

**MEMO# 19097**

August 16, 2005

## **FORMER INVESTMENT ADVISER AND DISTRIBUTOR EXECUTIVES SETTLE SEC CHARGES RELATING TO MARKET TIMING**

©2005 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [19097] August 16, 2005 TO: BOARD OF GOVERNORS No. 37-05 CHIEF COMPLIANCE OFFICER COMMITTEE No. 55-05 COMPLIANCE MEMBERS No. 9-05 SEC RULES MEMBERS No. 93-05 SMALL FUNDS MEMBERS No. 71-05 RE: FORMER INVESTMENT ADVISER AND DISTRIBUTOR EXECUTIVES SETTLE SEC CHARGES RELATING TO MARKET TIMING The Securities and Exchange Commission has issued orders making findings and imposing penalties and remedial sanctions in enforcement actions against the former Chief Investment Officer (“CIO”) of an investment adviser to a group of mutual funds (“Funds”) and the former President and CEO of the Funds’ principal underwriter.<sup>1</sup> The actions involved allegations that the Respondents unlawfully authorized or permitted market timing arrangements within certain Funds.<sup>2</sup> The Respondents consented to the SEC Orders without admitting or denying the SEC’s findings. Findings According to the SEC Orders, from January 2001 until September 2003, the adviser, through the Respondents and others, permitted certain investors to make excessive exchanges and redemptions in select Funds. The arrangements were contrary to the Funds’ prospectus disclosures and were not disclosed to the Funds’ directors or shareholders. 1 See In the Matter of Edgar M. Larsen, SEC Release Nos. IA-2406 and IC-26992, Admin. Proc. File No. 3-11986 (July 18, 2005); In the Matter of Michael J. Cemo, SEC Release Nos. 34-52055 and IC-26991, Admin. Proc. File No. 3-11985 (July 18, 2005) (“SEC Orders”). Larsen was the former CIO of AIM Advisors, Inc. and Cemo was the former President and CEO of AIM Distributors, Inc. The SEC Orders, which also impose cease and desist orders on the Respondents, are available on the SEC’s website at <http://www.sec.gov/litigation/admin/ia-2406.pdf> and <http://www.sec.gov/litigation/admin/34-52055.pdf>. 2 The adviser and principal underwriter were each sanctioned in a related SEC proceeding. See Institute Memorandum to Board of Governors No. 67-04, Chief Compliance Officer Committee No. 16-04, Compliance Advisory Committee No. 101-04, Primary Contacts – Member Complex No. 96-04, SEC Rules Members No. 154-04, and Small Funds Members No. 115-04 [18095], dated October 25, 2004. 2 Based on this conduct, the SEC found that the Respondents: • willfully aided and abetted and caused the adviser’s violations of Section 206(2) of the Investment Advisers Act of 1940 by permitting certain investors to engage in market timing, despite the market timing prohibition in the Funds’ prospectuses and the Funds’ policy of prohibiting market timing; • caused the adviser’s and the principal underwriter’s violations of Section 17(d) of the Investment Company Act of 1940 and Rule 17d-1 thereunder, pertaining to certain

prohibited transactions involving the Funds and their affiliated persons; and • caused the adviser's violations of Section 34(b) of the Investment Company Act, by causing the adviser to make material misstatements or omissions in a registration statement or other document filed or transmitted pursuant to the Investment Company Act. Sanctions • The former President and CEO of the principal underwriter was ordered to pay a civil money penalty of \$125,000. He is suspended from associating with a broker or dealer, and prohibited from serving as an officer or director for a fund's investment adviser or principal underwriter, for a period of nine months. • The former CIO of the adviser was ordered to pay a civil money penalty of \$100,000. He is suspended from associating with an investment adviser, and prohibited from serving as an officer or director for a fund's investment adviser or principal underwriter, for a period of six months. Rachel H. Graham Assistant Counsel

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