



Dear Customer:

As we have promised in the past, Matrix seeks to keep our customers abreast of recent and upcoming events that affect their businesses. Accordingly, we are writing to advise those of you who manage omnibus accounts about certain issues you are likely to face in the near future arising from the securities regulatory settlements by mutual funds in the market timing/late trading scandal. In particular, you will have to make decisions soon with regard to plans for the distribution of monies from the settling mutual funds to investors who may have been injured by the improper trading.

The information discussed below is based in part on provisions in proposed distribution plans that have not yet been approved by the SEC, and therefore still subject to change. Nevertheless, the issues affecting you and your clients are significant and complex enough that we thought it would be helpful to bring them to your attention at this early stage.

#### How Certain Proposed Distribution Plans Would Treat Omnibus Accounts

Since the market timing and late trading practices at certain mutual funds came to light in 2003, over twenty mutual fund companies have entered into settlement agreements with the SEC and other regulators. These companies agreed to pay substantial sums, in the form of disgorgement and penalties, into “Fair Funds” for distribution to investors. To date, proposed distribution plans in connection with several of these settlements have been developed by Independent Distribution Consultants (IDCs) and released for public comment. As proposed, certain of these distribution plans will force many of our customers that manage omnibus accounts, such as banks, trust companies and third party administrators (collectively, “omnibus intermediaries”), to make important choices.

Typically, a mutual fund company is unaware of the identity of the beneficial owners of omnibus accounts. Nor does a mutual fund company typically possess information as to the holdings and trades (dates and volume of purchases and sales) of the beneficial owners. Yet a fair and rational distribution of a Fair Fund may require the IDC (or a Fund Administrator) to identify the underlying investors who suffered losses arising from improper mutual fund trading activity and determine the amounts of their losses.

Distribution plans that have been proposed have tackled these issues in various ways:

- Under one method, the IDC is required to contact omnibus intermediaries and request information that would allow the IDC to make distributions in the appropriate amounts directly to the beneficial owners. Such information could include both the identities of the beneficial owners and information with respect to their mutual fund holdings and transactions.

- Distribution plans may provide that omnibus intermediaries may decline to provide such information to the IDC. Instead, the IDC would provide the intermediary with a lump sum payment, with the intermediary assuming the responsibilities of both determining the appropriate amount to provide each beneficial owner and transmitting the payments. In such instances, the intermediary must determine the appropriate payment and methodology, consistent with its fiduciary, contractual or other legal obligations.
- A distribution plan may provide that the omnibus intermediary may supply the IDC with information as to its beneficial owners, but in masked form, thereby maintaining confidentiality with respect to their identities. The IDC could then calculate the distributions to be made and provide that information to the intermediary, which would then be responsible for transmitting the payments.
- Distribution plans also may provide that, if the amount to be paid to an entire omnibus account is below a certain threshold (say, \$1,000), or if the cost of identifying and distributing funds to the beneficial owners of an omnibus account exceeds the total amount to be distributed, the omnibus intermediary may decline the distribution.

One complication for many of our customers may be that omnibus accounts frequently themselves contain omnibus accounts. In such instances, an omnibus intermediary may be required to pierce the layers of accounts to provide information as to the ultimate beneficial owners to the IDC, or assume the responsibilities of determining appropriate payment amounts and making payments to the ultimate beneficial owners.

#### Issues That Managers of Omnibus Accounts Will Have to Consider

As discussed above, you may be contacted by an IDC and required to choose between, on the one hand, divulging identities and other information with regard to the beneficial owners of your omnibus accounts, or, on the other, assuming the responsibilities of determining the amounts to be paid to the beneficial owners and/or distributing the payments. Any of these paths may raise complex issues or pose significant risks.

The issues that omnibus intermediaries may face under these distribution plans are many. Intermediaries will have to be cognizant of their fiduciary duties to beneficial owners, as well as all other applicable legal obligations, such as may arise under the Employee Retirement Income Security Act (ERISA), regulations of the Department of Labor and the Office of the Comptroller of the Currency, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934, the Uniform Trust Code, the Uniform Prudent Investor Act, and state law. Intermediaries may have to assess and weigh any obligations, pursuant to law or contract, to maintain confidentiality of their underlying investors, as well as any obligations – which may be countervailing – to maximize payouts to those investors.

Omnibus intermediaries may face significant cost issues. It may be very expensive – in some cases, prohibitively expensive – to retrieve and analyze investor and transaction data, calculate payment amounts, and/or transmit payments to investors. Intermediaries may be required to mine archived data, perhaps from prior computer systems that are

incompatible with existing systems. They may be required to purchase new hardware or software, dedicate existing personnel to this task, or even retain additional personnel. Distribution plans may provide for reimbursement of certain expenses incurred in this effort, but the reimbursement may fall well short of compensating for all costs incurred.

Omnibus intermediaries also face potential liability. A wide range of their decisions and actions may be subject to challenge, and potential suit, by investors who may feel aggrieved, such as by allegedly unfair methods of determining payments, erroneous calculations, alleged breaches of confidentiality, or acts as mundane as failing to locate an investor or sending a check to a wrong address. You should be aware that the disclosures about mutual fund market timing and late trading have spawned a large number of civil lawsuits against mutual fund companies, broker-dealers, banks, third party administrators and others, many of which have been consolidated as a multidistrict litigation in the United States District Court for the District of Maryland. The possibility of additional suits challenging distribution plans and the entities involved in their implementation should not be overlooked.

### Conclusion

The distribution plans that have been proposed but not yet approved by the SEC are diverse and complex. They may subject you to a Hobson's choice of disclosing your clients or assuming legal liability for the distribution of the Fair Funds settlement. You may also be subject to several different plans, from different mutual funds, for your various clients – all with different terms and conditions. We will update you with regard to future significant developments.

In the meantime, because of the significant issues you will be facing – and because you may soon be receiving questions from your clients – it may be prudent for you to begin considering the issues raised in this letter and any others that may be applicable to your particular situation. Please note that we have provided this letter as a courtesy, and you should not rely on it as an authoritative or complete presentation of the issues you may face and the options available to you.

If you would like legal guidance on any of the issues discussed above, or any other relevant issues, please contact us or Marc Powers, Esq., the head of the Securities Litigation and Regulatory Enforcement practice at the law firm of Baker Hostetler, at (212) 589-4216 or [mpowers@bakerlaw.com](mailto:mpowers@bakerlaw.com). Mr. Powers and his firm are not affiliated with us, but they are familiar with these issues and have represented clients involved in the market timing/late trading scandal. We have used Baker Hostetler for ERISA-related work. They will be pleased to advise you on your legal duties and help formulate a distribution plan for your clients which meets the legal and regulatory standards.

Regards,

Cliff D'Amato, CEO

John Moody, President