

MEMO# 16709

October 31, 2003

SEC AND MASSACHUSETTS FILE ENFORCEMENT ACTIONS AGAINST FUND ADVISER AND TWO FORMER PORTFOLIO MANAGERS

[16709] October 31, 2003 TO: COMPLIANCE ADVISORY COMMITTEE No. 92-03 INVESTMENT ADVISER MEMBERS No. 38-03 SEC RULES MEMBERS No. 147-03 SMALL FUNDS MEMBERS No. 60-03 RE: SEC AND MASSACHUSETTS FILE ENFORCEMENT ACTIONS AGAINST FUND ADVISER AND TWO FORMER PORTFOLIO MANAGERS The Securities and Exchange Commission and the Massachusetts Securities Division announced the filing of federal civil charges and federal and state administrative proceedings against an investment adviser and two former portfolio managers of the adviser. The actions stem from allegations of market timing activity and excessive short-term trading in shares of mutual funds advised by the adviser. Enforcement Actions by the Commission The Commission filed a civil action in federal court charging the two former portfolio managers with violations of the antifraud provisions of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940.¹ The complaint alleges that the managers violated these provisions by engaging in excessive and undisclosed short-term trading for their personal accounts in shares of mutual funds advised by the adviser, including funds in which they participated in managing. The Commission is seeking injunctive relief, disgorgement, penalties, and such equitable relief as the court deems appropriate. Separately, the Commission has issued a release announcing that it has instituted administrative proceedings against the investment adviser.² According to the release, the Commission's Division of Enforcement alleges that the adviser willfully violated Sections 206(1) and 206(2) of the Investment Advisers Act by failing to disclose to the affected mutual funds and their boards of directors the personal trading activities of the two former portfolio managers and similar activities by other employees. The Division further alleges that the 1 See SEC v. Justin M. Scott and Omid Kamshad, No. 03-12082 (D. Mass. Oct. 28, 2003). A copy of the complaint is available at www.sec.gov/litigation/complaints/comp18428.htm. 2 See In the Matter of Putnam Investment Management, LLC, Release No. IA-2185, Administrative Proceeding File No. 3-11317 (Oct. 28, 2003). A copy of the Commission's release is available at www.sec.gov/litigation/admin/ia-2185.htm. 2 adviser: (1) willfully violated Section 204A of the Investment Advisers Act by failing to have policies and procedures reasonably designed to prevent the misuse of nonpublic information; (2) willfully violated Section 17(j) of, and Rule 17j-1(c) under, the Investment Company Act of 1940 by failing to enforce adequately its code of ethics; and (3) failed to supervise the managers and other employees under Section 203 of the Investment Advisers Act. The Division is seeking a cease-and-desist

order, disgorgement, penalties, and such other relief as the Commission deems appropriate. Administrative Proceeding by the Massachusetts Securities Division The Massachusetts Securities Division has filed an administrative complaint charging the investment adviser and the two former portfolio managers with violations of the antifraud provisions of the Massachusetts Uniform Securities Act and regulations under that Act.³ The complaint's allegations as to the adviser involve the omission of material information from mutual fund prospectuses, failure to address market timing activity in accordance with the adviser's stated policies, and failure to halt market timing and short-term trading by the former portfolio managers and other holders of fund shares. The allegations as to the former portfolio managers involve their personal trading in the mutual funds they managed. The Division is seeking a cease-and-desist order, disgorgement, payment of an administrative fine, and such other actions as may be in the public interest and necessary and appropriate for the protection of Massachusetts investors. Rachel H. Graham Assistant Counsel 3 See In the Matter of Putnam Investment Management, Inc., Putnam Investment Management, LLC, Omid Kamshad and Justin M. Scott (Mass. Reg. Docket No. E-2003-061, Oct. 28, 2003). A copy of the complaint is available at www.state.ma.us/sec/sct/sctpdf/putnamcomplaint.pdf.

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