

MEMO# 7271

September 15, 1995

SEC STAFF LETTER PERMITTING ""BUNCHING"" OF CLIENT ORDERS

September 15, 1995 TO: COMPLIANCE COMMITTEE No. 34-95 INVESTMENT ADVISER
ASSOCIATE MEMBERS No. 37-95 INVESTMENT ADVISER MEMBERS No. 42-95 SEC RULES
MEMBERS No. 63-95 RE: SEC STAFF LETTER PERMITTING ""BUNCHING"" OF CLIENT ORDERS

The Division of Investment Management recently granted no-action relief under Section 17(d) of the Investment Company Act of 1940, Rule 17d-1 thereunder and Section 206 of the Investment Advisers Act of 1940, to an investment adviser that sought to aggregate purchase and sale orders for clients, including investment companies. Employees and principals of the adviser invest in collective investment vehicles advised by the adviser, which would participate in the aggregation of orders. Copies of the request for the no-action relief and the staffs response are attached. The adviser represented that it generally would: provide full disclosure of its aggregation policies; aggregate orders only if consistent with its best execution duty and its advisory agreements; not favor any advisory client over another; before entering an aggregated order, specify the participating client accounts and its method for allocation, and allocate accordingly; allocate on a different basis only if all clients receive fair treatment and the reason for the different allocation is explained in writing and approved by the compliance officer; maintain books and records separately reflecting the transactions for each client; avoid holding client cash or securities collectively any longer than necessary; avoid receiving additional compensation as a result of the aggregation; and provide individual treatment and advice to each client. In its letter, the staff stated, "We agree that the mere aggregation of orders for advisory clients, including a registered investment company, would not violate section 17(d), provided that the investment company participates on terms no less advantageous than those of any other participant." The letter also states that the adviser would not violate its duty to seek best execution merely by failing to aggregate orders, but should disclose to its clients "that it will not aggregate and the potential consequences of the failure to aggregate." Thomas M. Selman Associate Counsel Attachment