

**THE ASSOCIATION OF THE BAR
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COMMITTEE ON INVESTMENT MANAGEMENT REGULATION

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Honorable William H. Donaldson
Chairman
United States Securities and Exchange Commission
450 Fifth Street NW
Washington, DC 20549

Dear Chairman Donaldson:

The Committee on Investment Management Regulation of the Association of the Bar of the City of New York is composed of lawyers with diverse perspectives on investment management issues, including members of law firms, and counsel to financial services firms, investment company complexes and investment advisers. A list of our current members is enclosed.

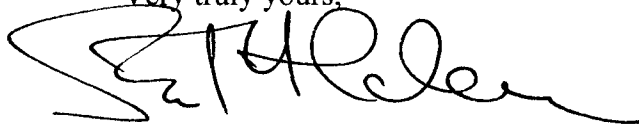
We are writing to you to express our concern with one aspect of the proposed settlement recently announced by the SEC staff regarding Bank of America. The settlement agreement generally deals with the securities fraud charges arising from arrangements to permit timing in certain Nations Funds mutual funds and for facilitating market timing and late trading by certain customers. We understand that the Commission has not approved the proposed settlement. Our concern relates to the portion of the proposed settlement which indicates Bank of America "has agreed to implement certain election and retirement procedures for the Nations Funds Trustees that will result in the replacement of the Nations Funds trustees within one year."

The purpose of the Investment Company Act of 1940 is to protect investors, especially with regard to conflicts that may exist between the interests of fund shareholders and management. It has long been understood that the independent directors of investment companies stand at the core of the Act. The Supreme Court has referred to the independent directors as the "independent watchdogs" and the SEC has consistently recognized the important and unique role played by the independent directors of investment companies. The concept of independent director in the investment company arena has long been viewed as critical because of the special relationships which exist between a fund and the entities which created it, thus "creating inherent conflicts of interest and potential for abuse," as you stated in a recent speech. In the proposing release to the new governance practices, the SEC stated, "The effectiveness of a fund board and the influence of its independent directors depend on both the quality of directors

and the governance practices they adopt.” The release further stated, “Management-dominated boards may be less likely to effectively undertake the many important responsibilities assigned to them.” In putting forth the new governance practices, it is clear the SEC is trying to give the independent directors sufficient tools to be “an independent force in [fund] affairs rather than a passive affiliate of management.”

Allowing the SEC staff to negotiate a settlement whereby fund management undertakes to remove independent directors strongly suggests that independent directors serve at the pleasure of management and that, in this case, the respondents in an enforcement proceeding are endorsed as appropriate arbiters of independent director selection or performance. Consequently, we believe that the independent directors and other mutual fund industry participants, including fund shareholders, may read the Bank of America proposed settlement as a dramatic shift in the SEC position, which heretofore has viewed the independence of fund directors from management as a core protection against conflicts of interest. This development would be antithetical to the regime of fund governance the SEC is attempting to improve. The SEC, in general, is trying to reinforce the vigilance, effectiveness and independence of fund directors and reminding them of their fiduciary duty to act solely in the best interests of the fund and its shareholders, even if this means taking actions detrimental to the investment adviser/sponsor. We believe the message conveyed in the proposed Bank of America settlement is fundamentally inconsistent with the concept of director independence and we urge the SEC to reaffirm its support for the important role independent directors provide in the operations of investment companies.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Stuart H. Coleman', written in a cursive style.

Stuart H. Coleman, Chair

Drafting Committee:

Philip L. Kirstein
Joel H. Goldberg

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