

MEMO# 6052

July 14, 1994

SEC SANCTIONS, IMPOSES PERSONAL TRADING PROCEDURES ON FUND ADVISER

July 14, 1994 TO: COMPLIANCE COMMITTEE NO. 14-94 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 30-94 INVESTMENT ADVISER MEMBERS NO. 34-94 SEC RULES MEMBERS NO. 48-94 RE: SEC SANCTIONS, IMPOSES PERSONAL TRADING PROCEDURES ON FUND ADVISER

The Securities and Exchange Commission recently sanctioned a fund adviser, its Chairman, and its Chief Financial Officer with respect to violations of the Investment Advisers Act and the Investment Company Act that allegedly occurred between 1987 and early 1990. One interesting aspect of the Commission's order consists of the personal trading procedures that the adviser agreed to adopt (discussed below). A copy of the Commission's order is attached.

1. **Affiliated Transactions** The Commission found that the adviser, aided and abetted by the officers, failed to disclose trading between the adviser's clients and an offshore fund affiliated with the adviser, in violation of the Advisers Act. The Commission also found that the adviser violated the Investment Company Act by stating in semi-annual reports that the funds did not engage in securities transactions with affiliated persons. The Commission found that the adviser and its Chairman aided and abetted violations of Section 17(a) of the Investment Company Act in effecting certain trades between its mutual funds and between its mutual funds and the offshore fund. These trades allegedly did not comply with the exemptive provisions of Rule 17a-7 for the reasons set forth in the Commission's order.

2. **Personal Trading Practices** The Commission found that the adviser, aided and abetted by the officers, misrepresented material facts in its Form ADV, by stating that persons associated with the adviser are not permitted to invest in any securities recommended to clients, when the Chairman and the offshore fund did engage in transactions at the same time or at a time near to when the securities were recommended to clients.

3. **Procedures to be Adopted by the Adviser** Without admitting or denying the allegations, the adviser and the two officers agreed to cease and desist from the violations. The adviser also agreed to comply with various undertakings, including the adoption of procedures designed to detect and prevent conflicts of interest in management's trading activities. These procedures include: - designation of a compliance officer to preclear trades by access persons; - annual dissemination of the fund's personal trading policy to each access person; - certification by the access person when preclearance is sought, as to whether to his or her knowledge any fund or other account managed by the adviser holds or is considering the purchase or sale of the securities; - certification by the access person when preclearance is sought that the person has read the firm's personal trading policy within the past year and believes that the transaction complies with the policy; - during preclearance, determination by the compliance officer that the security is not held by any of the firm's funds or managed

accounts and that the firm's trading desk does not have any unexecuted order to purchase or sell the security; - delivery of brokerage confirmations of each access person's securities transaction to the firm; - quarterly comparison of the confirmations to the advance authorizations to determine, among other things, whether any fund or managed account owned the securities at the time of the transaction or purchased or sold the securities within 10 days of the transaction. The adviser also agreed tat the fund boards would be composed of at least 5 directors, at least 3 of whom are disinterested. The adviser consented to reimburse its mutual funds for certain pricing errors in specified affiliated trades and a six-month prohibition on accepting new clients. Thomas M. Selman Assistant Counsel Attachment

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.