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MUTUAL FUND INVESTMENT ADVISER SETTLES SEC AND THREE STATE ENFORCEMENT ACTIONS RELATING TO MARKET TIMING

[17931] August 31, 2004 TO: BOARD OF GOVERNORS No. 56-04 CHIEF COMPLIANCE OFFICER COMMITTEE No. 3-04 COMPLIANCE ADVISORY COMMITTEE No. 85-04 PRIMARY CONTACTS - MEMBER COMPLEX No. 80-04 SEC RULES MEMBERS No. 122-04 SMALL FUNDS MEMBERS No. 94-04 RE: MUTUAL FUND INVESTMENT ADVISER SETTLES SEC AND THREE STATE ENFORCEMENT ACTIONS RELATING TO MARKET TIMING The Securities and Exchange Commission has issued an order making findings and imposing disgorgement, penalties, and compliance and mutual fund governance reforms in an enforcement proceeding against a registered investment adviser to a group of mutual funds ("Funds").1 The adviser consented to the entry of the SEC Order without admitting or denying the SEC's findings. In addition, the adviser settled related charges with the Attorney General of New York, the Attorney General of Colorado, and the Colorado Division of Securities.2 All of these enforcement actions involved allegations that the adviser negotiated agreements with several market timers while representing to other shareholders that it did not permit frequent trading in the Funds. The four settlements – each of which imposes somewhat different obligations on the adviser – are summarized below. 1 See In the Matter of Janus Capital Management, LLC, SEC Release Nos. IA-2277 and IC-26532, Admin. Proc. File No. 3-11590 (Aug. 18, 2004) ("SEC Order"). The SEC Order also censures the adviser and imposes a cease and desist order. Copies of the SEC Order and accompanying press release are available at http://www.sec.gov/litigation/admin/ia-2277.pdf and http://www.sec.gov/news/press/2004-111.htm, respectively. 2 Copies of the three settlements with state regulators are attached as exhibits to a Form 8-K filing made by the adviser's parent company on August 18, 2004, which is available at http://www.sec.gov/Archives/edgar/data/1065865/000095013404012523/0000950134-04-012523-index.htm. 2 I. SEC Order A. Findings3 The SEC Order finds that between November 2001 and September 2003, the adviser entered into or maintained agreements with twelve market timers that permitted them to trade Fund shares far more frequently than other shareholders and, in some cases, make frequent trades of up to tens of millions of dollars each in the Funds. During the same period, according to the SEC Order, the Funds' prospectuses stated, or at least strongly implied, that the adviser did not permit frequent trading or market timing in the Funds. The SEC Order finds that the adviser waived any redemption fees on the frequent trading that otherwise would have been imposed by certain Funds4 and that, in connection with some of the agreements, the adviser required the market timer to invest "sticky assets" in Funds that were not being timed. According to

the SEC Order, certain members of the adviser's sales group negotiated the agreements and then notified the adviser's operations group of the terms of the agreements, in order to help ensure that all approved timing activity was not restricted as part of the adviser's normal practice of monitoring and restricting market timing in the Funds. The SEC Order also finds that certain portfolio managers and members of the adviser's senior management knew, or were reckless in not knowing, about the approved market timing relationships. As a result of the conduct generally described above, the SEC Order finds that the adviser willfully violated: • the antifraud provisions of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940, by entering into agreements with market timers, which created a conflict of interest that the adviser knowingly or recklessly failed to disclose to the Funds' Board of Trustees, and which were inconsistent with the Funds' prospectus disclosures; • Section 34(b) of the Investment Company Act of 1940, by making false statements and otherwise representing in the Funds' prospectuses that the adviser did not permit frequent trading or market timing in the Funds; and • Section 17(d) of the Investment Company Act and Rule 17d-1 under that Act, by participating, as principal, in transactions in connection with joint arrangements in which the Funds were participants without an SEC order approving the transactions. B. Voluntary Undertakings In determining to accept the settlement offer, the SEC considered the following efforts voluntarily undertaken by the adviser: 3 The factual allegations described in the settlements with state regulators generally mirror those in the SEC Order and, accordingly, will not be discussed separately in this memorandum. 4 According to the SEC Order, one Fund assessed redemption fees for the entire time period from November 2001 through August 2003, while certain other Funds assessed redemption fees beginning in March or June 2003. 3 • Fund Governance – The adviser will use its best efforts to cause the Funds to operate in accordance with the following governance policies and practices, which the Funds have represented are currently in effect: o At least 75% of the trustees of each Fund will be independent. o The chairman of the board of trustees of each Fund will be independent. o Any counsel to the independent trustees of a Fund will be an "independent legal counsel," as defined under the Investment Company Act. • Board Actions – No action by the Funds' Board of Trustees will be taken without the approval of a majority of the independent trustees, and any action approved by a majority of the independent trustees but not by the full board will be disclosed in Fund shareholder reports. • Election of Trustees – Commencing in 2005, each Fund will hold a shareholder meeting to elect its board of trustees at least once every five years. • Fund Compliance Rule – The Funds will comply with Rule 38a-1 under the Investment Company Act by the earlier of 45 days from entry of the SEC Order or October 5, 2004. • Cooperation – The adviser will cooperate fully with the SEC in any investigations, litigations or other proceedings relating to or arising from matters described in the SEC Order. C. Required Undertakings General Compliance • Code of Ethics Oversight Committee – The adviser will maintain a Code of Ethics Oversight Committee responsible for all matters relating to issues under the adviser's code of ethics. The adviser will report to the Legal and Regulatory Committee of the Funds' Board of Trustees at least quarterly on issues arising under the code of ethics, including all violations of the code. Any material violations of the code will be reported promptly. • Internal Compliance Controls Committee – The adviser will establish an Internal Compliance Controls Committee. The Funds' independent trustees will be invited to participate in all meetings of the committee. The committee will report to the Legal and Regulatory Committee of the Funds' Board at least quarterly on internal compliance matters. • Reports – The adviser will provide to the Audit Committee of its parent company the same reports of the Code of Ethics Oversight Committee and the Internal Compliance Controls Committee that it provides to the Legal and Regulatory Committee of the Funds' Board. 4 • Senior Officer – The adviser will establish and staff a full-time senior-level position with

responsibility for compliance matters relating to conflicts of interests. This officer will report directly to the adviser's Chief Compliance Officer ("CCO"). • Quarterly Compliance Reporting – The adviser's CCO will report to the independent trustees of the Funds at least quarterly any breach of fiduciary duty or the federal securities laws of which the CCO becomes aware. Any material breach will be reported promptly. • Ombudsman – The adviser will establish a corporate ombudsman to whom its employees may convey concerns about ethics matters or questionable practices. The adviser must review any matters brought to the ombudsman's attention, along with any resolution of such matters, with the independent trustees of the Funds with such frequency as the independent trustees may instruct. • Adviser Compliance Rule – The adviser will comply with Rule 206(4)-7 under the Advisers Act by the earlier of 45 days from entry of the SEC Order or October 5, 2004. Disgorgement, Civil Penalties, and Other Sanctions • Disgorgement and Penalties – The adviser will pay $50 million in disgorgement and a civil money penalty of $50 million.5 • Independent Distribution Consultant – Within 90 days of the SEC Order, the adviser must retain an Independent Distribution Consultant acceptable to the SEC staff and to the independent trustees of the Funds. The consultant will develop a plan to distribute the total disgorgement and penalties to investors for (1) their proportionate share of losses suffered by the Funds due to market timing and (2) a proportionate share of advisory fees paid by Funds that suffered such losses during the period of such market timing. The Independent Distribution Consultant must submit the distribution plan to the adviser and the SEC staff within 160 days of the SEC Order. Following the issuance of an SEC order approving a final plan of disgorgement, the Independent Distribution Consultant and the adviser must take all necessary and appropriate steps to administer the final plan. • Independent Compliance Consultant – Within 90 days of the SEC Order, the adviser must retain an Independent Compliance Consultant acceptable to the SEC staff and to the majority of the Funds' independent trustees to conduct a comprehensive review of its supervisory, compliance, and other policies and procedures designed to prevent and detect breaches of fiduciary duty, breaches of the code of ethics, and federal securities law violations by the adviser and its employees. The review must include, but not be limited to: (1) the adviser's market timing controls across all areas of its business; (2) pricing practices that may make the Funds vulnerable to market timing; (3) utilization by the Funds of short-term trading fees and other controls for deterring excessive short term trading; and (4) the adviser's policies and procedures concerning 5 Each of the settlements with state regulators requires the adviser to pay disgorgement and penalties in the amounts and manner set forth in the SEC Order. 5 conflicts of interest, including conflicts arising from advisory services to multiple clients. The Independent Compliance Consultant must complete its review and provide its recommendations in a report to the adviser, the Funds' Board, and the SEC staff no more than 180 days after the entry of the SEC Order. • Periodic Compliance Review – At least once every other year, commencing in 2006, the adviser must undergo a compliance review by a third party that is not an interested person of the adviser. The third party must issue a report of its findings and recommendations to the Internal Compliance Controls Committee and the Legal and Regulatory Committee of the Funds' Board. • Certification – No later than 24 months after the entry of the SEC Order, the adviser's CEO must certify to the SEC in writing that the adviser has fully adopted and complied in all material respects with the undertakings in the SEC Order and the recommendations of the Independent Compliance Consultant, or must describe any material non-adoption or non-compliance. • Recordkeeping – Any record of the adviser's compliance with the undertakings in the SEC Order must be preserved for at least six years from the end of the fiscal year last used, the first two years in an easily accessible place. II. Settlement with Attorney General of New York The Attorney General of New York ("NYAG") conducted an investigation into possible violations by the adviser of New York's Martin Act and other statutes. The adviser, without

admitting or denying the allegations against it, agreed to the entry of an Assurance of Discontinuance to resolve the investigation. The Assurance of Discontinuance imposes a cease and desist order on the adviser and generally requires the following: • Reduction in Advisory Fees – The adviser will reduce the advisory fees payable by certain identified Funds for a period of five years. The projected reduction, based upon the assets under management in those Funds as of May 31, 2004, would total $125 million for the period. • Restrictions on the Adviser's Management of the Funds – On or after October 1, 2004, the adviser generally may manage a Fund only if, among other things: o The Funds' Board has at least 75% independent trustees and an independent chair. The person selected as chair also must have had no prior relationship with the adviser or its affiliates (other than service as a member of the Funds' Board). o The Funds' Board hires and retains a full-time senior officer, reporting exclusively to the Board, to monitor compliance. The senior officer may also function as the Fund's CCO, provided that he or she is not otherwise an employee of the adviser. Alternatively, the Board may engage an independent compliance consultant to perform this function. 6 o The Funds' Board assigns to the senior officer responsibility for managing the process by which the proposed management fees to be charged to the Fund are reasonable, negotiated at arm's length, and consistent with the Assurance of Discontinuance. Alternatively, the Board may retain an independent fee consultant to perform this function. o The reasonableness of fees is determined by the Funds' Board through either competitive bidding (which must include at least three sealed bids) or an annual independent evaluation that considers factors including: (1) the level of fees charged to institutional investors for like services; (2) the level of fees charged by other mutual funds for like services; (3) the costs of providing services; and (4) the profit margins of the adviser and its affiliates. o The adviser publicly discloses a reasonable summary of any independent fee evaluation no later than 15 days after the Funds' Board has approved a new advisory agreement or the continuation of a presently existing advisory agreement. The summary must contain data regarding the factors considered in the evaluation and sufficient specifics so that a reasonable investor can make an informed decision regarding the reasonableness of the fees, but the summary does not have to include confidential, competitively sensitive data. Public disclosure must include at least: (1) continuous, prominent posting on the adviser's website of the two most recent summaries; (2) inclusion of the most recent summary in shareholder reports; and (3) prominent notice in account statements furnished to direct investors of the summary's availability. • Actual Cost Disclosures – In an easy-to-understand format, the adviser must disclose: o In periodic account statements, beginning with the statement for the period ending March 31, 2005, the fees and costs in actual dollar amounts charged to each investor based upon (1) the investor's most recent quarterly closing balance and (2) a hypothetical $10,000 investment held for 10 years, assuming an annual return of 5% and application of the reduced management fee rates for five years as required by the Assurance of Discontinuance, and showing the impact of such fees and costs on fund returns for each year and cumulatively. o In the Fund's prospectus (subject to SEC approval) and on the adviser's website, the fees and costs associated with the hypothetical example described above. o On the adviser's website, a calculator that will enable an investor to calculate the fees and costs, in actual dollars and on a Fund by Fund basis, charged to the investor based on the investor's most recent quarterly closing balance. • Cooperation – The adviser will cooperate fully and promptly with the NYAG in any pending or subsequently initiated investigation, litigation or other proceeding relating to market timing or late trading. Among other things, such cooperation will include 7 making outside counsel reasonably available to provide comprehensive presentations concerning any internal investigation relating to all matters in the Assurance of Discontinuance and to answer questions, except to the extent such presentation or questions call for the disclosure of confidential or privileged information. III.

Settlement with Attorney General of Colorado The Attorney General of Colorado conducted an investigation of the adviser under the Colorado Consumer Protection Act. The adviser, without admitting or denying the allegations against it, agreed to the entry of an Assurance of Discontinuance to resolve the investigation. It requires the adviser to pay $1.2 million to the Attorney General for costs associated with this matter and for investor education and related enforcement efforts. The Assurance of Discontinuance also generally requires that the adviser comply with the undertakings described below for a period of ten years. A. Voluntary Undertakings In determining to accept the settlement offer, the Attorney General considered certain efforts voluntary undertaken by the adviser. These undertakings include those outlined in the SEC Order relating to fund governance, board actions, and the election of trustees. The remaining voluntary undertakings, which the adviser will use its best efforts to ensure, are as follows: • Board Committees – The Funds' Board will maintain one or more committees primarily dedicated to oversight of the Funds' investment operations. Each committee will have a majority of independent trustees and an independent chair. • Evaluation of Management Fees – In approving the Funds' advisory agreements, the independent trustees of the Funds will consider factors that are consistent with their fiduciary duties and are in the best interests of fund shareholders, including those factors identified in the NYAG settlement. The Funds will disclose a fee summary similar to that required by the NYAG settlement. • Compliance Monitoring – The Funds' Board will designate an independent individual or firm to assist the Board in monitoring compliance. (Similar undertakings are included in the SEC Order and NYAG settlement). B. Required Undertakings The settlement requires the adviser to adhere to several undertakings that are the same as, or similar to, those in the SEC Order relating to: the maintenance of Code of Ethics Oversight and Internal Compliance Controls Committees; hiring of a senior officer; quarterly compliance reporting; establishment of a corporate ombudsman; retention of an Independent Compliance Consultant; periodic compliance reviews; certification; recordkeeping; and ongoing cooperation. The additional required undertakings are as follows: 8 • Market Timing or Excessive Trading – The adviser will take reasonable steps to detect market timing or excessive trading in the Funds. Activities to police market timing will be managed by a business group separate from the adviser's sales group. Reports that identify market timers will be distributed to the adviser's senior management and the Funds' Board of Trustees as they may request. Once a market timer has been identified, the adviser will take reasonable steps to prevent future violations, including (if warranted) barring the timer from further investments in any non-money market Fund. The adviser will not solicit or accept an investment in a Fund that is in any way tied to the investor receiving trading privileges that are contrary to the adviser's market timing policies. • Soft Dollars – The adviser will not pay for third-party research with soft dollars. • Redemption Fee Waivers – The adviser will require that any waiver of a redemption fee, a change to the existing exemptions to a redemption fee, or the addition of any new exemption be approved by a top executive of the adviser, the adviser's Operating Council, or the Funds' Board of Trustees. • Omnibus Accounts – The adviser will implement policies and procedures that are reasonably designed to detect and prevent late trading and market timing of Fund shares through intermediaries or omnibus accounts. The adviser will request that each of its twenty largest intermediaries that hold omnibus accounts provide it with: (1) data sufficient to identify individual transactions or accounts entering orders in amounts of $250K or more; or (2) within one year of the settlement, a SAS 70 or similar attestation from the intermediary regarding the intermediary's compliance with the relevant Fund's prospectus requirements and with Rule 22c-1 under the Investment Company Act of 1940. If the intermediary does not provide the requested information, the adviser must inform the intermediary that it reserves the right to take additional steps, such as rejecting orders, removing the Fund as an investment option, or reporting the intermediary to regulators.

These requirements will be void if the SEC adopts amendments to Rule 22c-1 requiring enhanced reporting by intermediaries to mutual funds. IV. Settlement with Colorado Division of Securities The Colorado Division of Securities conducted an investigation into possible violations of Colorado law by the adviser. The adviser, without admitting or denying the allegations against it, agreed to the entry of a Consent Order to resolve this matter. The Consent Order imposes a cease and desist order and contains undertakings that generally mirror: (1) those in the SEC Order relating to the retention of an Independent Compliance Consultant and periodic compliance reviews; (2) that in the NYAG settlement relating to the establishment of a web-based fee calculator; and (3) those in the settlement with the Colorado Attorney General relating to soft dollars and omnibus accounts. The Consent Order also requires the adviser to implement procedures that are reasonably designed to detect and deter market timing in the 9 Funds that is inconsistent with their prospectus disclosures, which must include monitoring for potential market timing activity: (1) on a daily basis for trades of $50,000 or more, to the extent that such information is available; and (2) on a monthly basis for trades of less than $50,000. The adviser also must implement procedures reasonably designed to prevent any future violations by any account identified for potential timing activity. Rachel H. Graham Assistant Counsel

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