

**MEMO# 16610**

October 3, 2003

## **NEW YORK AND SEC ANNOUNCE CRIMINAL AND ADMINISTRATIVE ACTIONS AGAINST HEDGE FUND TRADER IN CONNECTION WITH LATE TRADING**

[16610] October 3, 2003 TO: COMPLIANCE ADVISORY COMMITTEE No. 79-03 SEC RULES MEMBERS No. 131-03 RE: NEW YORK AND SEC ANNOUNCE CRIMINAL AND ADMINISTRATIVE ACTIONS AGAINST HEDGE FUND TRADER IN CONNECTION WITH LATE TRADING The Office of the New York State Attorney General and the Securities and Exchange Commission announced the filing of state criminal charges and a federal administrative proceeding against a hedge fund trader.\* Both actions are predicated on the same underlying conduct, which involved either the placing of mutual fund orders through broker-dealers after 4:00 p.m. or communicating such orders to broker-dealers before 4:00 p.m. and then confirming, altering, or canceling the orders after 4:00 p.m. In both instances, the orders were executed at the 4:00 p.m. price, thereby resulting in "late trading." As a result of this conduct, the trader has been charged by the New York Attorney General with committing a Class E felony under the antifraud provisions of New York General Business Law 352-c(6), which is punishable by four years imprisonment. He has also been found by the Commission in its related administrative proceeding to have violated the antifraud provisions of Sections 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 (and Rule 10b-5 thereunder), and with willfully aiding and abetting and causing violations of Rule 22c-1(a) under the Investment Company Act of 1940. In the criminal proceeding, the trader has entered a guilty plea. The Commission found him to have committed the violations alleged, ordered him to cease and desist from committing or causing any future violations, and barred him from association with any investment adviser or registered investment company. While the Commission plans to seek disgorgement and penalties from the trader, according to its Order, this issue "will be resolved at a later date." Tamara K. Salmon Senior Associate Counsel \* For a copy of the Commission's action, see *In re Steven B. Markowitz*, which can be found on the Commission's website at: [www.sec.gov/litigation/admin/33-8298.htm](http://www.sec.gov/litigation/admin/33-8298.htm). For a copy of the criminal information and the felony complaint, see [http://www.oag.state.ny.us/press/2003/oct/superior\\_court\\_info.pdf](http://www.oag.state.ny.us/press/2003/oct/superior_court_info.pdf).

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