

MEMO# 16452

August 20, 2003

SETTLEMENT OF SEC ADMINISTRATIVE PROCEEDING AGAINST ADVISER IN CONNECTION WITH ITS VOTING OF CLIENT PROXIES

[16452] August 20, 2003 TO: COMPLIANCE ADVISORY COMMITTEE No. 61-03 INVESTMENT ADVISER ASSOCIATE MEMBERS No. 18-03 INVESTMENT ADVISERS COMMITTEE No. 19-03 SEC RULES MEMBERS No. 110-03 RE: SETTLEMENT OF SEC ADMINISTRATIVE PROCEEDING AGAINST ADVISER IN CONNECTION WITH ITS VOTING OF CLIENT PROXIES The Securities and Exchange Commission (SEC) accepted an offer of settlement and imposed a civil penalty of \$750,000 in an administrative proceeding against a registered investment adviser for violation of the Investment Advisers Act in connection with its voting of client proxies.¹ The adviser consented to the issuance of the order without admitting or denying the SEC's findings. The order is summarized below. The order states that in January 2002, Hewlett-Packard Company (HP) retained the investment banking affiliate of the adviser to advise HP in connection with its proposed merger with Compaq Computer Corporation (Compaq). In March 2002, the Proxy Working Group of the adviser voted to cast all of the adviser-controlled HP proxies against the merger. Subsequently, after learning that the adviser had voted approximately 17 million proxies against the merger, HP senior management contacted the adviser's investment banking affiliate and requested that HP be given an opportunity to make a presentation to the Proxy Working Group. The investment banking affiliate, in turn, made the request to the adviser's then-Chief Investment Officer (CIO) for HP management to speak with the Proxy Working Group. The CIO agreed to the meeting on the condition that a dissident HP shareholder who was leading opposition to the merger also be given a chance to make a presentation to the Group. According to the order, the Proxy Working Group heard from the dissident HP shareholder and then from HP senior management. The order states that during the Proxy Working Group's discussion about the proxy votes, the CIO informed members of the Proxy Working Group of the investment banking affiliate's advisory role for HP on the proposed merger with Compaq. Following the discussion, the Proxy Working Group voted to revoke their previous proxies and cast them in favor of the merger. ¹ In the Matter of Deutsche Asset Management, Inc., Admin. Proc. File No. 3-11226 (Aug. 19, 2003). A copy of the order is available on the SEC's website at <http://www.sec.gov/litigation/admin/ia-2160.htm>. ² According to the order, the adviser violated section 206(2) of the Advisers Act by voting client proxies in connection with the HP-Compaq merger without first disclosing the circumstances of its investment banking affiliate's work for HP on the proposed merger and the affiliate's intervention in the adviser's voting process. The order states that a reasonable advisory client would want to know that its fiduciary had been contacted by officials of its affiliated investment bank in

connection with an engagement directly related to the subject of the proxy vote. In the settlement of the proceeding, the adviser was censured and agreed to cease and desist from committing or causing any violations and any future violations of section 206(2) of the Advisers Act. In addition, the adviser was ordered to pay a civil money penalty of \$750,000.
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