

**MEMO# 6868**

April 19, 1995

## **SEC COMMISSIONER'S SPEECH ON THE ROLE OF COMPLIANCE PERSONNEL FOR INVESTMENT ADVISERS**

April 19, 1995 TO: COMPLIANCE COMMITTEE No. 19-95 INVESTMENT ADVISER ASSOCIATE MEMBERS No. 15-95 INVESTMENT ADVISER MEMBERS No. 20-95 RE: SEC COMMISSIONER'S SPEECH ON THE ROLE OF COMPLIANCE PERSONNEL FOR INVESTMENT ADVISERS

SEC

Commissioner Roberts recently delivered a speech on what he views "to be the proper role of compliance personnel for broker-dealers and investment advisers." He also discussed several Commission enforcement actions dealing with compliance matters and some issues regarding wrap fee programs. A copy of his speech is attached. Commissioner Roberts noted that in-house compliance personnel serve as the first line of defense and, as such, should have certain "weapons" in their arsenal. Specifically, he stated that (1) a compliance officer must have the authority to remedy inappropriate conduct, including the ability to sanction, or even fire, "rogue" employees; (2) the firm must have in place strong compliance procedures that both educate and monitor employees; and (3) a compliance department must have the proper resources to be effective. In describing several enforcement actions dealing with various compliance matters, Commissioner Roberts observed that the federal securities laws do not impose a duty to adopt compliance procedures, except under Section 15(f) of the Securities Exchange Act and Section 204A of the Investment Advisers Act to address the misuse of nonpublic information. Nevertheless, he stressed the importance of such procedures, noting that they serve as "an affirmative defense to a failure to supervise actions" and that "good compliance procedures make excellent business sense as they protect the integrity of the firm." Most of the enforcement cases that Commissioner Roberts discussed involved allegations of failure to supervise. He noted that the determination of whether a compliance officer is a supervisor of "non-line" employees is based on the particular facts and circumstances. In describing the Commission's position on this matter, he stated that a 1992 report issued by the Commission as part of its proceedings involving a Salomon Brothers trader who submitted false bids to the Treasury Department, expanded the traditional definition of "supervisor." Specifically, the report stated, "[D]etermining if a particular person is a 'supervisor' depends on whether, under the facts and circumstances of a particular case, that person has a requisite degree of responsibility, ability or authority to affect the conduct of the employee whose behavior is at issue." Finally, Commissioner Roberts alerted the audience to be on the lookout for Commission enforcement activity in the wrap fee accounts area. In this regard, he stated that the Commission has been concerned for some time that certain wrap fee programs are no different from mutual funds and, thus, may need to register under the Investment Company Act. In his view, one of the most telling differences between

a wrap fee program and a mutual fund is the opportunity for clients to exclude particular securities from their accounts. He noted that the Commission expects to consider shortly a staff release providing interpretive guidance on various wrap fee account issues, and that the release will more clearly delineate the line between a legitimate wrap fee program and an unregistered investment company. Amy B.R. Lancellotta Associate Counsel Attachment

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