

# **BANK OF AMERICA FAIR FUND** **STATEMENT TO ELIGIBLE INVESTORS**

## **For Nations Funds Holders**

### **INTRODUCTION**

You have received a distribution payment from a Fair Fund established by the U.S. Securities and Exchange Commission (“SEC”) commonly known as the “Bank of America Fair Fund.” This statement provides information to help you determine the U.S. federal income tax consequences of the distribution payment if you are a citizen or resident of the U.S. for U.S. federal income tax purposes.

**YOU SHOULD NOT RELY ON THIS STATEMENT AS TAX ADVICE. CONSULT YOUR TAX ADVISOR WITH RESPECT TO THE SPECIFIC TAX CONSEQUENCES OF THE DISTRIBUTION PAYMENT, INCLUDING THE EFFECTS OF U.S. FEDERAL, STATE, LOCAL, AND NON-U.S. TAX RULES AND THE EFFECT OF POSSIBLE CHANGES IN LAWS.**

In 2005, in the proceeding *In the Matter of Banc of America Capital Management, LLC, BACAP Distributors, LLC, and Banc of America Securities, LLC*, Admin. Proc. No. 3-11818, the SEC issued an order instituting and simultaneously settling public administrative and cease-and-desist proceedings against the respondents (the “Order”). In the Order, the SEC authorized and established a Fair Fund<sup>1</sup> of \$375,000,000 in disgorgement and penalties to be paid by Banc of America Capital Management, LLC, BACAP Distributors, LLC, and Banc of America Securities, LLC (“Respondents”). According to the Order, the Bank of America Fair Fund is to be distributed to investors injured by certain trading, in various Nations mutual funds (“Nations Funds”) and other mutual funds (“Unaffiliated Funds”), as described in Section III.A of the Order (the “Trading identified in the Order”). The distribution payment is intended by the SEC to compensate you for harm to your mutual fund investment(s) caused by Trading identified in the Order. This distribution is being conducted pursuant to a distribution plan (“Distribution Plan”) developed by an Independent Distribution Consultant (the “IDC”), Professor Lawrence A. Hamermesh, Ruby R. Vale Professor of Corporate and Business Law at Widener University School of Law in Wilmington, Delaware.

On December 27, 2007, the SEC approved the Distribution Plan, which provides for distribution to all eligible investors of their share of the disgorgement and penalties paid by Respondents. The Distribution Plan compensates such investors for harm they suffered as a result of the Trading identified in the Order,

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<sup>1</sup> The Fair Fund is commonly known as the “Bank of America Fair Fund;” however, it may also be known as the “Nations Fair Fund,” the “Bank of America Distribution Fund,” or the “BOA Fair Fund.”

during the period spanning 2000 to 2003 (“the relevant period”). Prior to any distribution, the Bank of America Fair Fund held a total of \$375,000,000 plus accumulated interest.

The Bank of America Fair Fund is a Qualified Settlement Fund (“QSF”) under the Internal Revenue Code. Damasco & Associates LLP was appointed as the Tax Administrator for the QSF. The SEC authorized Damasco & Associates LLP to seek a Private Letter Ruling (“PLR”) from the Internal Revenue Service (“IRS”) on behalf of the Bank of America Fair Fund QSF. A PLR was obtained that provides guidance to the Bank of America Fair Fund QSF with respect to the tax reporting obligations of *the Bank of America Fair Fund QSF* in making a distribution payment to you.<sup>2</sup> The PLR does not address *your* tax compliance obligations as an investor receiving a distribution payment. Damasco & Associates LLP has participated in the preparation of this statement, but is not providing services or advice to you or any other eligible investor receiving a distribution payment.

Some eligible investors may be subject to special tax rules, including, without limitation, if you are a non-U.S. investor, if you hold your shares in a tax-qualified retirement plan or an individual retirement account (“IRA”) (except as specifically discussed below), or if you are a tax-qualified retirement plan. This statement does not address the tax consequences under any state, local or non-U.S. tax laws, or the alternative minimum tax provisions of the Internal Revenue Code.

This Statement to Investors is intended to address the tax consequences of distribution payments to investors that held shares in one or more of the *Nations Funds*.

If you are receiving a distribution payment related to shares you held in one or more of the *Unaffiliated Funds*, the information pertaining to your situation will be provided in a separate Statement to Eligible Investors related to the Unaffiliated Fund(s) entitled, “Bank of America Fair Fund Statement to Eligible Investors for Unaffiliated Funds Holders.” **This Statement to Investors is not intended to address the tax consequences of distribution payments to an investor that held shares in Unaffiliated Funds.**

If you are receiving a distribution payment associated with an IRA, in addition to Part I, additional information that also pertains to your situation appears in Part II below (Special Issues for Investments Held in IRA or Tax-Qualified Retirement Plans).

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<sup>2</sup> The Tax Administrator obtained the following PLRs: 200645008, 200645017, 200646010, 200701001, 200702006, 200702008, 200702009, 200702010, 200702011, 200702012, 200702048, 200703008, 200703009, 200703010, 200703034, 200712004, 200712005, 200722004 and 200722025. You may obtain copies of these PLRs from the IRS Web Site, [www.irs.gov](http://www.irs.gov).

## I. INFORMATION FOR NATIONS FUNDS HOLDERS REGARDING THE DISTRIBUTION PAYMENT

Pursuant to the Order, the Distribution Plan has been developed “according to a methodology developed by the IDC in consultation with Respondents and the independent trustees of the Nations Fund mutual funds acceptable to the staff of the Commission.”

The methodology for the distribution of the money in the Bank of America Fair Fund involves two bases for allocation. First, it is designed to provide compensation for dilution and related harm to contemporaneous long term shareholders arising from the Trading identified in the Order in the various Nations Funds. The second basis for allocating the Fair Fund in this proceeding involves return, to contemporaneous long term holders of Nations Funds in which the Trading identified in the Order occurred, of advisory and administrative fees paid to BACAP and BACAP Distributors by those funds during the periods in which that trading occurred.

Accordingly, your payment is composed of a “dilution component” and an “advisory fee component.” These calculations were performed by the IDC. The dilution component represents how the Respondents’ conduct impaired the value of your Nations Fund shares as a result of the Trading identified in the Order. The advisory fee component represents your share of advisory and administrative fees that the Nations Funds paid to the Respondents.

### A. Dilution Component

The dilution component of your payment is intended by the SEC to compensate you for harm to the value of your Nations Fund(s) investment caused by the Trading identified in the Order. This harm has been measured as dilution in the share price. This payment is not income to you to the extent of your basis in your shares;<sup>3</sup> however, you must adjust your basis downward by the amount of the payment. (Generally, your basis is the amount you paid for your shares). If the amount of this payment exceeds your tax basis in your investment, then the excess is includable in your income as capital gain. Any such capital gain is long-term capital gain, unless you disposed of your investment before holding it for longer than one year.

Example 1: You have a basis of \$100 in your shares. The dilution component of your distribution is \$10. You do not have gross income as a result of the dilution component of your distribution *BUT* your basis is reduced to \$90 for purposes of determining gain

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<sup>3</sup> References to “shares” throughout this disclosure means shares you owned in the Nations Funds to which your distribution payment relates during the relevant period.

or loss in the future (\$100 basis less \$10 dilution distribution = \$90).<sup>4</sup>

Example 2: You have a basis of \$400 in your shares. The dilution component of your distribution is \$1,000. You apply \$400 of the dilution component to reduce your basis to zero for purposes of determining gain or loss in the future *AND* you include the remaining \$600 in income as taxable gain on your investment.

Example 3: You have sold all of your shares in the Nations Fund to which the distribution relates and the dilution component of the distribution is \$1,000. Generally, you will include the \$1,000 in income as additional taxable gain from your shares. If you have sold only a portion of your shares in the Nations Fund, you should make a reasonable allocation of the distribution between the shares you have sold and the shares you retain. The portion allocated to the sold shares is treated as described in this Example 3 and the portion allocated to the retained shares is treated as described in Examples 1 and 2.

If you do not have reasonable access to records indicating the tax basis of your investment, then you should assume that your tax basis is zero and that the entire dilution component of your payment is includable in your income as capital gain. Any such capital gain is long-term capital gain, unless you disposed of your investment before holding it for longer than one year.

**The QSF will not issue a Form 1099 to you for the dilution component of your distribution. The IRS has ruled that the Bank of America Fair Fund QSF is not required to report the dilution component of the distribution. Nevertheless, you should consult with your tax advisor as to how to report any portion of the dilution component that is taxable to you as described in Example 2 or 3.<sup>5</sup>**

B. Advisory Fee Component

The advisory fee component of your distribution payment (identified as such on the distribution check you receive) represents your share of advisory and administrative fees paid by the Nations Funds to the Respondents during the relevant period. The advisory fee component *may* constitute ordinary income to you depending on several factors including whether the Nations Fund(s) made a

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<sup>4</sup> If you use the specific identification method of determining basis when shares are sold (as opposed to the dollar cost averaging method), your basis must be allocated among the shares in a reasonable manner.

<sup>5</sup> There may be some circumstances in which the Bank of America Fair Fund QSF will issue information returns and will report payments to the IRS. These circumstances are beyond the scope of this Statement to Eligible Investors and are addressed in the PLR obtained on behalf of the Bank of America Fair Fund QSF.

dividend payment taxable as ordinary income (as opposed to taxable as capital gain) in a year covered by this proceeding in which the Nations Fund(s) paid advisory and administrative fees.

If you continue to hold your shares in Nations Fund(s) to which the distribution relates, first you should allocate your advisory fee payment among the Nations Funds to which your distribution relates, and to the years at issue. The advisory fee component of your payment may be allocated in a reasonable manner according to your holdings.

If you received a dividend payment taxable as ordinary income from a particular Nations Fund in the same year to which you have allocated advisory fees (pursuant to the preceding paragraph), that allocation of advisory fees will be taxable to you as ordinary income. If that Nations Fund did not make a dividend payment taxable as ordinary income in that year, the advisory fee allocation will be considered an adjustment to your basis to the extent of your basis in your shares, as described in Examples 1 and 2, above.

The information on the chart attached as Annex A will assist you and/or your tax advisor in determining whether the advisory fee component of your distribution payment is taxable to you as ordinary income.

If the amount of your advisory fee component that is not ordinary income exceeds your basis in your investment, then the excess is includable in your income as capital gain. Any such capital gain is long-term capital gain, unless you disposed of your investment before holding it for longer than one year. If you do not have reasonable access to records indicating the tax basis of your investment, then you should assume that your tax basis is zero and that the entire advisory fee component that is not ordinary income is includable in your income as capital gain. Any such capital gain is long-term capital gain, unless you disposed of your investment before holding it for longer than one year.

If you have sold your shares, you should consult your tax advisor regarding the proper treatment of the advisory fee component.

**The QSF will not issue a Form 1099 to you for the advisory fee component of your distribution. The IRS has ruled that the Bank of America Fair Fund QSF is not required to report the advisory fee component of the distribution. Nevertheless, you should consult with your tax advisor as to how to report any portion of the advisory fee component that is taxable to you.<sup>6</sup>**

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<sup>6</sup> There may be some circumstances in which the QSF will issue information returns and will report payments to the IRS. These circumstances are beyond the scope of this Statement to Eligible Investors and are addressed in the PLR obtained on behalf of the QSF.

## II. SPECIAL ISSUES FOR INVESTMENTS HELD IN IRA OR TAX-QUALIFIED RETIREMENT PLANS

### A. Bank of America Fair Fund Distributions to IRA Accounts

**Please follow the applicable instructions below if you received a check that is associated with an IRA.<sup>7</sup>**

#### 1. For Checks Payable to the Custodian but Mailed to the Investor

a. If you held some or all of your mutual fund shares through an IRA, in most cases the distribution check will have been made payable to your IRA custodian but mailed directly to you. You may choose to forward the check to your custodian with a letter of instruction or, to review your options, contact the Bank of America Fair Fund Administrator at 866-730-8148. You should deposit the check in your IRA account. **Caution:** If the check is cashed or deposited in any account other than an account eligible to receive the check, it may be subject to a 10% penalty and taxed as ordinary income in the year of receipt.

b. If your IRA custodian has changed, you may be able to transfer the payment to another custodian, or roll the payment over to another IRA or eligible account. Please contact the Bank of America Fair Fund Administrator at 866-730-8148 to review your options. **Caution:** Please consult with your tax advisor because the rules related to transfers and rollovers are complicated and failure to comply with those rules could subject the payment to income tax and a 10% penalty.

c. If you no longer hold your IRA, please contact the Bank of America Distribution Plan Administrator at 866-730-8148 to review your options.

#### 2. For Checks Payable to the Investor and Mailed to the Investor

If the distribution check was made payable to you (as opposed to the custodian of your IRA) because of the way your account was registered in the records obtained for the distribution, please contact the Bank of America Fair Fund Administrator immediately at 866-730-8148 to receive instructions to get a replacement distribution check made payable to the custodian of your IRA. **Caution:** If you cash the check, or deposit it in any account other than an account eligible to receive the check, it may be subject to a 10% penalty and taxed as ordinary income in the year of receipt.

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<sup>7</sup> As a general rule, distribution payments from the Bank of America Fair Fund received as a result of the investment held by your IRA do not constitute a "contribution" to your IRA for purposes of determining your maximum yearly contribution to your IRA.

Additional information on this topic is available on the IRS Web Site [www.irs.gov](http://www.irs.gov), Tax Topic 451 and Publication Number 590.

B. Bank of America Fair Fund Distributions to Tax-Qualified Retirement Plans

1. Checks Mailed to Your Retirement Plan

If you held some or all of your Nations Fund shares through a tax-qualified retirement plan, in most cases the distribution check was made payable and mailed to your tax-qualified retirement plan.<sup>8</sup> Plan fiduciaries are responsible for allocating these funds. Please contact your plan fiduciary if you have questions.

2. Checks Mailed to You

In limited instances, the distribution check was mailed to you and made payable to either (i) your retirement plan or (ii) you because of the way your account was registered in the records obtained for the distribution. **Please follow the applicable instructions below if you received a check that is associated with a tax-qualified retirement plan.**<sup>9</sup>

a. For A Check Payable to Your Retirement Plan but Mailed to You

In some instances the check payable to your tax-qualified retirement plan was mailed to you because your address was the address of record. If *you* received a check made payable to your tax-qualified retirement plan, please follow the directions in i. or ii., below.

i. If you are still a participant in the tax-qualified retirement plan, contact your retirement plan trustee/administrator to coordinate the deposit of the check to your retirement plan.

ii. If you are no longer a participant in the tax-qualified retirement plan to which the distribution is directed, please contact the trustee/administrator of your former tax-qualified retirement plan to determine the appropriate course of action. If you have difficulty making contact with your former

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<sup>8</sup> As a general rule, distribution payments from the Bank of America Fair Fund received as a result of the investment held by your tax-qualified retirement plan do not constitute a "contribution" to your plan for purposes of determining your maximum yearly contribution to your plan or for purposes of determining your employer's contributions to your plan.

<sup>9</sup> Many types of plans are eligible to accept rollover contributions (and the recently enacted Pension Protection Act of 2006 expanded the list of permissible recipient plans). More information on the Pension Protection Act of 2006 can be found at the IRS web site [www.irs.gov](http://www.irs.gov). Contact your tax advisor to determine the types of plans to which you may make a rollover contribution.

plan trustee/administrator, consult your tax advisor or contact the Bank of America Fair Fund Administrator at 866-730-8148.

b. For a Check Payable to You and Mailed to You

Distributions with respect to investments held by a tax qualified plan should not be payable to individual investors. If you received such a check, this is an error likely due to the data available for the distribution. If you received a distribution check made payable to *you* in connection with an investment held by your tax-qualified retirement plan, please contact the Bank of America Fair Fund Administrator immediately at 866-730-8148.

Additional information on this topic is available on the IRS Web Site [www.irs.gov](http://www.irs.gov), Tax Topic 558.

## Annex A

| Mutual Fund                         | FUND MADE DISTRIBUTION<br>TAXABLE AS ORDINARY INCOME |      |      |      |      |
|-------------------------------------|--|------|------|------|------|
|                                     | Years  | 2000 | 2001 | 2002 | 2003 |
| Nations International Equity        | N/A  | YES  | YES  | YES  | YES  |
| Nations International Value         | N/A  | YES  | YES  | YES  | YES  |
| Nations Emerging Markets            | N/A  | YES  | YES  | YES  | YES  |
| Nations LargeCap Enhanced Core      | N/A  | YES  | YES  | YES  | YES  |
| Nations LargeCap Index              | N/A  | YES  | YES  | YES  | YES  |
| Nations SmallCap Index              | N/A  | YES  | YES  | YES  | YES  |
| Nations Strategic Growth            | N/A  | YES  | YES  | YES  | YES  |
| Nations MidCap Index                | N/A  | YES  | YES  | YES  | YES  |
| Nations Convertible Securities      | N/A  | YES  | YES  | YES  | YES  |
| Nations Small Company               | N/A  | NO   | NO   | NO   | NO   |
| Nations Bond Fund                   | N/A  | YES  | YES  | YES  | YES  |
| Nations Short Term Income           | N/A  | YES  | YES  | YES  | YES  |
| Nations Government Securities       | N/A  | YES  | YES  | YES  | YES  |
| Nations Value Fund                  | N/A  | YES  | YES  | YES  | YES  |
| Nations Intermediate Municipal Bond | N/A  | YES  | YES  | YES  | YES  |
| Nations CA Municipal Bond Fund      | YES  | YES  | YES  | YES  | YES  |
| Nations Municipal Income Fund       | YES  | YES  | YES  | YES  | YES  |

“N/A” means “not applicable” because distributions from the Bank of America Fair Fund are not attributable to the year 2000 for those Nations Funds.