

MEMO# 12458

August 10, 2000

SEC STAFF NO-ACTION LETTER CONCERNING RULE 17J-1 REPORTING REQUIREMENTS FOR INDEPENDENT DIRECTORS OF INVESTMENT ADVISERS

[12458] August 10, 2000 TO: COMPLIANCE ADVISORY COMMITTEE No. 31-00 SEC RULES MEMBERS No. 59-00 RE: SEC STAFF NO-ACTION LETTER CONCERNING RULE 17j-1 REPORTING REQUIREMENTS FOR INDEPENDENT DIRECTORS OF INVESTMENT ADVISERS The Division of Investment Management of the Securities and Exchange Commission recently issued a no-action letter under Section 17(j) of the Investment Company Act and Rule 17j-1 thereunder concerning the reporting obligations of independent directors of investment advisers concerning their personal investments.¹ A copy of the letter is attached and is summarized below. Rule 17j-1(d) sets forth certain reporting requirements for “access persons,” as defined under the rule, with respect to their personal trading and holdings in securities. The term “access person” includes any director of an investment company or of its investment adviser, but Rule 17j-1(d)(2)(ii) provides an exception from the initial and annual holdings reporting requirements for an independent fund director who would have been required to make a report solely by reason of being a fund director. Rule 17j-1(d)(2)(ii) also excepts an independent fund director from the quarterly transaction reporting requirement unless the director knew or, in the ordinary course of fulfilling his or her official duties as a director, should have known that during the 15-day period immediately before or after the director’s transaction, the fund purchased or sold the security, or the fund or its adviser considered purchasing or selling the security. In proposing Rule 17j-1, the Commission explained that it was unnecessary “to subject disinterested [fund] directors to reporting requirements as extensive as those applicable to other persons, since disinterested [fund] directors would, as a general matter, have less contact with an investment company’s day-to-day operations than other access persons.”² In the no-action letter, the staff agreed not to recommend enforcement action to the Commission if, solely for purposes of the exceptions to the personal reporting requirements of Rule 17j-1(d)(2)(ii), the independent directors of the investment advisers at issue were treated in the same manner as independent fund directors. The staff noted that its position was based on the facts and representations set forth in the incoming letter, in particular that the independent directors (1) would not be deemed to be “interested persons,” as defined in Section 2(a)(19)(B) of the Investment Company Act, of the advisers for any reason other than that they are directors of the advisers and knowingly have any direct or indirect beneficial interests in securities issued by the advisers, and (2) have no involvement with the day-to-day operations of either the advisers or the funds. ¹ Mackenzie Investment Management (pub. avail. August 8, 2000). ² Investment Company Act Release

No. 10162 (March 20, 1978). 2Kathy D. Ireland Associate Counsel Attachment Note: Not all recipients receive the attachment. To obtain a copy of the attachment to which this memo refers, please call the ICI Library at (202) 326-8304 and request the attachment for memo 12458. ICI Members may retrieve this memo and its attachment from ICINet (<http://members.ici.org>). Attachment (in .pdf format)

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