

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 84232 / September 20, 2018

ADMINISTRATIVE PROCEEDING

File No. 3-11818

In the Matter of

**Banc of America Capital Management,
LLC, BACAP Distributors, LLC, and Banc
of America Securities, LLC,**

Respondents.

**ORDER DIRECTING TRANSFER OF
REMAINING FUNDS AND ANY
FUTURE FUNDS RECEIVED BY THE
FAIR FUND TO THE U.S.
TREASURY, DISCHARGING THE
FUND ADMINISTRATOR, AND
TERMINATING THE FAIR FUND**

On July 16, 2007, the Commission published a notice of the Plan of Distribution (“Plan”) proposed by the Division of Enforcement in connection with this proceeding (Securities Exchange Act Release No. 56077). The Commission received comments and on December 27, 2007, the Plan was approved (Exchange Act Release No. 57048).

The Plan provides that a Fair Fund consisting of \$375,000,000 in disgorgement and civil penalties, plus any accrued interest, be transferred to Deutsche Bank to be distributed by the Plan Administrator to injured investors according to the methodology set forth in the Plan. From June 2008 to July 2013, the Fund Administrator implemented thirteen waves of distributions to distribute all distributable assets of the Fair Fund to eligible investors. These thirteen waves of distribution resulted in a total disbursement of \$303,101,410 to more than 3 million eligible investors.¹ An additional \$62,004,695 was disbursed through coordinated disbursements with

¹ By Order Directing Disbursement of Fair Fund dated June 5, 2008, the Commission ordered the first disbursement, composed of \$103,683,707.84. *See* Exchange Act Release No. 57926 (June 5, 2008). By Order Directing Disbursement of Fair Fund dated August 6, 2008, the Commission ordered the second disbursement, composed of \$39,910,827.97. *See* Exchange Act Release No. 58322 (August 6, 2008). By Order Directing Disbursement of Fair Fund dated November 3, 2008, the Commission ordered the third disbursement, composed of \$23,825,205.86. *See* Exchange Act Release No. 58896 (November 3, 2008). By Order Directing Disbursement of Fair Fund dated March 5, 2009, the Commission ordered the fourth

four fair fund distribution plans: RS Investment Management, Inc. et al., Exch. Act Rel. No. 57661 (Apr. 14, 2008); AIM Advisors, Inc. et al., Exch. Act Rel. No. 9929 (May 14, 2009); Invesco Funds Group, Inc., Exch. Act Rel. No. 60292A (Nov. 20, 2009); and Prudential Equity Group, LLC, Exch. Act Rel. No. 62848 (Sep. 3, 2010). In all, a total of \$365,106,105 of the distributable assets in the Fair Fund was disbursed to make distributions to eligible investors. Of this amount, a total of \$41,037,141 remained unclaimed, consisting of refused, returned, undeliverable or uncashed checks.

Section 6.12 of the Plan provides that “[i]n situations in which distributions are unclaimed (checks not cashed), or persons to whom a distribution would otherwise be made cannot be identified or located, the distributable amounts will be paid to the fund to which the distribution relates.” The IDC, in coordination with the Fund Administrator and Commission staff, determined that \$36,335,607.45 of the \$41,037,141 in unclaimed payments relate to and should be remitted to 40 eligible mutual funds (“Eligible Funds”). By Order Directing Disbursement of Fair Fund dated November 20, 2017, the Commission ordered the Fund Administrator to distribute \$36,335,607.45 to the Eligible Funds and transfer the remaining \$4,701,533.78 in Fair Fund assets at Deutsche Bank to the Commission’s Office of Financial Management.²

disbursement, composed of \$14,734,968.83. *See* Exchange Act Release No. 59520 (March 5, 2009). By Order Directing Disbursement of Fair Fund dated June 9, 2009, the Commission ordered the fifth disbursement, composed of \$17,511,119.22. *See* Exchange Act Release No. 60080 (June 9, 2009). By Order Directing Disbursement of Fair Fund dated December 1, 2009, the Commission ordered the sixth disbursement, composed of \$13,054,368.91. *See* Exchange Act Release No. 61088 (December 1, 2009). By Order Directing Disbursement of Fair Fund dated June 3, 2010, the Commission ordered the seventh disbursement, composed of \$10,478,066.61. *See* Exchange Act Release No. 62212 (June 3, 2010). By Order Directing Disbursement of Fair Fund dated November 23, 2010, the Commission ordered the eighth disbursement, composed of \$3,047,283.83. *See* Exchange Act Release No. 63360 (November 23, 2010). By Order Directing Disbursement of Fair Fund dated June 6, 2011, the Commission ordered the ninth disbursement, composed of \$5,251,498.94. *See* Exchange Act Release No. 64606 (June 6, 2011). By Order Directing Disbursement of Fair Fund dated November 14, 2011, the Commission ordered the tenth disbursement, composed of \$23,984,335.72. *See* Exchange Act Release No. 65746 (November 14, 2011). By Order Directing Disbursement of Fair Fund dated July 11, 2012, the Commission ordered the eleventh disbursement, composed of \$24,826,874.15. *See* Exchange Act Release No. 67415 (July 11, 2012). By Order Directing Disbursement of Fair Fund dated November 9, 2012, the Commission ordered the twelfth disbursement, composed of \$9,036,325.11. *See* Exchange Act Release No. 68208 (November 9, 2012). By Order Directing Disbursement of Fair Fund dated July 31, 2013, the Commission ordered the thirteenth disbursement, composed of \$13,756,827.09. *See* Exchange Act Release No. 70082 (July 31, 2013).

² *See* Exchange Act Release No. 82133 (November 20, 2017).

Section 6.25 of the Plan provides that “[t]he Fair Fund shall terminate effective upon the later of March 30, 2008 or 60 days after the final distribution of funds to investors and the resolution of uncashed or unclaimed funds and the payment or reserve for taxes and the final accounting by the Fund Administrator has been submitted to and approved by the Commission.” A final accounting, which has been submitted to the Commission for approval as required by Rule 1105(f) of the Commission’s Rules of Fair Fund and Disgorgement Plans, is now approved, and the Commission staff has verified that all taxes, fees and expenses have been paid. The Commission is in possession of the remaining funds in the Fair Fund.

Accordingly, it is ORDERED that:

1. The remaining funds in the Fair Fund in the amount of \$49,747,926.17 and any future funds received by the Fair Fund shall be transferred to the U.S. Treasury;
2. The Fund Administrator is discharged; and
3. The Fair Fund is terminated.

By the Commission.

Brent J. Fields
Secretary