

MEMO# 20092

June 8, 2006

SEC Sanctions Adviser for Violating Antifraud Provisions of Advisers Act and the Compliance Program Rule

©2006 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [20092] June 8, 2006 TO: COMPLIANCE MEMBERS No. 27-06 CHIEF COMPLIANCE OFFICER COMMITTEE No. 8-06 INVESTMENT ADVISER MEMBERS No. 17-06 INVESTMENT ADVISER ASSOCIATE MEMBERS No. 9-06 RE: SEC SANCTIONS ADVISER FOR VIOLATING ANTIFRAUD PROVISIONS OF ADVISERS ACT AND THE COMPLIANCE PROGRAM RULE The Securities and Exchange Commission has sanctioned a registered investment adviser and its Director of Client Service and Marketing (the "Director") for violating the antifraud provisions of the Investment Advisers Act of 1940 and Rule 206(4)-7 thereunder, which requires advisers to adopt and implement written compliance policies and procedures.* As discussed below, these sanctions resulted from the adviser making false and/or misleading statements in RFPs regarding the results of an SEC examination of the adviser. According to the Order, the adviser was examined by the SEC in July 2002. Upon the conclusion of the examination, the adviser received a deficiency letter that identified "various problems" relating to the adviser's advertising, marketing and performance, custody of client assets, assignment of advisory contracts, and internal controls, which needed to be rectified. In September 2002, the Director worked on drafting a letter to the SEC staff identifying the steps the adviser intended to take to address the noted deficiencies. Between August 2002 and December 2004, the adviser responded to 39 RFPs, 12 of which requested specific information relating to regulatory audits, inspections or examinations. In ten instances, the adviser responded by falsely stating that the SEC had not found any deficiencies or violations or required any follow-up action. In the other two instances, the adviser answered "N/A" in one and that it had never been subject to a regulatory inspection in the other. Eleven of these 12 responses had been approved by the Director. In August 2004, the SEC conducted another * See In the Matter of CapitalWorks Investment Partners, LLC and Mark J. Correnti, SEC Rel. No. IA-2520, Admin. Proc. File No. 3-12324 (June 6, 2006) (the "Order"). The Order is available on the SEC's website at: <http://www.sec.gov/litigation/admin/2006/ia-2520.pdf>. 2 examination of the adviser, at which time the Director was informed of the false statements in the RFPs. Approximately two months later, the Director approved sending out a false response in another RFP. According to the Order, despite the adviser's knowledge of the SEC staff's concerns regarding the RFPs, the adviser "failed to adopt any written procedures that would have addressed the types of issues that arose regarding the [RFP] responses until April 2005." Based upon this failure and the adviser's false response in the RFPs, the SEC found the adviser to have violated the antifraud provisions of Sections 206(2) and (4) of the Advisers

Act. Based upon the adviser's failure to have adopted and implemented written policies and procedures reasonably designed to prevent violations of the Advisers Act, the adviser was also found to have violated Rule 206(4)-7 under the Act, the compliance program rule. The Director was found to have willfully aided and abetted and been a cause of the adviser's violation of these provisions. The Order censures the adviser and its Director, orders them to cease and desist from committing or causing any violations or future violations of Sections 206(2) and (4) of the Advisers Act and Rule 206(4)-7 thereunder, and imposes civil penalties of \$40,000 on the adviser and \$25,000 on the Director. In addition, the adviser must provide, within 30 days, a copy of the SEC order to all of its existing clients and must, for one year, provide a copy to all prospective advisory clients. The Order also requires the adviser to retain an independent consultant to conduct quarterly reviews for a two-year period of the adviser's compliance with its written policies and procedures for responding to RFPs with a view towards detecting and preventing the adviser from publishing, circulating, or distributing false or misleading information regarding the SEC staff's examination. The independent consultant must provide quarterly reports to the SEC staff on its review and recommendations. Tamara K. Salmon Senior Associate Counsel

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