

MEMO# 1561

November 29, 1989

ADVISER SANCTIONED FOR VIOLATIONS OF ADVERTISING RULE

November 29, 1989 TO: INVESTMENT ADVISER MEMBERS NO. 57-89 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 57-89 RE: ADVISER SANCTIONED FOR VIOLATIONS OF ADVERTISING RULE _____ On October 25, 1989, the Securities and Exchange Commission imposed sanctions on an investment adviser for violations of Section 206 and Rules 204-2 and 204-3 under the Advisers Act. A copy of the administrative proceeding order is attached. According to the SEC order, the adviser published advertisements which were materially false and misleading in that they: "(a) contained material misrepresentations concerning the profitability of the recommendations made by the adviser and trades made by the adviser on these recommendations...; and (b) failed to disclose (i) that adviser's recommendations referred to in its advertisements consisted entirely of options recommendations; (ii) what adviser's performance would have been had all of its recommendations been included; and (iii) the time parameters of each advertised period of results." The SEC also sanctioned the adviser for failure to comply with Rule 204-3 in that adviser failed to offer to furnish to its clients or prospective clients a disclosure statement which contained all of the information required by the brochure rule. Finally, the SEC sanctioned the adviser for violations of Rule 204-2(e)(1) for keeping its cash receipts and cash disbursement journals outside of the territorial United States where they would not be easily accessible for examination by representatives of the SEC. Among other things, the SEC's sanctions required the adviser to: (a) keep its books and records within the United States; (b) offer its clients and prospective clients a disclosure statement; (c) mail a copy of the order to its existing clients and newsletter subscribers; (d) refrain from publishing any advertisements not in accordance with the Advisers Act and the rules thereunder; and (e) employ an attorney familiar with the provisions of the Investment Advisers Act to review and revise any advertisements that do not comply with the Advisers Act and to submit an affidavit of compliance to the SEC within two months of the issue date of the order. Robert L. Bunnan, Jr. Assistant General Counsel Attachment