The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

MEMO# 7058

June 27, 1995

FUND ADVISERS AND ASSOCIATED PERSONS SETTLE SEC ALLEGATIONS DIVERSION OF INVESTMENT OPPORTUNITIES

1 See Memorandum to SEC Rules Members No. 18-95, Compliance Committee No. 16-95 and Closed-End Fund Members No. 8-95, dated March 13, 1994. 2 The InstituteGs previous memorandum incorrectly stated that none of the equity kickers had been allocated to any of the investment companies. Id. We subsequently learned that some of the equity kickers from one of the offerings had been allocated to one of the investment companies that had purchased the high yield bonds. June 27, 1995 TO: CLOSED-END FUND MEMBERS No. 22-95 COMPLIANCE COMMITTEE No. 28-95 SEC RULES MEMBERS No. 44-95 RE: FUND ADVISERS AND ASSOCIATED PERSONS SETTLE SEC ALLEGATIONS DIVERSION OF INVESTMENT OPPORTUNITIES

_____ The Securities and Exchange Commission recently accepted offers of settlement and issued an order imposing remedial sanctions on two affiliated fund advisers and associated persons in administrative proceedings alleging that certain investment opportunities belonging to public investment companies had been diverted to an in-house profit-sharing plan.1 The respondents, without admitting or denying the CommissionGs findings, consented to the order. The order also dismissed one of the respondents from the proceedings. According to the order, in connection with three high-yield bond offerings, the advisers (through a portfolio manager for the investment companies and the high-yield portion of the profit-sharing planGs portfolio) purchased bonds for the investment companies but purchased for the profit- sharing plan some or all of the equity “kickers” that were available only because of the investment companiesG bond purchases.2 The investment companies did not consent to the planGs purchase of the equity kickers. The Commission found that the planGs purchase of the equity kickers operated as a fraud upon the investment companies and constituted a prohibited joint arrangement between the plan and the investment companies. In addition, the Commission found that the portfolio manager was responsible for the purchases of the bonds and the equity kickers, and that the portfolio managerGs immediate supervisor failed reasonably to supervise him with a view toward preventing these securities law violations. The advisers, the portfolio manager and the profit-sharing plan were ordered to cease and desist from committing or causing any violation or future violation of certain provisions of the Investment Advisers Act and the Investment Company Act. In addition, the advisers and the plan were censured, the portfolio manager was barred from association with any broker, dealer, municipal securities dealer, investment adviser or investment company (provided that after one year he may reapply to the appropriate self-

regulatory agency or if there is none, to the Commission), and his immediate supervisor was barred from association in a supervisory capacity with any such entities (provided that after one year he may reapply to the appropriate self-regulatory agency or if there is none, to the Commission). Amy B.R. Lancellotta Associate Counsel Attachment

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