

MEMO# 8559

January 16, 1997

SEC SANCTIONS PORTFOLIO MANAGER AND INVESTMENT ADVISER FOR PERSONAL SECURITIES TRADES

* Investment Company Act Release No. 22461 (Jan. 13, 1997). January 16, 1997 TO: COMPLIANCE ADVISORY COMMITTEE No. 1-97 SEC RULES MEMBERS No. 6-97 RE: SEC SANCTIONS PORTFOLIO MANAGER AND INVESTMENT ADVISER FOR PERSONAL SECURITIES TRADES _____ The Securities and Exchange Commission recently sanctioned a portfolio manager of a registered mutual fund with respect to personal securities transactions made by the manager in 1993. The SEC also censured and fined the investment adviser to the mutual fund. A copy of the SECs order is attached.* According to SECs order, the portfolio manager was contacted by a broker-dealer who offered the opportunity to the fund to purchase corporate debentures at a specified price. The portfolio manager rejected the offer on behalf of the fund. Later the same day, the portfolio manager learned of a bid from another broker-dealer for the debentures at a higher price than previously quoted. The SECs order states that, while purchasing and selling the same securities on the same day would have been a deviation from the funds normal method of investing, the fund was legally and financially able to take advantage of the opportunity. On the same day, the portfolio manager personally purchased \$10 million of the debentures and, later in the day, sold them for a total profit of \$16,000. The portfolio manager reported his purchases, as required by the investment adviser. The advisers compliance department reviewed the trades after they occurred, primarily for conflicts with trading activity by the fund, and took no further action. The SEC concluded that the portfolio manager breached his fiduciary duty to the fund by taking the investment opportunity in the debentures without disclosing the opportunity to, and obtaining the prior consent of, the fund (or a disinterested employee of the adviser authorized to waive this opportunity on the funds behalf). It also found that the investment adviser failed reasonably to supervise the portfolio manager, because it had failed to establish a mechanism for disclosing trades by portfolio managers to the fund and a process for employees to obtain prior consent of the fund. Without admitting or denying the SECs allegations, the portfolio manager agreed to (1) cease and desist from future violations of Section 17(j) and Rule 17j-1 thereunder of the Investment Company Act of 1940, Sections 206(1) and 206(2) of the Investment Advisers Act of 1940, and Section 10(b) and Rule 10b-5 thereunder of the Securities Exchange Act of 1934; (2) a suspension from association with any investment adviser, investment company, broker-dealer or municipal securities dealer for a 90-day period; (3) disgorgement of \$16,000 (plus prejudgment interest) and a penalty of \$16,000; and (4) an undertaking to refrain from engaging in, directly or indirectly, any personal securities transactions involving publicly traded securities if he is associated with an investment adviser. The investment adviser agreed to

be censured and to pay a penalty of \$25,000. Alexander C. Gavis Assistant Counsel
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