

MEMO# 1755

March 7, 1990

SETTLEMENT OF SEC PROCEEDING ALLEGING MISLEADING STATEMENTS BY ADVISER CONCERNING PAST PERFORMANCE

- 1 - March 7, 1990 TO: SEC RULES MEMBERS NO. 20-90 INVESTMENT ADVISER MEMBERS NO. 8-90 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 6-90 RE: SETTLEMENT OF SEC PROCEEDING ALLEGING MISLEADING STATEMENTS BY ADVISER CONCERNING PAST PERFORMANCE _____ On February 26, 1990, the Securities and Exchange Commission approved the settlement of a proceeding against an investment adviser alleging misleading statements in a fund's registration statement concerning the adviser's past investment performance. A copy of the SEC Order is attached. The alleged misleading statements related to the investment performance of Security Equity Fund (SEF) in 1965. The adviser at issue in the proceeding was a sub-adviser to Security Management Company (SMC), SEF's investment adviser, and provided investment research, statistical analysis, and advice to SMC. SMC retained the authority, however, to reject the sub-adviser's recommendations, and, in fact, did so on one occasion. The sub-adviser founded its own fund in 1986, and included in the fund's registration statement representations concerning its investment performance on equity-oriented accounts from 1965 to 1986, including SEF, its only active advisory account in 1965. The registration statement did not disclose, however, that the sub-adviser's contract with SEF was non-discretionary insofar as SMC retained the authority to reject the sub-adviser's recommendations for SEF, to select stocks for SEF on its own and to determine the executing broker on SEF transactions. The Commission alleged that these representations were materially misleading in violation of section 34(b) of the Investment Company Act. Under the terms of the Order, the adviser must (i) institute and maintain internal controls, procedures and records to facilitate compliance with Section 34(b); (ii) retain the services of an attorney who was previously unaffiliated with the adviser and who is not unacceptable to the SEC's New York - 2 - Regional Office to serve as the adviser's compliance officer; and (iii) prior to publishing, circulating or distributing any advertisement containing statements relating to the performance of accounts managed by the adviser or any person or entity affiliated with it, submit such advertising to independent outside counsel for review. Robert L. Bunnen, Jr. Assistant General Counsel Attachment

should not be considered a substitute for, legal advice.