

MEMO# 20330

August 30, 2006

Broker-Dealer Settles with SEC, Justice Department, NASD and State Regulators Over Market-Timing of Mutual Fund Shares

©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. [20330] August 30, 2006 TO: COMPLIANCE MEMBERS No. 35-06 SEC RULES MEMBERS No. 74-06 SMALL FUNDS COMMITTEE No. 21-06 RE: BROKER-DEALER SETTLES WITH SEC, JUSTICE DEPARTMENT, NASD AND STATE REGULATORS OVER MARKET-TIMING OF MUTUAL FUND SHARES The Securities and Exchange Commission has issued an order making findings and imposing remedial sanctions in an enforcement proceeding against a registered broker-dealer (the "Respondent").¹ The Respondent consented to the entry of the SEC Order without admitting or denying the SEC's findings. The Respondent simultaneously settled with NASD² and three state securities regulators,³ and also settled criminal charges with the U.S. Department of Justice.⁴ The SEC alleged that former registered representatives of the Respondent used deceptive trading practices to conceal their identities, and those of their customers, to evade mutual funds' prospectus limitations on market timing. Based on this alleged conduct, the Respondent was censured and ordered to pay disgorgement of \$270 million, which will be distributed based on a plan to be developed by an independent distribution consultant. In a related matter, the SEC filed a civil 1 See In the Matter of Prudential Equity Group, LLC, formerly known as Prudential Securities, Inc., SEC Release No. 34- 54371, Admin. Proc. File No. 3-12400 (Aug. 28, 2006) ("SEC Order"), available at www.sec.gov/litigation/admin/2006/34-54371.pdf, and accompanying press release, available at <http://www.sec.gov/news/press/2006/2006-145.htm>. 2 See "Prudential Securities, Inc. Ordered to Pay Regulators \$600 Million to Resolve Fraud, Other Charges Relating to Improper Market Timing", NASD Press Release (Aug. 28, 2006), available at http://www.nasd.com/PressRoom/NewsReleases/2006NewsReleases/NASDW_017277. The settlement with NASD resolved charges of fraudulent activities and supervisory deficiencies relating to the alleged conduct, as well as recordkeeping violations. 3 The Respondent entered into separate settlement agreements with the Massachusetts Securities Division (consent order available at <http://www.sec.state.ma.us/sct/sctpru/pruidx.htm>), the New Jersey Bureau of Securities (press release available at <http://www.nj.gov/oag/newsreleases06/pr20060828c.html>), and the New York Attorney General's Office (assurance of discontinuance available at <http://www.oag.state.ny.us/press/2006/aug/Prudential%20AOD.pdf>). 4 See "Prudential Financial Subsidiary Agrees to Pay \$600 Million to Settle Securities Fraud Allegations,"

Department of Justice Press Release (Aug. 28, 2006), available at http://www.usdoj.gov/opa/pr/2006/August/06_odag_574.html. 2 injunctive action in the United States District Court for the Southern District of New York against four registered representatives of the Respondent in connection with their deceptive market timing practices. This action follows a previous civil injunctive action filed in November 2004 against five other registered representatives charged with similar conduct. The Respondent also entered into a deferred prosecution agreement with the Department of Justice, pursuant to which it has admitted criminal wrongdoing in connection with its deceptive market timing practices, and agreed to pay \$325 million in criminal penalties. The Respondent has also agreed to certain terms and conditions for a period of five years, including cooperating with the Justice Department in its ongoing investigation of abusive and fraudulent trading practices. The Respondent will also pay a \$5 million civil penalty to the Massachusetts Securities Division. Mara Shreck Assistant Counsel

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