

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

FILED U.S. DISTRICT COURT DISTRICT OF MARYLAND

2010 MAY 19 P 4:08

IN RE MUTUAL FUNDS INVESTMENT LITIGATION	MDL No. 1586	CLERK'S OFFICE AT BALTIMORE
IN RE EXCELSIOR, FEDERATED, SCUDDER and AMCAP	No. 04-md-15861 (CCB)	BY _____ DEPUTY
[Federated Sub-track]		

~~PROPOSED~~ ORDER CONDITIONALLY CERTIFYING THE CROSS-TRACK CLASSES FOR SETTLEMENT PURPOSES, PRELIMINARILY APPROVING THE CROSS-TRACK SETTLEMENTS, AND DIRECTING THE ISSUANCE OF NOTICE TO THE CROSS-TRACK CLASSES

WHEREAS, on January 28, 2010, Lead Plaintiff in the Class Action, Colbart Birnet, LLC ("Lead Plaintiff") and the Derivative Plaintiffs Dolores Banas, Howard Bertram, Edward Casey, Tina Casey, Brian Louis Clark, Michael Feder, Howard W. Mathews, Michael J. Meehan, Teresa M. Meehan, Dina Rozenbaum, Risa B. Schneps, Elizabeth Shuhany, Stanley Soto, Virginia Wilcox, and Lu Chang ("Derivative Plaintiffs") (collectively, the "Plaintiffs"), acting on behalf of themselves and the applicable Classes of shareholders of Federated fluctuating value mutual funds (the "Federated Funds"), entered into the Federated/BAS Severed Agreement and Stipulation of Settlement (the "Federated/BAS Severed Stipulation") with Banc of America Securities LLC ("BAS" or the "BAS Defendants"), resolving all claims in this sub-track against BAS and related entities;

WHEREAS, as of January 27, 2010, Plaintiffs and Canary Capital Partners, LLC, Canary Capital Partners, Ltd., Canary Investment Management, LLC and Edward Stern (collectively "Canary" or the "Canary Defendants"), entered into the Federated/Canary Severed Agreement

and Stipulation of Settlement (the "Federated/Canary Severed Stipulation"), resolving all claims in this sub-track against the Canary Defendants;

WHEREAS, the Federated/BAS Severed Stipulation and the Federated/Canary Severed Stipulation (collectively, the "Cross-Track Stipulations") are subject to review under Rules 23 and 23.1 of the Federal Rules of Civil Procedure and, together with the exhibits thereto, set forth the terms and conditions of the proposed settlements (collectively the "Cross-Track Settlements" and individually the "BAS Settlement" and the "Canary Settlement") of the claims alleged in the Consolidated Amended Class Action Complaint and the Amended Fund Derivative Complaint, which were both filed on September 29, 2004 (collectively, the "Complaints");

WHEREAS, all defined terms contained herein shall have the same meanings set forth in the Cross-Track Stipulations;

WHEREAS, Plaintiffs have filed a Motion for Certification of the Cross-Track Settlement Classes (the "Cross-Track Classes" are defined below) and for Preliminary Approval of the Cross-Track Settlements.

NOW THEREFORE, upon careful consideration of Plaintiffs' Motion for Certification of the Cross-Track Classes and for Preliminary Approval of Cross-Track Settlements, and review of the Cross-Track Stipulations that have been entered into by the Parties, the proposed "Publication Notice of Pendency and Proposed Cross-Track Settlements of Class and Derivative Actions, Motion for Attorneys' Fees and Expenses and Settlement Hearing" (the "Cross Track Publication Notice"), proposed "Notice of Pendency and Proposed Settlement of Class and Derivative Actions, Motion for Attorneys' Fees and Expenses and Settlement Hearing" ("Cross-Track Long Form Notice"), and proposed "Summary Notice of Proposed Settlements in the *In Re Mutual Funds Investment Litigation*, No. 04-md-15861 (D. Md.) and Settlement Fairness

Hearing” (the “Global Publication Notice,” collectively, the “Settlement Notices”), and for good cause shown, IT IS HEREBY ORDERED, this ____ day of _____ 2010 that:

1. The terms of the Cross-Track Stipulations, and the Cross-Track Settlements provided therein, are approved preliminarily as fair, reasonable and adequate to the Cross-Track Classes, subject to further consideration at the hearing described at paragraph 9 of this Order (the “Final Settlement Hearing”).

2. The definitions set forth in the Cross-Track Stipulations are hereby incorporated by reference into this Order (with capitalized terms as set forth in the Cross-Track Stipulations).

3. Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court hereby preliminarily certifies, for settlement purposes only, the following classes of Federated Fund shareholders (the “Cross-Track Classes”):

a. The Federated/BAS Class:

All shareholders of the following Federated fluctuating value mutual funds: Federated Clover Value Fund (a successor to the Federated American Leaders Fund); Federated Capital Appreciation Fund; Federated Equity-Income Fund; Federated International Leaders Fund (a successor to the Federated Global Equity Fund and the Federated International Equity Fund); Federated InterContinental Fund (a successor to the Federated International Growth Fund); Federated International Small-Mid Company Fund (f/k/a Federated International Small Company Fund); Federated Kaufmann Fund; and Federated MaxCap Index Fund (the “Federated/BAS Settlement Funds”) from May 1, 2000 through September 26, 2003 (the “Federated/BAS Class Period”).

b. The Federated/Canary Class:

All shareholders in the following Federated fluctuating value mutual funds: Federated Clover Value Fund (a successor to the Federated American Leaders Fund); Federated Capital Appreciation Fund; Federated Equity-Income Fund; Federated Kaufmann Fund; and Federated MaxCap Index Fund (the “Federated/Canary Settlement Funds”) from December 1, 2002 through July 31, 2003 (the “Federated/Canary Class Period”) (the Federated/BAS Settlement Funds

and the Federated/Canary Settlement Funds are collectively referred to as “the Federated Settlement Funds”).

4. Excluded from the Federated/BAS Class are the Federated Defendants, Cross-Track Defendants, each other defendant in the Actions and the members of the immediate families (*i.e.* parents, current or former spouses, siblings and children), officers, directors, parents, subsidiaries, affiliates, legal representatives, heirs, predecessors, successors and assigns of any of the foregoing excluded parties and any entity in which any of the foregoing excluded parties has, or had during the Federated/BAS Class Period, a controlling interest. Also excluded from the Federated/BAS Class are persons and entities who excluded themselves by timely requesting exclusion from the Federated/BAS Class in accordance with the requirements set forth herein.

5. Excluded from the Federated/Canary Class are the Federated Defendants, the Cross-Track Defendants, and other defendants in the Actions, their officers, directors, trustees, legal representatives, parents, affiliates, heirs, successors or assigns, immediate family members and any entity in which any defendant in the Actions have or had a controlling interest, and any other person who engaged in the unlawful conduct described in the Complaints. Also excluded from the Federated/Canary Class are persons and entities who excluded themselves by timely requesting exclusion from the Federated/Canary Class in accordance with the requirements set forth herein.

6. Pursuant to the Cross-Track Stipulations, and for settlement purposes only, the Court preliminarily finds that the prerequisites for a class action under Federal Rules of Civil Procedure 23(a) and (b)(3) have been satisfied in that: (a) the members of the Cross-Track Classes are so numerous that joinder of all members thereof is impracticable; (b) there are questions of law or fact common to the Cross-Track Classes; (c) the Cross-Track Class

Representative's claims are typical of the claims of the Cross-Track Classes he seeks to represent; (d) the Cross-Track Class Representative and Lead Counsel will fairly and adequately represent the interests of the Cross-Track Classes; (e) questions of law and fact common to the members of the Cross-Track Classes predominate over any questions affecting only individual members of the Cross-Track Classes; and (f) the class action is superior to other available methods for fair and efficient adjudication of the controversies. Accordingly, the Court conditionally CERTIFIES the Cross-Track Classes for purposes of these Cross-Track Settlements only, under Rules 23(a) and 23(b)(3).

7. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Cross-Track Settlements only, Stanley Soto is preliminarily certified as class representative for the Cross-Track Classes (the "Cross-Track Class Representative"), and Bernstein Liebhard LLP is preliminarily appointed Lead Counsel and Pomerantz Haudek Grossman & Gross LLP is preliminarily appointed Derivative Counsel (Lead Counsel and Derivative Counsel are referred to collectively as "Plaintiffs' Counsel").

8. By this Order, the Court hereby exercises subject matter and personal jurisdiction over the Cross-Track Classes for purposes of evaluating the final certification of the Cross-Track Classes, the Cross-Track Class Representatives, and the fairness and adequacy of the Cross-Track Settlements.

9. The Final Settlement Hearing pursuant to Rule 23(e) of the Federal Rules of Civil Procedure is hereby scheduled to be held before the Court on October 21 and 22, 2010, at 10:00 a.m. for the following purposes:

(a) to determine whether the BAS Settlement is fair, reasonable and adequate and should be approved by the Court;

- (b) to determine whether the Canary Settlement is fair, reasonable and adequate and should be approved by the Court;
- (c) to determine whether the Final Order and Judgment as provided under the Cross-Track Stipulations should be entered, dismissing the Complaints on the merits and with prejudice, and to determine whether the releases as set forth in the Stipulations, should be provided to the Cross-Track Defendants;
- (d) to determine whether the Cross-Track Classes should be certified for settlement purposes only, whether Stanley Soto should be appointed as a Cross-Track Class Representative, and whether the law firm of Bernstein Liebhard LLP should be appointed as Lead Counsel;
- (e) to determine whether the proposed plan of allocation for the proceeds of the BAS Settlement (the "Federated/BAS Plan of Allocation") and the plan of allocation for the proceeds of the Canary Settlement (the "Federated/Canary Plan of Allocation," together with the Federated/BAS Plan of Allocation, the "Cross-Track Plans of Allocation") are reasonable and should be approved by the Court;
- (f) to consider Plaintiffs' Counsels' and Plaintiffs' Administrative Chair and Liaison Counsel's application for awards of attorneys' fees and expenses; and
- (g) to rule on such other matters as the Court may deem appropriate.

10. The Court reserves the right to approve the Cross-Track Settlements with or without modification and with or without further notice of any kind. The Court further reserves the right to enter the Final Orders and Judgments approving the Cross-Track Settlements and dismissing the Complaints on the merits and with prejudice regardless of whether it has approved the Federated/BAS Plan of Allocation and/or the Federated/Canary Plan of Allocation or awarded attorneys' fees and expenses. The Court may also adjourn the Final Settlement Hearing or modify any of the dates herein without further notice to members of the Cross-Track Classes.

11. The Court approves the form, substance and requirements of the:

(a) Cross-Track Publication Notice in substantially the form annexed hereto as Exhibit A;

(b) Cross-Track Long Form Notice, to be posted on the Internet in substantially the form annexed hereto as Exhibit B; and

(c) Global Publication Notice, in substantially the form annexed hereto as Exhibit C.

12. The Court directs that Plaintiffs' Counsel shall cause the Cross-Track Publication Notice to be published in *The Wall Street Journal* and *USA Today*, no later than July 14, 2010. Plaintiffs' Counsel will also cause notice of the Cross-Track Settlements to be transmitted over the *Business Wire*.

13. The Court directs that Plaintiffs' Counsel, jointly with plaintiffs' counsel in other mutual fund sub-tracks, shall cause the Global Publication Notice to be published in *People* magazine, *The Wall Street Journal* and *The New York Times* no later than July 14, 2010. Plaintiffs' Counsel will also cause the Global Publication Notice to be posted on banner ads on CNN.com, AOL.com, Hotmail.com, Facebook.com, Yahoo.com, and Wall Street Journal online, in addition to RSS Feed Advertising and transmitted over the *PR Newswire*.

14. At the same time or before the Cross-Track Publication Notice and the Global Publication Notice are provided, information about the Cross-Track Stipulations and the Cross-Track Settlements, including copies of the Cross-Track Stipulations and the Cross-Track Long Form Notice, will be made available on the Internet at an internet address referenced in the Cross-Track Publication Notice. Said information is to remain available through the date of final approval of the Cross-Track Settlements by this Court.

15. The form and content of the notice program described herein, and the method set forth herein of notifying all members of the Cross-Track Classes of the pendency of the Actions as class actions and of the terms and conditions of the proposed Cross-Track Settlements meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, Section 27 of the Securities Act of 1933, 15 U.S.C. § 77z-1(a)(7) as amended by the Private Securities Litigation

Reform Act of 1995 (“PSLRA”), Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7) as amended by the PSLRA, and the due process clause of the Constitution of the United States, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all persons and entities entitled thereto.

16. The form of the Settlement Notices fairly, plainly, accurately, and reasonably informs members of the Cross-Track Classes of: (1) appropriate information about the nature of the Actions, the Cross-Track Classes, the identity of Plaintiffs’ Counsel, and the essential terms of the Cross-Track Settlements, including the Cross-Track Plans of Allocation; (2) appropriate information about the applications of Plaintiffs’ Counsel and Plaintiffs’ Administrative Chair and Liaison Counsel for attorneys’ fees and litigation expenses that will be deducted from the proceeds of the BAS Settlement and the Canary Settlement in this sub-track; (3) appropriate information about how to participate in the Cross-Track Settlements; (4) appropriate information about this Court’s procedures for final approval of the Cross-Track Settlements, and about the right of members of the Cross-Track Classes to appear through counsel if they desire; (5) appropriate information about how to object to the Cross-Track Settlements, or opt out of the Cross-Track Settlements; and (6) appropriate instructions about how to obtain additional information regarding the Cross-Track Settlements.

17. Prior to the Final Settlement Hearing, Lead Counsel shall serve and file a sworn statement, evidencing compliance with the provisions of this Order concerning notice, including the publication of the Cross-Track Publication Notice and the Global Publication Notice, transmittal of notice over the *Business Wire*, the establishment of a website, and the posting of the Cross-Track Long Form Notice on the Internet.

18. Any members of the Federated/BAS Class or the Federated/Canary Class wishing to be excluded from either or both of the Cross-Track Classes shall mail a request for exclusion (“Request for Exclusion”) to Lead Counsel, Bernstein Liebhard LLP, as set forth in the Cross-Track Publication Notice attached hereto as Exhibit A. To be valid, the Request for

Exclusion must be received by Lead Counsel on or before **September 21, 2010**. Such Request for Exclusion shall include: the name, address and telephone number of the person or entity requesting exclusion; must state that such a person or entity “requests exclusion from the Federated/BAS Class and/or the Federated/Canary Class in *In re Federated Investors, Inc. Securities Litigation*, Civil No. 04-md-15861 (D. Md.);” must be signed by such a person or entity, and must also contain the following:

a. persons requesting exclusion from the Federated/BAS Class: the full name of the Federated/BAS Settlement Funds purchased; the person or entity’s account number; and the number of shares held on May 1, 2000, the number of shares held on September 26, 2003, and the number of shares held at the end of each calendar quarter during the period from May 1, 2000 through September 26, 2003, provided that if such a person represents to Lead Counsel (subject to verification) that quarterly information is not available, he, she or it may provide the number of shares that he, she or it held at the end of each calendar year for the period 2000 to 2003; and

b. persons requesting exclusion from the Federated/Canary Class: the full name of the Federated/Canary Settlement Funds purchased; the person or entity’s account number; and the number of shares held on December 1, 2002, the number shares held on July 31, 2003, and the number of shares held at the end of each calendar quarter during the period from December 1, 2002 through July 31, 2003, provided that if such a person represents to Lead Counsel (subject to verification) that quarterly information is not available, he, she or it may provide the number of shares that he, she or it held at the end of each calendar year for the period 2002 to 2003.

19. Any member of the Cross-Track Classes who does not properly and timely request exclusion as set forth above shall be included in the Federated/BAS Class and/or the Federated/Canary Class and will be bound by the judgment in the Actions.

20. Lead Counsel shall provide copies of all Requests for Exclusion to counsel for BAS and Canary in accordance with the terms of the Supplemental Agreements that BAS and Canary entered into with Plaintiffs. Within a reasonable period after the deadline for Requests for Exclusion, but in no event later than twenty (20) days prior to the Final Settlement Hearing, Lead Counsel shall: (a) provide Counsel for the Parties the names of members of the Cross-Track Classes, if any, who request exclusion; and (b) file with the Court a sworn statement listing all persons who have submitted timely Requests for Exclusion. The originals of all Requests for Exclusion shall be retained by Lead Counsel.

21. The Court will consider objections to the Cross-Track Settlements, the Federated/BAS Plan of Allocation, the Federated/Canary Plan of Allocation, and the request for an award of attorneys' fees or the request for reimbursement of expenses only if such objections and any supporting papers are filed in writing with:

Clerk of the Court
United States District Court for the District of Maryland
101 West Lombardi Street
Baltimore, Maryland 21201

and copies of all such papers are delivered or sent by first class mail (with corresponding postmark), on or before September 21, 2010, to Lead Counsel at the following address:

BERNSTEIN LIEBHARD LLP
U. Seth Ottensoser
Stephanie M. Beige
10 East 40th Street
22nd Floor
New York, New York 10016

Lead Counsel shall forward copies of any and all objections to counsel for the settling parties immediately upon receipt. Attendance at the Final Settlement Hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Cross-Track Settlements, the Federated/BAS Plan of Allocation, the Federated/Canary Plan of Allocation, and/or the request for attorneys' fees and other expenses are required to indicate in their written objection their intention to appear at the hearing. Persons who intend to object to the Cross-Track Settlements, the Federated/BAS Plan of Allocation, Federated/Canary Plan of Allocation, and/or the request for awards of attorneys' fees and other expenses and desire to present evidence at the Final Settlement Hearing must include in their written objections: (a) his/her full name, current address, and telephone number; (b) whether the member of the Cross-Track Classes objects to the BAS Settlement and/or the Canary Settlement, in whole or in part; (c) the full name of the Federated/BAS Settlement Funds or Federated/Canary Settlement Funds purchased; (d) the person or entity's account number; (e) the date(s), price(s), and number(s) of shares of all purchases, acquisitions, and sales during the Federated/BAS Class Period or the Federated/Canary Class Period; and (f) a specific statement of the legal and factual basis for the objection and the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Final Settlement Hearing. Cross-Track Class Members may retain an attorney at their own expense to appear at the Final Settlement Hearing, but there is no need for them to do so; Cross-Track Class Members can appear at the hearing without hiring an attorney. Cross-Track Class Members do not need to appear at the Final Settlement Hearing or take any other action to indicate their approval.

22. Any person who does not make his, her or its objection in the manner provided herein and in the Settlement Notices shall be deemed to have waived such objection and shall

forever be foreclosed from making any objection to the fairness, reasonableness or adequacy of the Cross-Track Settlements, or to the Federated/BAS Plan of Allocation, the Federated/Canary Plan of Allocation, and/or the request for awards of attorneys' fees and other expenses, unless otherwise ordered by the Court, but shall otherwise be bound by the judgments to be entered and the releases to be given.

23. Any member of the Cross-Track Classes who does not elect to opt out of the Cross-Track Settlements, may appear at the Final Settlement Hearing in person or by counsel if an appearance is filed and served as hereinafter provided in the Cross-Track Publication Notice, and such person will be heard to the extent allowed by the Court. No person shall be permitted to be heard unless, on or before September 21, 2010, such person (a) has filed with the Clerk of the Court a notice of such person's intention to appear; and (b) has served copies of such notice upon Plaintiffs' Counsel. No person may raise any objections to the Cross-Track Settlements unless the grounds therefore have been contained in a written objection timely filed and served by such person. Plaintiffs' Counsel will forward copies of any notices of intention to appear to all counsel within three business days following receipt.

24. Pending final determination of whether the Cross-Track Settlements should be approved, Plaintiffs, members of the Cross-Track Classes, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence, prosecute, or pursue any action which asserts Released Claims against the Released Parties, as defined in the BAS Stipulation and the Canary Stipulation.

25. Submissions of the Parties relative to the Cross-Track Stipulations, including memoranda in support of the Cross-Track Settlements, and petitions for attorneys' fees and reimbursement of expenses by Plaintiffs' Counsel and Plaintiffs' Administrative Chair and

Liaison Counsel shall be filed with the Clerk of the Court on or before September 14, 2010.

Reply papers, if any, shall be filed with the Court on or before October 6, 2010. Any attorney hired by a member of the Cross-Track Classes, at that member's expense, for the purpose of objecting to the Cross-Track Settlements, or to any petition for attorneys' fees and expenses, shall file with the Clerk of Court and serve upon Plaintiffs' Counsel and counsel for Canary and BAS a written notice of appearance no later than September 21, 2010.

26. All funds held in escrow pursuant to the Cross-Track Stipulations shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court until such time as such funds shall be distributed pursuant to the Federated/BAS Severed Stipulation and the Federated/Canary Severed Stipulation and/or further order of the Court.

27. All other events contemplated under the Cross-Track Stipulations to occur after this Order and before the Final Settlement Hearing shall be governed by the Cross-Track Stipulations and the Cross-Track Publication Notice, to the extent not inconsistent herewith. Plaintiffs' Counsel and counsel for the Cross-Track Defendants shall take such further actions as are required under the Cross-Track Stipulations.

28. Neither these Cross-Track Settlements, the Cross-Track Stipulations, the Settlement Notices, or the Cross-Track Plans of Allocation, nor this Order, nor any act performed or document executed pursuant to or in furtherance of the Cross-Track Settlements, the Cross-Track Stipulations, the Settlement Notices, or the Cross-Track Plans of Allocation:

(i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any of the Plaintiffs' Released Claims or the Released Parties' Claims, or of any wrongdoing or liability of the Released Parties; or (ii) is or may be deemed to be, or may be used as, an

admission, or evidence of, any fault or omission of any of the Released Parties in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal.

29. The Parties to the Cross-Track Stipulations shall be authorized to make non-material changes to the Cross-Track Publication Notice, the Global Publication Notice, and the Cross-Track Long Form Notice, so long as Plaintiffs' Counsel and counsel for the Cross-Track Defendants agree, and one of the Parties files a notice thereof with the Court prior to the Final Settlement Hearing.

30. All proceedings in the Actions, other than such as may be necessary to carry out the terms and conditions of the Cross-Track Stipulations or the responsibilities related or incidental thereto are stayed and suspended until further order of this Court.

31. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Cross-Track Classes.

32. If any specified condition to the Cross-Track Settlements set forth in the Cross-Track Stipulations is not satisfied and Plaintiffs, Plaintiffs' Counsel or BAS or Canary elect to terminate the Cross-Track Settlements as provided in the Cross-Track Stipulations, then, in any such event, the Cross-Track Stipulations, including any amendment(s) thereof, except as expressly provided in the Cross-Track Stipulations, and this Preliminary Approval Order shall be null and void, of no further force or effect, and without prejudice to any settling party, and may not be introduced as evidence or used in any actions or proceedings by any person or entity against the settling parties, and each settling party shall be restored to his, her or its respective litigation position as it existed prior to the execution of the Cross-Track Stipulations.

33. The Court retains exclusive jurisdiction over the Actions to consider all further matters arising out of or connected with the Cross-Track Settlements.

SO ORDERED this 9 day of May, 2010.



CATHERINE C. BLAKE
UNITED STATES DISTRICT JUDGE