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Filed Electronically

September 4, 2006

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

Re: **Proposed Distribution Plan for Banc One Investment Advisors Corporation (Administrative Proceeding File Number 3-11530)**

Dear Ms. Morris:

The SPARK Institute, Inc. (“SPARK”)¹ appreciates this opportunity to comment regarding the proposed distribution plan (the “Distribution Plan”) for Banc One Investment Advisors Corporation (“Banc One”) that was published by the U.S. Securities and Exchange Commission (“SEC”) on August 7, 2006. The SPARK Institute members include the retirement plan service providers that will be responsible for reconstructing account holder balance information, making allocations, receiving proceeds, and making distributions to plan participants who are the intended beneficiaries of a substantial portion of the distribution at issue.

We commend the SEC for its prior efforts to address and minimize the administrative complexities associated with allocating and distributing payments to retirement plans. We also

¹ SPARK represents the interests of a broad based cross section of retirement plan service providers, including members that are banks, mutual fund companies, third party administrators and benefits consultants. SPARK members include most of the largest service providers in the retirement plan industry and the combined membership services more than 90% of all defined contribution plan participants.

appreciate the SEC's most recent efforts to address the issues raised by The SPARK Institute in our comment letter regarding the proposed distribution plan for Pilgrim Baxter & Associates, Ltd (the "Pilgrim Baxter Distribution Plan").² The SPARK Institute remains concerned, that the Banc One Distribution Plan together with the Pilgrim Baxter and Columbia Funds Distribution Plans³ will set precedent for future distribution plans.

At the outset, we note that we are concerned about the fact that the Distribution Plan provides virtually no guidance or assistance with respect to the handling of retirement plans and retirement plan omnibus accounts. As the SEC knows, such accounts involve thousands of plans and millions of participants who are likely the intended beneficiaries of a large percentage of the total distribution. The rules and regulations that apply to such plans are extremely complex and raise potential fiduciary duty issues for service providers who are not otherwise plan fiduciaries. It should be further noted that the Distribution Plan expressly addresses the treatment of non-retirement plan omnibus accounts, both transparent and opaque, and the Fund Administrator undertakes to perform the allocations with respect to such accounts on behalf of the omnibus account holders. However, retirement plan accounts are treated differently and effectively ignored. The SPARK Institute urges the SEC to require the IDC to modify the Distribution Plan to address the concerns specific to retirement plans and retirement plan omnibus account holders.

I. The Distribution Plan Substantially Limits The Ability Of Retirement Plan Service Providers To Cost Effectively Allocate Payments And Rely On Certain "Safe Harbors" Created By The Department Of Labor.

The Distribution Plan provides that "For all non-IRA retirement accounts, other than salary reduction-only 403(b) accounts, the record holder shall distribute the funds in accordance with applicable guidance, if any, issued by the Department of Labor" (see page 17). It is our understanding that the foregoing provision effectively means that service providers who held positions in the affected funds for retirement plans through omnibus accounts will be responsible for all aspects of determining the allocations and making the payments. Such responsibilities include making all plan level and individual participant level allocations. It is also our understanding that substantially all of the other provisions in the Distribution Plan that relate to the allocation and payment of the proceeds generally do not apply to non-IRA retirement plan accounts.⁴

² The SPARK Institute comment letter submitted by Robert G Wuelfing, President, and Larry H. Goldbrum, General Counsel, dated July 31, 2006 is available at <http://www.sec.gov/comments/3-11524/3-11524.shtml>.

³ The SPARK Institute filed comments regarding the Columbia Funds Distribution Plan. The letter submitted by Robert G Wuelfing, President, and Larry H. Goldbrum, General Counsel, dated August 18, 2006 is available at <http://www.sec.gov/comments/3-11814/3-11814.shtml>.

⁴ We have assumed that the third paragraph on page 17 of the Distribution Plan is the controlling provision with respect to the handling of retirement plan omnibus accounts. In the event that such assumption is incorrect, The SPARK Institute requests that the Distribution Plan be modified and additional time for comment provided as needed to the extent that treatment of retirement plan service providers is intended to be different.

The Distribution Plan appears to utilize a distribution methodology (the “Methodology”) that allocates the available funds according to the relative harm suffered by investors on a daily basis. In order to apply the Methodology, retirement plan service providers must reconstruct the historical account balance information at the participant level from June 1999 through May 2003.

The Department of Labor (“DOL”) provided guidance regarding these matters in Field Assistance Bulletin (“FAB”) 2006-1, dated April 19, 2006. The FAB provides a safe harbor for retirement plan service providers if the service provider utilizes the particular allocation methodology set forth in a distribution plan. Because of the costs and complexity of applying the Methodology to individual participant data, and the fact that the Fund Administrator will not undertake to determine plan level or individual participant level allocations with respect to retirement plan omnibus accounts, the Distribution Plan substantially limits the ability of a retirement plan service provider to rely on the safe harbor provisions. A retirement plan service provider who is neither a plan fiduciary nor has fiduciary discretionary authority over plan assets, and is unwilling to assume a fiduciary role with respect to such assets has no choice but to undertake extremely costly historical data reconstruction in order to apply the Methodology. (The costs issues are discussed in greater detail under Section III.) For many retirement plan service providers the fiduciary implications created by the receipt of funds under the Distribution Plan are not contemplated in their arrangement with the plans they service. Moreover, many retirement plan service providers carefully construct their services to avoid fiduciary status, and the services are priced accordingly, such that fiduciary risk is not factored into the fees charged. It is unreasonable to expect a retirement plan service provider to apply the Methodology across thousands of plans and millions of participants in order to avoid unexpected fiduciary concerns.

II. Retirement Plan Service Providers Should Not Be Treated Less Favorably Than Other Similarly Situated Omnibus Account Holders.

Retirement plan service providers, plan sponsors and plan participants should not be treated less favorably than similarly situated broker-dealers, other omnibus account holders, and their respective customers. We note this especially in light of the extremely large percentage of mutual funds held in defined contribution retirement plans and the large percentage of mutual fund assets that are attributable to retirement plan accounts. The Banc One Distribution Plan permits broker-dealers and other omnibus account holders to submit data regarding their underlying account holders to the Fund Administrator so that it could perform calculations of distribution amounts to the underlying holders. However, no such alternative is made available with respect to retirement plan omnibus accounts. We acknowledge that most retirement plans omnibus accounts are different and more complicated than other omnibus accounts because retirement plan omnibus accounts may include a second level sub-account (i.e., the individual participant level). We also understand that the IDC and its agents may not be willing to perform distribution calculations at the participant level. However, if a retirement plan service provider were to so request, the IDC and the Fund Administrator should be willing to perform the calculations of distribution amounts at the plan level (based on data provided to the Fund Administrator by such service provider). We

note that not all retirement plan service providers will want to take advantage of this option. In fact, for some service providers this option would make their tasks more complicated. Nevertheless, this option should be available to those that will benefit from it. Additionally, the availability of this option should not be considered a basis for treating those who don't use it less favorably in connection with the option that works best for them.

III. The Costs To Apply The Methodology Based On Historical Balance Information Will Be Significant and Will Substantially Reduce The Beneficiary Payments Unless Either, Banc One Absorbs Such Costs, Or The SEC And The DOL Provide Additional Guidance Regarding The Application Of The Methodology By Retirement Plan Service Providers.

We note that retirement plan record keeping systems are sophisticated and perform a great number of functions necessary to comply with complex rules under the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and the Internal Revenue Code. Such systems have been designed and evolved over the years in order to make mutual fund investing through retirement plans available to millions of Americans in a cost effective manner. However, although such systems are well designed for their intended purposes, including maintaining records for millions of plan participants with relatively small balances and frequent small deposits through payroll deductions, such systems were not designed to meet the massive data retrieval demands of this extraordinary and historical restitution process without significant costs being incurred.

The information required to make plan level allocations across thousands of plans and millions of participants over the four year period at issue will be significant.⁵ Although applying the Methodology based on historical balance data may be the most precise allocation method, the effort and cost associated with gathering this information with respect to retirement plans, even at the plan level, may not be cost effective and may not be justifiable given the ultimate benefit of such accuracy. If the Distribution Plan does not provide for reimbursement of costs and expenses to retirement plan service providers, then in effect the Distribution Plan is dictating that the intended beneficiaries receive less than other beneficiaries unless the plan service provider absorbs such costs. Accordingly, as discussed in greater detail below, the SEC should facilitate efforts through the Distribution Plan to

⁵ At the request of the SEC in response to our comment letter regarding the Pilgrim Baxter Distribution Plan, The SPARK Institute worked with its members to develop certain costs estimates. The estimated average compliance costs for daily historical data retrieval and allocation of the proceeds at the plan and participant levels range is approximately \$242,000 per institution for a single distribution plan. For certain institutions the estimates reached a high of approximately \$500,000 for more widely used funds that would impact a high percentage of their plans. Moreover, such estimates **did not include** costs for communications with plan sponsors and participants, distribution costs, and the costs associated with locating and handling payments for plans and participants that have moved during or following the period at issue. The costs associated with these additional items can be significant and possibly even more costly than the data reconstruction. For example, the costs associated with mailing trade confirmations to millions of affected participants as required under SEC Rule 10b-10 alone will likely exceed the data retrieval costs.

minimize such costs in such a way that does not force retirement plan service providers out of the DOL safe harbor and does not subject them to fiduciary responsibility rules under ERISA. Additionally, if retirement plan intermediary costs and expenses are not reimbursed then the Distribution Plan should expressly state that the intent is for such costs and expenses that are not reimbursed to be charged against the proceeds.

One of the most costly aspects of this process with respect to retirement plan omnibus accounts will be the retrieval, reconstruction, recalculation, and verification of the historical (e.g., daily or monthly) account balance information. Most retirement plan record keeping systems do not retain historical balance information in the way a typical brokerage system retains such information. Although the balance information can be calculated, the data gathering process is extremely complicated and will require the dedication of significant information technology resources. This effort will easily affect tens of thousands of plans, millions of participants, and hundreds of millions of transactions and data points because retirement plan service providers process hundreds of thousands and even millions of transactions each day. Under some record keeping systems the use of month-end or quarter-end data would greatly reduce the costs and time required in this effort and preserves a greater amount of the proceeds for beneficiaries without arbitrarily disadvantaging such beneficiaries. The Distribution Plan should expressly provide the opportunity for retirement plan service providers to use monthly or quarterly records to determine allocations. Such change to the Distribution Plan will help some retirement plan service providers to fall within the safe harbor under the FAB. However, such change will not resolve our concerns with respect to most record keeping systems.

Additionally, retirement plan record keeping systems have changed significantly since 1999. Many service providers have changed record keeping platforms, have outsourced their record keeping operations to other entities, or have been involved in mergers and acquisitions. Some of the information may be on systems that are no longer supported by the service provider or its software vendor. The combined costs and demands that this Distribution Plan, the others that are pending, and other SEC matters affecting retirement plan service providers⁶ are significant and should not be overlooked by the SEC when considering how to resolve these matters.

In order to fully address these concerns, The SPARK Institute urges the SEC to modify the Distribution Plan to provide clear and specific guidance in the form of an alternative allocation methodology (the “Alternative Methodology”) that the retirement plan service provider could apply when the net costs (after taking into account Banc One cost reimbursement) for allocating the proceeds according to the Methodology among plans and participants, as reasonably determined by the retirement plan service provider and affirmed

⁶ SPARK Institute members are concerned that they are already devoting significant IT resources towards making system changes to facilitate mutual fund industry compliance with SEC Rule 22c-2. Absent an extension from the SEC, Rule 22c-2 has a compliance deadline of October 16, 2006.

by the Fund Administrator, exceeds 50% of the gross proceeds.⁷ The Alternate Methodology should provide that the proceeds can be allocated among the plans that held the affected funds during the restitution period according to average share or dollar account balances. The Alternate Methodology should provide that individual plan proceeds can be either (a) allocated among participants pro rata based upon their current total account balance in the affected plan, (b) to the extent permitted by the plan, used to pay reasonable expenses of administering the plan, or (c) allocated according to the directions given to the service provider by the plan sponsor. The SPARK Institute also urges the SEC to modify the Distribution Plan to clearly and specifically acknowledge that it would be reasonable for retirement plan service providers to apply the Methodology to a simplified data set (i.e., month-end or quarter end account balances) in order to make plan and participant allocations where, based on the record keeping system involved, it is more cost effective and administratively feasible to do so. The combined impact of this additional guidance and relief would greatly reduce the costs and time required in this effort and preserve a greater amount of the proceeds for beneficiaries without arbitrarily disadvantaging such beneficiaries.

IV. Retirement Plan Service Providers Will Require Significant Time To Complete Their Roles In Connection With The Distribution Processes.

Under the FAB, the DOL concluded that a retirement plan service provider becomes a fiduciary upon receipt of settlement funds, even if such entity is not otherwise a fiduciary with respect to the plan it services. Consequently, retirement plan service providers will likely elect to handle the distributions according to the provisions in the DOL FAB that suggests that a record keeper “may be able to avoid fiduciary status” if the “receipt, allocation and/or distribution services . . . are carried out in accordance with the directions and approval of appropriate plan fiduciaries. . . .” (FAB 2006-1.) Accordingly, the service provider must have adequate time to obtain the required instructions from the appropriate plan fiduciaries and make the allocation before receiving any payments from the Fund Administrator. Identifying the affected plans and obtaining the required instructions will be a time consuming process.

⁷ For example, assume gross proceeds under the Distribution Plan of \$1,000,000 and a proposed cost reimbursement estimate of \$150,000 to a particular record keeper. Additionally, assume that the record keeper estimates that the costs and expenses to follow the Methodology will be \$300,000 and is permitted to offset such costs against the proceeds under its plan agreements. The net proceeds to be allocated under this example would be \$850,000 ($\$1,000,000 - \$300,000 + \$150,000$). Accordingly, the service provider would follow the Methodology for the plan level allocation, and possibly the participant level allocation, because the net allocation costs will not exceed 50% of the gross proceeds ($\$300,000 - \$150,000 < \$1,000,000 \times 50\%$). Alternatively, assume gross proceeds under the Distribution Plan of \$450,000 and a proposed cost reimbursement estimate of \$67,500 to the same record keeper. The allocation costs to follow the Methodology remain at \$300,000 because such costs are not driven by the amount of the proceeds but instead by the costs to reconstruct the balance history and complexity of the Methodology. Under these facts the record keeper would follow the Alternate Methodology because the net cost to follow the Methodology will be \$232,500 which is greater than 50% of the gross proceeds (\$225,000), unless Banc One agrees to absorb a greater portion of the allocation expenses.

The SPARK Institute urges the SEC, the IDC and the Fund Administrator to allow retirement plan record keepers the time that is reasonably necessary to, for example (1) identify and provide targeted notification to the affected plans in order to obtain plan sponsor directions regarding participant level allocations; (2) gather the required transaction and balance information necessary to determine the plan level and participant level allocations, and (3) complete such tasks prior to the receipt of funds so that such service providers avoid or minimize the fiduciary status and potential fiduciary duties under ERISA. The SPARK Institute can provide additional information regarding these time concerns and needs, upon request by the SEC.

V. The Distribution Plan Should Expressly Provide For Reimbursement Of Expenses To Retirement Plan Service Providers For Making Allocations And Distributions With Respect to Retirement Plan Omnibus Accounts.

The Distribution Plan provides that Banc One will bear the administrative costs associated with the Distribution Plan (see page 3). Further, the Distribution Plan provides that Banc One is prepared “to reimburse opaque omnibus account holders for commercially reasonable expenses incurred in gathering and providing the necessary data...” (see page 12). However, it appears that costs incurred by the retirement plan record keepers with respect to retirement plan omnibus accounts are not addressed in the Distribution Plan.

The SPARK Institute believes that retirement plan service providers should be eligible for reimbursement just as other intermediaries will be. To perform the allocations and distributions in the retirement plan omnibus context is an even more complicated, involved, and time consuming process. In the absence of any cost relief in the form of reimbursement, retirement plan intermediaries will be forced to pass on their costs associated with allocating and making distributions to plan participants and reduce, if not entirely eliminate, their distribution amount. As noted above, by not providing for reimbursement of costs and expenses to retirement plan intermediaries, the Distribution Plan will in effect be dictating that the intended beneficiaries receive less than other beneficiaries. It is unreasonable to expect retirement plan intermediaries only to absorb all the costs they incur with respect to the accounts they hold.

The SPARK Institute recommends that (a) the Distribution Plan allow for reimbursement of expenses incurred by retirement plan service providers, and (b) if the Fund Administrator can reasonably estimate the gross payment amount to the underlying holders of the opaque omnibus account at the time it notifies such omnibus account holder, the Fund Administrator should also provide an estimate of the potential cost reimbursement to such account holder. This will allow the plan record keeper and the Fund Administrator to determine what is the most cost effective way to handle the matter. However, regardless of the approach taken, Banc One should remain responsible for all of the administrative costs incurred by retirement plan omnibus account holders.

Conclusion

We would be remiss for not pointing out that some of our members are extremely concerned about the fact that they are being required to play a significant role in this process which is the result of mutual fund scandals with respect to which they are not at fault. Such members are being asked, if not forced, to accept fiduciary responsibilities that they never contemplated undertaking, and to incur and absorb significant costs to facilitate this Distribution Plan and others that are pending. Such members are further troubled by the fact that these distribution plans are being developed by third parties without their participation. We respectfully request that the SEC consider these concerns as they evaluate this comment and our request for modifications.

We thank you for this opportunity to comment on this very important effort. Should you have additional questions or need additional information regarding this comment, please do not hesitate to contact us at (860) 658-5058.

Respectfully,

/s/

Robert G. Wuelfing
President

/s/

Larry H. Goldbrum
General Counsel

cc: Peter H. Bresnan, Division of Enforcement (Securities and Exchange Commission)
Nancy Burton, Division of Enforcement (Securities and Exchange Commission)
Lou Campagna, Employee Benefits Security Administration (Department of Labor)