

MEMO# 5301

November 4, 1993

SEC COMMENCES PROCEEDINGS AGAINST INVESTMENT ADVISER IN CONNECTION WITH ITS PERFORMANCE ADVERTISEMENTS

November 4, 1993 TO: INVESTMENT ADVISERS COMMITTEE NO. 32-93 RE: SEC COMMENCES PROCEEDINGS AGAINST INVESTMENT ADVISER IN CONNECTION WITH ITS PERFORMANCE ADVERTISEMENTS _____ On October

22, 1993, the Securities and Exchange Commission ("SEC") issued an Order Instituting Proceedings against an investment adviser and the chairman and president of the adviser for violations of the Advisers Act and rules thereunder as a result of certain of its performance advertisements. Based upon an investigation, the Division of Enforcement of the SEC has alleged, among other things, that the adviser has engaged in fraudulent, deceptive, or manipulative acts or practices by publishing, circulating, or distributing advertisements which contain untrue statements of material fact, or which are otherwise false or misleading. As part of this conduct, the adviser allegedly distributed advertisements which contained false or misleading performance figures covering the period from 1984 through the third quarter of 1991 and falsely stated that certain of these performance figures were audited. In addition, the Division has alleged that the adviser violated the recordkeeping requirements under the Advisers Act and the rules thereunder. Among other things, the adviser allegedly failed to "make and keep true, accurate and current all records or documents that are necessary to form the basis for or demonstrate the calculation of its advertised performance . . ." as required by Section 204 of the Advisers Act and Rule 204-2(a)(16) thereunder. The chairman and president have allegedly willfully aided and abetted the adviser's violations. The SEC has ordered that a hearing be held to determine the validity of these allegations. A copy of the SEC's Order is attached. Tamara K. Cain Assistant Counsel Attachment