

# **JANUS FAIR FUND DISTRIBUTION** **STATEMENT TO ELIGIBLE INVESTORS**

## **INTRODUCTION**

You have received a distribution payment from the Janus Fair Fund established by the U.S. Securities and Exchange Commission (“SEC”). Your payment has been calculated based on information contained in the records of Janus Capital Management, LLC (“JCM” or “Respondent”) and of third party intermediaries. The distribution payment is intended by the SEC to compensate you for harm to your mutual fund investment(s) due to market timing.

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 2004, in the proceeding *In the Matter of Janus Capital Management LLC*, Admin. Proc. No. 3-11590, the SEC issued an order instituting and simultaneously settling public administrative and cease-and-desist proceedings against the Respondent (the “Order”). In the Order, the SEC authorized and established a fair fund, the JCM Fair Fund QSF (herein the “Janus Fair Fund”) of \$100 million in disgorgement and penalties paid by Respondent. According to the Order, the Janus Fair Fund is to be distributed to investors harmed by market timing in various Janus mutual funds (“Janus Funds”) pursuant to a plan of distribution to be developed by an independent distribution consultant (the “IDC”), Christopher James, William H. Dial/SunBank Eminent Scholar and Professor of Finance at the University of Florida.

On April 25, 2008, the SEC approved the IDC Modified Plan of Distribution (“Distribution Plan”), which provides for distribution to all eligible investors of their proportionate share of the disgorgement and penalties paid by Respondent. The Distribution Plan compensates such investors for harm they suffered as a result of market timing in certain Janus Funds for the period spanning 2001 to 2003. Prior to any distribution, the Janus Fair Fund held a total of \$100 million paid by the Respondent (plus accumulated interest, less taxes and tax related fees).

The Janus 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 Janus Fair Fund. A PLR was obtained that provides guidance to the Janus Fair Fund with respect to the tax reporting obligations of *the Janus Fair Fund* in making a distribution to you.<sup>1</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.

### **THE DISTRIBUTION PAYMENT**

Pursuant to the Order, the Distribution Plan “shall provide for investors to receive, from the monies available for distribution in order of priority, (i) their proportionate share of losses suffered by the fund due to market timing, and (ii) a proportionate share of advisory fees paid by funds that suffered losses during the period of such market timing.”

The Distribution Plan provides that total losses amounted to \$21,101,522, which will be distributed to reimburse investors in satisfaction of condition (i) of the Order, discussed above. The Distribution Plan provides that the residual funds in the Janus Fair Fund will be allocated in proportion to losses suffered in satisfaction of condition (ii) of the Order, discussed above.

Accordingly, your payment is composed of a “losses component” and an “advisory fee component.” These calculations were performed by the IDC. The losses component represents how the Respondent’s conduct has impaired the value of your mutual fund shares arising out of market timing. The advisory fee component represents your calculated share of advisory fees that were improperly paid by the Janus Funds to the Respondent. Each of these components has different tax consequences (discussed below).

#### **A. Losses Component**

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<sup>1</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).

The losses component of your payment is intended to compensate you for harm to the value of your Janus Fund(s) investment caused by market timing in Janus Funds. This harm has been measured as losses in the share price, foregone appreciation and trading costs. The losses component of the payment is not income to you to the extent of your basis in your shares;<sup>2</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 of the Janus Fund to which the distribution relates. The losses component of your distribution is \$10. You do not have gross income as a result of the losses component of your distribution *BUT* your basis is reduced to \$90 for purposes of determining gain or loss in the future. (\$100 basis less \$10 distribution to losses component = \$90).<sup>3</sup>

Example 2: You have a basis of \$400 in your shares. The losses component of your distribution is \$1,000. You apply \$400 of the losses 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.

**The Janus Fair Fund will not issue a Form 1099 to you for the losses component of your distribution. The IRS has ruled that the Janus Fair Fund is not required to report the losses component of the distribution. Nevertheless, you should consult with your tax advisor as to how to report any portion of the losses component that is taxable to you, as described in Example 2.<sup>4</sup>**

B. Advisory Fee Component

The advisory fee component of your distribution payment is intended to compensate you for improper advisory fees paid by the Janus Funds. The advisory fee component *may* constitute ordinary income to you depending on

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<sup>2</sup> References to “shares” throughout this disclosure means shares you owned in the Janus Fund(s) to which your distribution payment relates during the years covered by this proceeding (approximately 2001 to 2003).

<sup>3</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>4</sup> There may be some circumstances in which the Janus Fair Fund 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 Janus Fair Fund.

several factors including whether the Janus Fund(s) made a dividend payment taxable as ordinary income (as opposed to taxable as capital gain) in a year covered by this proceeding in which the Janus Fund(s) paid improper advisory fees.

If you continue to hold your shares in Janus Fund(s) to which the distribution relates, first you should allocate your advisory fee payment among the Janus 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 Janus Fund in the same year to which you have allocated advisory fees, that allocation of advisory fees will be taxable to you as ordinary income. If that Janus 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 Janus Fair Fund will not issue a Form 1099 to you for the advisory fee component of your distribution. The IRS has ruled that the Janus Fair Fund 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 as described in Example 2.<sup>5</sup>**

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<sup>5</sup> There may be some circumstances in which the Janus Fair Fund 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 Janus Fair Fund.

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

### A. Janus Fair Fund Distributions to IRA Accounts

**Please follow the applicable instructions below if you received a check that is associated with an IRA.<sup>6</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 Janus Fair Fund Administrator at (800) 419-5292. 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 Janus Fair Fund Administrator at (800) 419-5292 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 hold your IRA with Janus Capital Management LLC which is registered through State Street Bank, forward your check to Janus with a letter of instruction.

d. If you no longer hold your IRA, please contact the Janus Fair Fund Administrator at (800) 419-5292 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

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<sup>6</sup> As a general rule, distribution payments from the Janus 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.

registered in the records obtained for the distribution, please contact the Janus Fair Fund Administrator at (800) 419-5292 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.

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. Janus Fair Fund Distributions to Tax-Qualified Retirement Plans

### 1. Checks Mailed to Your Retirement Plan

If you held some or all of your Janus 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>7</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>8</sup>

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<sup>7</sup> As a general rule, distribution payments from the Janus 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>8</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.

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 retirement plan 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 plan trustee/ administrator, consult your tax advisor or contact the Janus Fair Fund Administrator at (800) 419-5292.

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 Janus Fair Fund Administrator immediately at (800) 419-5292.

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

## **ANNEX A**

The chart below shows whether a particular Janus Fund made a dividend payment taxable as ordinary income in a particular year.

<b>MUTUAL FUND</b>	<b>YEAR</b>	<b>DIVIDEND TAXABLE AS ORDINARY INCOME</b>
Janus Worldwide Fund 01/28/03 to 09/10/03 Ticker: JAWWX	2003	Yes
Janus High Yield Fund 11/26/02 to 9/10/03 Ticker: JAHYX	2002	Yes
	2003	Yes
Janus Adviser Worldwide Fund – S Shares <sup>9</sup> 04/30/02 to 09/22/03 Ticker: JWGRX	2002	Yes
	2003	Yes
Janus Adviser International Growth Fund – S Shares <sup>9</sup> 04/08/02 to 09/22/03 Ticker: JIGRX	2002	Yes
	2003	Yes
Janus Enterprise Fund 06/12/02 to 09/04/03 Ticker: JAENX	2002	No
	2003	No
Janus Research Fund <sup>10</sup> 11/07/01 to 09/04/03 Ticker: JAMRX	2001	Yes
	2002	No
	2003	No
Janus Overseas Fund 11/30/01 to 9/10/03 Ticker: JAOSX	2001	Yes
	2002	Yes
	2003	Yes

<sup>9</sup> Formerly known as I Shares

<sup>10</sup> Formerly known as Janus Mercury Fund