

MEMO# 6752

March 13, 1995

SEC PROCEEDINGS INSTITUTED AGAINST FUND ADVISERS FOR ALLEGED DIVERSION OF INVESTMENT OPPORTUNITIES

March 13, 1995 TO: CLOSED-END FUND MEMBERS No. 8-95 COMPLIANCE COMMITTEE No. 16-95 SEC RULES MEMBERS No. 18-95 RE: SEC PROCEEDINGS INSTITUTED AGAINST FUND ADVISERS FOR ALLEGED DIVERSION OF INVESTMENT OPPORTUNITIES

The Securities and Exchange Commission has instituted proceedings against two affiliated investment advisers, a portfolio manager employed by both firms, his supervisors and an in-house defined contribution retirement plan (the "Plan") in connection with an alleged scheme to fraudulently divert investment opportunities belonging to public investment companies to the Plan for the benefit of the advisers management and employees. Specifically, the Commission alleged that the investment advisers, through the portfolio manager (who managed several high yield mutual funds and one high yield closed-end fund, as well as the fixed income portfolio of the Plan), misappropriated investment opportunities belonging to the funds by allocating to the Plan certain equity "kickers." The advisers were able to purchase these equity securities, which were attractively priced securities sold as an inducement to purchasers of certain high yield bonds, only as a result of the funds purchases of those bonds. According to the Commissions order, however, none of these securities were allocated to the funds, even though they were permissible investments for the funds. The Plan made a profit of about \$251,000 on a \$51,600 investment in the equity securities. The Commission also alleged that the purchases of the equity securities by the Plan when the bonds were being purchased for the funds constituted a prohibited joint arrangement between the Plan and the funds in violation of Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder. Finally, the Commission alleged that two senior level employees of the advisers failed reasonably to supervise the portfolio manager with a view to preventing his aiding and abetting and causing violations of the federal securities laws within the meaning of Sections 203(f) and 203(e)(5) of the Advisers Act. Amy B.R. Lancellotta Associate Counsel Attachment