MEMO# 18504

February 4, 2005

INDIVIDUAL INVESTOR CONSENTS TO SETTLE SEC CHARGES RELATING TO TRADING OF CLOSED-END FUND SHARES

[18504] February 4, 2005 TO: CHIEF COMPLIANCE OFFICER COMMITTEE No. 11-05 COMPLIANCE ADVISORY COMMITTEE No. 11-05 CLOSED-END INVESTMENT COMPANY MEMBERS No. 9-05 RE: INDIVIDUAL INVESTOR CONSENTS TO SETTLE SEC CHARGES RELATING TO TRADING OF CLOSED-END FUND SHARES The Securities and Exchange Commission recently announced that an individual investor consented to settle a civil injunctive action, in which the SEC alleged that the investor engaged in a manipulative trading practice known as “marking the close” on over 100 occasions with respect to more than a dozen closed-end funds. 1 The individual, without admitting or denying the SEC’s allegations, consented to the entry of an order: (1) permanently enjoining him from violating the antifraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934 as well as Section 9(a)(2) of the Exchange Act2; and (2) imposing a $35,000 penalty. The SEC complaint in this action is summarized below. The SEC complaint alleged that from August 1999 to October 2003, the investor engaged in a scheme to artificially modify the closing price of several closed-end funds. Specifically, it alleges that on approximately 119 occasions, at or near the close of the trading day, the investor placed buy and sell orders of 100 or 200 shares of closed-end funds that resulted in increases or decreases to the closing price of each fund (“marking the close”). The investor allegedly engaged in “marking the close” transactions in two ways. First, when the individual owned a significant long position in a closed-end fund (e.g., 2000 shares), he allegedly would place an order to buy additional (e.g., 100-200) shares of the same fund within a few minutes of the close of the market. The complaint states that the execution of these buy orders increased the closing price of the fund. The individual also allegedly would enter a limit order before the open of the market on the next trading day at or 1 See U.S. Securities and Exchange Commission v. Thomas E. Edgar, Civil Action No. 05-2009 (Jan. 12, 2005). Copies of the SEC’s complaint and accompanying release are available at http://www.sec.gov/litigation/complaints/comp19033.pdf and, http://www.sec.gov/litigation/litreleases/lr19033.htm, respectively. 2 Section 9(a)(2), in part, makes it unlawful for any person, directly or indirectly, by use of the mails or any means or instrumentality of interstate commerce to effect a series of transactions in any exchange registered security which create actual or apparent active trading in such security, or raise or depress the price of such security, for the purpose of inducing the purchase or sale of such security by others. 2 near the price at which he had marked the close, thereby influencing the opening price. The individual then allegedly sold his shares the following day at the higher price. According to the complaint, the second way the investor allegedly “marked the close” was to establish a short position in a closed-end fund

in one trading account and, while still maintaining the short position, buy approximately 100 shares of the same closed-end fund in a second account. Within several minutes of the close of the market, the individual would place a market order to sell the 100 shares that he purchased earlier in the day. This sequence of trades allegedly enabled the individual to cover his short positions at a lower price at the beginning of the next trading day. Dorothy M. Donohue Associate Counsel

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