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INVESTMENT COMPANY INSTITUTE

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SEC FILES FRAUD CHARGES AGAINST INVESTMENT ADVISER, BROKER-DEALER FOR MARKET TIMING AND LATE TRADING OF MUTUAL FUNDS

[17646] June 8, 2004 TO: COMPLIANCE ADVISORY COMMITTEE No. 60-04 SEC RULES MEMBERS No. 87-04 SMALL FUNDS MEMBERS No. 66-04 RE: SEC FILES FRAUD CHARGES AGAINST INVESTMENT ADVISER, BROKER-DEALER FOR MARKET TIMING AND LATE TRADING OF MUTUAL FUNDS The Securities and Exchange Commission announced the filing of a civil enforcement action against a registered investment adviser, its affiliated broker-dealer, the president and owner of both entities, and a registered representative of the broker-dealer.* The SEC alleges that the defendants defrauded mutual funds and their shareholders by engaging in a series of activities designed to circumvent the funds' restrictions on market timing and by systematically engaging in late trading in the funds' shares. The complaint alleges that, from at least September 2001 through November 2003, the defendants consummated thousands of market timing and late trades in more than 100 mutual funds for at least nine clients, several of which were hedge funds. With respect to market timing, the complaint alleges that the mutual funds sent the adviser and broker-dealer warning letters, notices, and e-mails blocking the clients from trading due to their market timing activity. The complaint further alleges that, despite these warnings, the defendants used various deceptions to evade detection of ongoing market timing, including (1) suggesting that clients establish multiple accounts and use multiple clearing firms, (2) transferring assets from a blocked account to a new account within the same fund family, and (3) informing clients of the extent to which a mutual fund could detect market timing (e.g., identifying the maximum trade that could be processed without detection). With respect to late trading, the complaint alleges that on many occasions, the registered representative, with the president's knowledge and approval, accepted final trade instructions after the 4:00 p.m. EST market close and processed the trades as if the instructions had been received prior to that time. The complaint further alleges that the defendants concealed the late trading activity by time stamping preliminary trading instructions, accepting final trading instructions by undocumented phone conversations, or using a time stamp machine that intentionally did not reflect the accurate time. * See SEC v. Geek Securities, Inc., Geek Advisors, Inc., Kautilya "Tony" Sharma, and Neal R. Wadhwa, Civil Action No. 04- 80525 Paine/Johnson (S.D. FL June 4, 2004). A copy of the SEC's complaint is available on the SEC's website at http://www.sec.gov/litigation/complaints/comp18738.pdf. 2 The complaint charges the defendants with violations of the antifraud provisions in Section 17(a) of the Securities Act of 1933 and Section 10(b) of, and Rule 10b-5 under, the Securities Exchange

Act of 1934. The complaint also charges the broker-dealer with violating, and the individual defendants with aiding and abetting violations of, the antifraud provision in Section 15(c)(1) of the Exchange Act. The SEC is seeking injunctive relief, disgorgement, civil monetary penalties against each defendant, and such other and further relief as may be necessary and appropriate. Rachel H. Graham Assistant Counsel

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