

MEMO# 3870

June 17, 1992

PORTFOLIO MANAGER'S FAILURE TO REPORT PERSONAL SECURITIES TRANSACTIONS ADEQUATELY SUPPORTS CRIMINAL CHARGE

June 17, 1992 TO: SEC RULES MEMBERS NO. 25-92 COMPLIANCE COMMITTEE NO. 5-92 RE: PORTFOLIO MANAGER'S FAILURE TO REPORT PERSONAL SECURITIES TRANSACTIONS ADEQUATELY SUPPORTS CRIMINAL CHARGE

_____ In a case against a mutual fund portfolio manager who allegedly bought high yield bonds from Drexel Burnham Lambert, Inc. for funds that she managed and received bribes in return for participating in certain other transactions involving Drexel, the United States District Court for the Southern District of New York recently refused to dismiss a charge that the portfolio manager criminally violated Section 17(j) of the Investment Company Act. A copy of the court's opinion denying the portfolio manager's motion to dismiss is attached. The portfolio manager had moved for dismissal of a charge that was based upon her failure to disclose to the investment companies and investment adviser of which she was an "access person" certain transactions in securities in which she had a beneficial interest (as required under Rule 17j-1). She asserted that the charge did not state a crime because there was no allegation that the investment companies ever held or intended to acquire the securities at issue (an element of the conduct proscribed by Section 17(j)). The court found, however, that such a showing was not required. According to the court's opinion, Rule 17j-1 "is designed to prevent fraudulent conduct by a highly placed executive in certain types of financial institutions by requiring the disclosure of such executive's own securities transactions, whether or not those securities are the subject of interest or purchase by a financial institution." (Emphasis added.) The court concluded that the rule furthers the statutory purpose set forth in Section 17(j) and that a violation of the rule "is therefore the same as a violation of the statute itself." On this basis, the court denied the motion to dismiss. Frances M. Stadler Assistant Counsel Attachment