

MEMO# 5176

September 23, 1993

PROCEEDINGS INSTITUTED AGAINST MUTUAL FUND INVESTMENT ADVISER

September 23, 1993 TO: COMPLIANCE COMMITTEE NO. 21-93 SEC RULES MEMBERS NO. 74-93 RE: PROCEEDINGS INSTITUTED AGAINST MUTUAL FUND INVESTMENT ADVISER

The SEC has instituted public administrative proceedings against the investment adviser, and its former president and principal owner ("President"), to a series fund. A court had previously issued a permanent injunction from violations of the Investment Company Act of 1940 against the fund. The SEC alleges that the adviser and President caused one of the series to make a loan, contrary to its stated investment policies, to fund the purchase of historic property in New Mexico. The adviser and President allegedly failed to disclose material facts about the loan in various filings with the SEC and other publicly disseminated documents. In addition, the SEC alleges that the President failed to properly disclose the nature and status of another portfolio investment. Based on this conduct, the adviser and President are alleged to have willfully aided and abetted the violation of or willfully violated provisions of the Investment Company Act of 1940, the Securities Act of 1933 and the Securities Exchange Act of 1934. In addition, the SEC alleges that the adviser and the President caused another series of the fund to pay monthly dividends in excess of the fund's earnings, resulting in a return of capital, without properly disclosing this fact, in violation of certain provisions of the Investment Company Act, the Securities Act and the Exchange Act. The SEC also alleges that the President (1) caused the fund to have an improperly constituted board in violation of Sections 10(a) and 16(a) of the 1940 Act; (2) failed to ensure that the individual series filed or timely filed annual and semi-annual reports with the SEC and distributed them to shareholders, in violation of Sections 30(b)(1), 30(b)(2), and 30(d) of the 1940 Act and Rules 30b1-1, 30b2-1, and 30d-1 thereunder; (3) caused one of the series to borrow money in contravention of its investment policies in violation of Sections 13(a)(2) and 13(a)(3) of the 1940 Act; and (4) caused one of the series to fail to timely meet shareholder redemption requests in violation of Section 22(e) of the 1940 Act. A copy of the SEC's release and order on these proceedings is attached. Amy B.R. Lancellotta Associate Counsel

Attachment