

MEMO# 4147

October 5, 1992

SEC SANCTIONS ADVISER AND PRINCIPAL FOR FRAUD IN CONNECTION WITH ITS ADVERTISEMENTS

October 5, 1992 TO: INVESTMENT ADVISER MEMBERS NO. 47-92 INVESTMENT ADVISER
ASSOCIATE MEMBERS NO. 37-92 COMPLIANCE COMMITTEE NO. 18-92 RE: SEC SANCTIONS
ADVISED AND PRINCIPAL FOR FRAUD IN CONNECTION WITH ITS ADVERTISEMENTS

The Securities and Exchange Commission recently sanctioned a registered investment adviser and its president for violation of the antifraud provisions of the Investment Advisers Act in connection with the adviser's advertisements, as well as for violations of other provisions of the Act. Specifically, the SEC found that the adviser violated, and its president aided and abetted violations of, Section 206(4) of the Advisers Act and Rule 206(4)-1(a) thereunder for referring in its advertisements to the adviser's past specific recommendations, without setting out or offering to furnish a list of all recommendations and providing the information required by Rule 206(4)-1(a)(2). The Commission also found that the adviser failed to disclose the effect of material market or economic conditions on the described investment results; the effect of the deduction of fees and expenses; the extent to which the investment results reflected the reinvestment of dividends; the possibility of loss; any material conditions, objectives, or investment strategies used to obtain the results; and the limitations inherent in model results. Finally, the Commission found that the adviser had violated, and the president had aided and abetted violations of the provisions of the Advisers Act relating to the updating of Form ADV, the books and recordkeeping requirements, and the requirement to establish procedures to prevent the misuse of nonpublic information. Without admitting or denying the allegations, the adviser consented to the revocation of its registration, its president consented to a bar from association with any broker, dealer, investment company, or investment adviser, and both consented to an order to cease and desist from future violations of certain provisions of the Advisers Act and the relevant rules thereunder. Attached is a copy of the Commission's order. Thomas M. Selman Assistant Counsel Attachment