. Morris:

We believe that several aspects of the Distribution Plan ("Plan") for distribution of the Fair Fund established In the Matter of: RS Investment Management, Inc, RS Investment Management, L.P., G. Randall Hecht and Steven M. Cohen should be revisited as they relate to financial intermediaries that maintain omnibus accounts with the mutual funds for the benefit of their clients (hereinafter collectively referred to as "Account Carrying Firms"), including: empowering the IDC to approve alternative distribution methodologies, reimbursements of out-of-pocket costs, the recognition of the administrative role of Account Carrying Firms, and the inclusion of provisions for certain protections related to the delivery of beneficial owners' data by Account Carrying Firms. Certain capitalized terms used but not defined herein have the meanings ascribed to them in the Plan.

#### Distribution of Fair Fund

Section 4.1.4 of the Plan provides Account Carrying Firms with only two options for facilitating distributions from the Fair Fund to beneficial owners. (Option one provides only for Account Carrying Firms to refuse the money.) We note that while option three allows for Account Carrying Firms to make distributions to their clients it also requires the firm to perform all of the calculations necessary to determine the amounts due each client. It is our belief that Account Carrying Firms do not possess the capabilities to perform the data analysis required, nor would it be commercially reasonable for them to develop or purchase such services. Moreover, the Plan in its current form does not appear to provide the IDC with the flexibility to review and approve alternative methodologies for effecting distributions, and it is unclear whether the alternative method hereinafter suggested would be a material change to the Plan that would require approval of the Commission under paragraph 6.1 of the Plan.

For example, certain Account Carrying Firms may prefer to elect to provide more limited client data that would only allow the Fund Administrator to calculate payments due investors. The Account Carrying Firm would then credit distribution amounts to open sub-accounts and provide names and last known addresses to the Fund Administrator to help facilitate the mailing of checks only to accounts that have been closed at Account Carrying

Firms. This methodology has been embraced by other distribution plans as a viable alternative, presumably in recognition of the fact that it would result in less sensitive client information being transmitted to and among the multiple additional sub-contractors typically engaged by the Fund Administrator, including data processing firms, print/mail vendors, address research firms, and banks. We believe that the failure to provide additional flexibility to the IDC to allow alternate distribution methodologies may eliminate the ability of the Account Carrying Firms to facilitate a solution that will be cost effective, expeditious and will best service their clients invested in the RS Funds.

#### Reimbursements of Reasonable Costs

Paragraph 3.1 of the Plan states that the Respondent will pay all fees of the Fund Administrator, as well as any other costs associated with the administration of the Plan. In support of this, paragraph 4.1.5 of the Plan specifically provides that the Respondent will reimburse Account Carrying Firms for commercially reasonable expenses incurred in gathering and providing data. However, Section 5.3 requires certain communications to precede or accompany the distribution payment to beneficial owners. If the alternative distribution methodology suggested above were provided for, we believe that the Plan should recognize Respondent's obligation to reimburse the reasonable costs associated with the distribution, including at least, for example, the reasonable costs associated with the communications required by paragraph 5.3. Accordingly, we respectfully request that the Plan be revised to provide for the reimbursement of all reasonable costs of Account Carrying Firms in so far as they act in a reasonable administrative capacity when making distributions.

#### Indemnity

The Plan states in paragraph 1.7 that the limited liability/standard of care of the IDC and Fund Administrator and each of their designees, agents and assistants is merely an expression of the current state of the law. We believe that in certain circumstances Account Carrying Firms are acting as assistants to each of the IDC and/or Fund Administrator, particularly when they accept the responsibility of facilitating distributions from the Fair Funds. However, because it would appear that the current state of law is such that it has not been applied to facts similar to the current situation to reach the issue of the standard of care that would apply to Account Carrying Firms such that the IDC felt it appropriate to include them within the paragraph, we respectfully request that the Plan be revised to provide for indemnification of the Account Carrying Firms pursuant to Rule 1101(b)(6) [17 CFR 201.1101(b)(6)] of the Commission's Rules of Practice and Investigations. In particular, we believe that the Plan should include procedures for the indemnification of the Account Carrying Firms by the Respondent except in the case of an Account Carrying Firm's gross negligence, bad faith or willful misconduct, reckless disregard of duty, or reckless failure to comply with the terms of the Plan.

#### Data Privacy

The Plan may require Account Carrying Firms to transmit a substantial amount of client sensitive information, including name, address and social security number, to non-affiliated entities whose data control procedures may not be comprehensive. The safeguarding of client data is mandated by Federal law and regulation, and many state laws

govern financial institutions' handling of such client data. The transmission of client data exposes Account Carrying Firms to significant regulatory and reputational risks if such data is disclosed or distributed in an unauthorized manner or otherwise mishandled. We respectfully request that the Plan be revised to provide for security and confidentiality obligations and indemnification of all Account Carrying Firms for any misuse or loss of client data which may occur as a result of the delivery of this data.

The Commission has pointed out with respect to other proposed plans of distribution that those plans require the client data to be maintained confidentially by the Fund Administrator. It has come to our attention that fund administrators intend to transmit client data to numerous other service providers engaged by them, including data analysis firms, print-mail vendors and others, pursuant to written agreements with standard commercial terms, including confidentiality and indemnity provisions. Accordingly, it would seem only prudent for the Plan to specifically require the Fund Administrator to extract confidentiality obligations from their service providers. Moreover, given the fact that fund administrators have no obligation or commercial incentive to provide any indemnity to Account Carrying Firms, and because of the state of the law enjoy limited liability as specifically recognized by the Commission in the Plan, we believe the Commission should require the Plan to contain procedures requiring that fund administrators provide indemnities to Account Carrying Firms in applicable written agreements related to their provision of client data to their sub-contractors with the same standard of care referred to above. Again, we believe that the Commission's Rule 1101(b)(6) would allow for an indemnity to be included in the Plan.

Very truly yours,

William Bridy  
Managing Director  
Merrill Lynch & Co., Inc.