

MEMO# 16650

October 9, 2003

STATEMENT BY SEC CHAIRMAN DONALDSON REGARDING INITIATIVES TO COMBAT LATE TRADING AND MARKET TIMING OF MUTUAL FUNDS

[16650] October 9, 2003 TO: ACCOUNTING/TREASURERS MEMBERS No. 42-03 BOARD OF GOVERNORS No. 54-03 COMPLIANCE ADVISORY COMMITTEE No. 83-03 PRIMARY CONTACTS - MEMBER COMPLEX No. 85-03 SEC RULES MEMBERS No. 137-03 SMALL FUNDS MEMBERS No. 58-03 UNIT INVESTMENT TRUST MEMBERS No. 35-03 RE: STATEMENT BY SEC CHAIRMAN DONALDSON REGARDING INITIATIVES TO COMBAT LATE TRADING AND MARKET TIMING OF MUTUAL FUNDS SEC Chairman Donaldson has issued a statement regarding initiatives to combat late trading and market timing of mutual funds.¹ In particular, Chairman Donaldson has asked the SEC staff to prepare rulemaking initiatives to address these issues for Commission consideration no later than next month. With respect to late trading, the SEC staff is considering new rules and rule amendments designed to prevent late trading abuses. In particular, the SEC staff is examining the feasibility of requiring that the fund (rather than an intermediary such as a broker-dealer or other unregulated third party) receive orders prior to the time the fund prices its shares for an investor to receive that day's price (i.e., 4:00 p.m.). The SEC staff also is considering requiring funds to have additional procedures and controls in place to prevent late trading and ensure compliance with the new pricing requirements. With respect to market timing, the SEC staff is considering new rules and form amendments that would: require explicit disclosure in fund offering documents of market timing policies and procedures; require funds to have procedures to comply with representations regarding market timing policies and procedures; emphasize the obligation of funds to fair value their securities under certain circumstances to minimize market timing arbitrage opportunities; and reinforce the obligation of fund directors to consider the adequacy and effectiveness of fund market timing practices and procedures. Chairman Donaldson also has asked the SEC staff to consider whether funds should have additional tools to thwart market timing activity and whether additional requirements are necessary to reinforce funds' and advisers' obligations to comply with their fiduciary duties and to prevent the misuse of material, non-public information, including the selective disclosure of portfolio holdings information. Ari Burstein Associate Counsel

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