

**MEMO# 14659**

April 25, 2002

## **SEC SETTLES ADMINISTRATIVE PROCEEDINGS INSTITUTED AGAINST TWO ADVISERS AND THEIR OFFICERS FOR SECURITIES LAW VIOLATIONS**

[14659] April 25 2002 TO: COMPLIANCE ADVISORY COMMITTEE No. 37-02 SMALL FUNDS COMMITTEE No. 5-02 RE: SEC SETTLES ADMINISTRATIVE PROCEEDINGS INSTITUTED AGAINST TWO ADVISERS AND THEIR OFFICERS FOR SECURITIES LAW VIOLATIONS The Securities and Exchange Commission has recently settled administrative and cease- and-desist proceedings that were instituted against two affiliated investment advisers and their president and portfolio manager for violating or willfully aiding and abetting and causing the violation of various securities laws relating to several funds under their management.<sup>1</sup> According to the findings in the Commission's order, at various times, all four respondents caused three of the funds to purchase unrated industrial development bonds contrary to the restrictions set forth in the funds' prospectuses. In addition, from time to time, the respondents caused six of the funds to invest more than 5% of their total assets in another investment company, and one of the funds to hold more than 5% of its net assets in certificates of participation, all contrary to the restrictions set forth in the funds' statements of additional information. The Commission's order also found that the advisers and their president caused the advisers and the funds to violate various provisions of their Code of Ethics and Statement on Insider Trading, which they had all previously adopted. The Code required, among other things, that certain employees pre-clear all personal securities transactions, have duplicate confirmations sent to the compliance officer by their brokers, and report their securities positions on a quarterly and annual basis. The Code also required the advisers and the officers, on behalf of the funds, to inform the affected employees of these obligations. The Commission found that in one instance none of the required employees had duplicate confirmations sent to the compliance officer, nor were any of their securities transactions pre-cleared. Also, several required employees failed to report their securities transactions on a quarterly basis. As a result, the Commission's order found that the advisers willfully violated, and the president and portfolio manager willfully aided and abetted and caused the advisers and/or the funds to violate the following provisions under the securities laws: (1) Section 206(2) of the Investment Advisers Act of 1940, for failing to disclose that the funds made investments that materially deviated from investment restrictions set forth in the funds' respective prospectuses and SAs; (2) Section

34(b) of the Investment Company Act of 1940, for filing several registration statements, incorporating prospectuses and SAs, with the Commission that contained false statements about compliance with investment limitations; and (3) Section 12(d)(1)(A) of the Investment Company Act, for acquiring for the funds the securities of another investment company the value of which exceeded 5% of the funds' net assets. The Commission's order also found that the advisers willfully violated, and their president willfully aided and abetted and caused the adviser and/or the funds to violate Section 204 of the Advisers Act and Rule 204-2(a)(12) thereunder, for failing to obtain and maintain quarterly transaction reports from required employees, and Section 17(j) of the Investment Company Act and Rules 17j-1(b) and (c) thereunder, for failing to use reasonable diligence and institute procedures reasonably necessary to prevent violations of the Code, and for failing to notify employees of their duties under the Code. Without admitting or denying the findings, the advisers and officers each agreed to be censured, to cease and desist from committing or causing future violations of the cited provisions of the Investment Company Act and the Advisers Act, and to pay civil money penalties ranging from \$5,000 to \$15,000. In addition, the advisers separately agreed to comply with certain remedial undertakings, consisting primarily of obtaining an independent consultant to review their compliance procedures related to the violations mentioned above, and to establish and implement new procedures as necessary. The consultant's report will be delivered to the advisers, the funds, their boards of directors, and the SEC, and, for four years thereafter, will be updated at six-month intervals. Furthermore, the advisers agreed to disseminate, at their own expense, a copy of the Commission's order to all current shareholders, and to all prospective or new shareholders for a period of one year from the date of the order. Barry E. Simmons  
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