

MEMO# 18834

May 6, 2005

FORMER EXECUTIVES OF FUND GROUP SETTLE SEC CHARGES RELATING TO MARKET TIMING

©2005 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. [18834] May 6, 2005 TO: BOARD OF GOVERNORS No. 20-05 CHIEF COMPLIANCE OFFICER COMMITTEE No. 41-05 COMPLIANCE ADVISORY COMMITTEE No. 37-05 SEC RULES MEMBERS No. 58-05 SMALL FUNDS MEMBERS No. 41-05 RE: FORMER EXECUTIVES OF FUND GROUP SETTLE SEC CHARGES RELATING TO MARKET TIMING The Securities and Exchange Commission has issued orders making findings and imposing penalties and remedial sanctions in enforcement actions against three former executives ("Respondents") of an investment adviser to a group of mutual funds ("Funds").* The actions involved allegations that the adviser, through the Respondents, permitted an investor to engage in market timing in certain of the Funds that violated the Funds' prospectus disclosures, in exchange for fee-generating investments in hedge funds managed by the adviser. The Respondents consented to the SEC Orders without admitting or denying the SEC's findings. Findings According to the SEC Orders, from 2001 until 2003, the adviser, through the Respondents, provided "timing capacity" in certain of its Funds to a market timer in return for investments at agreed upon ratios in hedge funds managed by the adviser. The arrangements were contrary to the Funds' prospectus disclosures and were not disclosed to the Funds' directors or shareholders. Based on the conduct generally described above, the SEC found that all or some of the Respondents willfully violated: * See In the Matter of Gerald T. Malone, SEC Release Nos. IA-2378 and IC-26858, Admin. Proc. File No. 3-11914 (April 28, 2005); In the Matter of John D. Carifa, SEC Release Nos. IA-2379 and IC-26859, Admin. Proc. File No. 3-11915 (April 28, 2005); In the Matter of Michael J. Laughlin, SEC Release Nos. 34-51624, IA-2380, and IC-26860, Admin. Proc. File No. 3- 11916 (April 28, 2005) ("SEC Orders"). The Respondents were former executives of Alliance Capital. The SEC Orders also impose cease and desist orders on the Respondents. Copies of the SEC Orders are available on the SEC's website at <http://www.sec.gov/litigation/admin/ia-2378.pdf>, <http://www.sec.gov/litigation/admin/ia-2379.pdf>, and <http://www.sec.gov/litigation/admin/34-51624.pdf>. 2 • Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 by knowingly, recklessly and/or negligently (1) approving excessive short-term trading by a client in the Funds that was not disclosed in the Funds' prospectus and that was potentially harmful to the Funds; and (2) failing to disclose the arrangements to the Fund's Boards or shareholders; • Section 17(d) of the Investment Company Act of 1940 and Rule 17d-1 thereunder by participating, as principal, in transactions in connection with joint arrangements in which the Funds' were participants

without an SEC order approving the transactions; and • Section 34(b) of the Investment Company Act by making material misstatements or omissions in a registration statement or other document filed or transmitted pursuant to the Investment Company Act. Sanctions • The Respondents will each pay civil money penalties ranging from \$150,000 to \$375,000. • The Respondents are each suspended from associating with an investment adviser or an investment company for twelve months, and prohibited from serving as an officer or director of an investment adviser or investment company for three years. One Respondent is also suspended from associating with a broker or dealer for twelve months, and prohibited from serving as an officer or director of a broker or dealer for three years. Jane G. Heinrichs Assistant Counsel

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