

MEMO# 18603

March 4, 2005

SEC SETTLES WITH BROKER-DEALER REGARDING LATE TRADING OF MUTUAL FUND SHARES

[18603] March 4, 2005 TO: CHIEF COMPLIANCE OFFICER COMMITTEE No. 23-05 COMPLIANCE ADVISORY COMMITTEE No. 21-05 SEC RULES MEMBERS No. 34-05 SMALL FUNDS MEMBERS No. 21-05 RE: SEC SETTLES WITH BROKER-DEALER REGARDING LATE TRADING OF MUTUAL FUND SHARES The Securities and Exchange Commission has issued an order making findings and imposing civil money penalties and compliance reforms in an administrative proceeding against a registered broker-dealer.* The broker-dealer consented to the entry of the SEC Order without admitting or denying the SEC's findings. The action involved improper late trading of mutual fund shares by the broker-dealer on behalf of several of its hedge fund customers who were also engaged in market timing. Findings According to the SEC Order, from August 2001 through September 2003, the broker-dealer, on behalf of at least five hedge fund customers, accepted and executed more than 3,500 trades in dozens of fund families after 4:00 p.m. Eastern Time, the time as of which those funds calculated their NAV. The SEC Order finds that the broker-dealer received and executed through its clearing broker nearly all of these trades after 4:30 p.m., and the overwhelming majority after 5:00 p.m. The SEC Order further finds that the broker-dealer knew that those trades were receiving that day's NAV as opposed to the next trading day's NAV, a practice that violated the Investment Company Act of 1940. As a result of the conduct generally described above, the SEC Order finds that the broker-dealer willfully aided and abetted and caused the clearing broker's violations of Rule 22c-1 under the Investment Company Act. * See In the Matter of Brean Murray & Co., Inc., SEC Release Nos 34-51219 and IC-26761, Admin. Proc. File No. 3- 11836 (Feb. 17, 2005) ("SEC Order"), which is available at <http://www.sec.gov/litigation/admin/34-51219.htm>. The SEC Order also censures the broker-dealer and imposes a cease and desist order. 2 Undertakings According to the SEC Order, the broker-dealer has agreed to employ an independent consultant not unacceptable to the SEC staff who is knowledgeable in all aspects of mutual fund transactions, including but not limited to, the pricing of mutual funds and compliance with Rule 22c-1 under the Investment Company Act. The independent consultant will conduct a review of and make findings regarding the broker-dealer's internal controls. The broker-dealer will require that the independent consultant complete its review and provide its recommendations in a report to the broker-dealer and the SEC staff no later than 180 days after the date of entry of the SEC Order. Sanctions The broker-dealer will pay a \$150,000 civil money penalty. Jane G. Heinrichs Assistant Counsel

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