

MEMO# 20436

October 3, 2006

Former Fund Adviser Settles With SEC Over Alleged Material Misstatements and Omissions

©2006 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. [20436] October 3, 2006 TO: COMPLIANCE MEMBERS No. 41-06 FIXED-INCOME ADVISORY COMMITTEE No. 7-06 SEC RULES MEMBERS No. 88-06 SMALL FUNDS MEMBERS No. 72-06 RE: FORMER FUND ADVISER SETTLES WITH SEC OVER ALLEGED MATERIAL MISSTATEMENTS AND OMISSIONS The Securities and Exchange Commission has settled an administrative enforcement action against a former registered investment adviser ("Respondent") over charges it made a materially misleading statement and failed to disclose material facts concerning a fund ("Fund") it advised.* The Respondent neither admitted nor denied the findings. The SEC's Order found, among other things, that the Respondent, which was responsible for making the Fund's disclosures and public filings, did not disclose to investors that the Fund had entered into forbearance agreements with two obligors on bonds in the Fund's portfolio. The Order further found that the Respondent's statement in the portfolio manager's investment review letter that the overall percentage of the defaulted holdings in the Fund's portfolio was below 10% was materially misleading, because the report did not also disclose that an additional 14% of the Fund's net assets were subject to the deferred-interest forbearance agreements. Finally, the Respondent failed to designate the bonds subject to the forbearance agreements as partial-interest-paying bonds in the Fund's financial statements, as required by Regulation S-X. Based on the alleged conduct, the Order found that the Respondent willfully violated Section 34(b) of the Investment Company Act, and caused the Fund to violate Section 30(e) of the Investment Company Act and Rule 30e-1 thereunder. The Commission censured the Respondent, and ordered it * See In the Matter of Strong Capital Management, Inc., SEC Release Nos. IA-2560 and IC-27508, Admin. Proc. File No. 3- 12448 (Sept. 29, 2006) (the "Order"). The Order is available at <http://www.sec.gov/litigation/admin/2006/ia-2560.pdf>. 2 to pay approximately \$2.2 million in disgorgement, interest and penalties, which will be distributed according to a distribution plan developed by the Respondent in conjunction with the Commission. Mara Shreck Assistant Counsel