

MEMO# 2049

July 23, 1990

ADVISER SANCTIONED FOR ANTIFRAUD, ADVISERS ACT AND INVESTMENT COMPANY ACT VIOLATIONS

July 23, 1990 TO: SEC RULES MEMBERS NO. 53-90 RE: ADVISER SANCTIONED FOR
ANTIFRAUD, ADVISERS ACT AND INVESTMENT COMPANY ACT VIOLATIONS

The SEC has ordered a 90-day suspension of the registration of an investment adviser based on violations of antifraud laws, the Investment Advisers Act of 1940 and the Investment Company Act of 1940 in connection with services provided to two registered investment companies ("Funds"). The SEC's order, a copy of which is attached, indicates that the adviser violated Sections 206(1) and 206(2) of the Advisers Act by failing to reimburse the Funds for expenses exceeding a 2% limit imposed by the contract between the adviser and the Funds, while continuing to accept its management fee from the Funds for nine months after the reimbursement was due. This conduct resulted in several additional violations of the federal securities laws. First, failure to reimburse the Funds constituted borrowing money in violation of Section 17(a)(3) of the Investment Company Act. Second, the Funds' registration statement and prospectus contained an untrue statement that the Funds had received the reimbursement due to them and failed to disclose that the adviser had borrowed money from the Funds. The adviser was responsible for providing the false information and failing to disclose the loan, resulting in violations of Section 34(b) of the Investment Company Act. In addition, the adviser was found to have aided and abetted violations of Section 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Finally, the adviser violated Section 206(4) of the Advisers Act and Rule 206(4)-4(a)(1) thereunder by failing to disclose material facts about its poor financial condition to clients. In the same proceeding, the SEC ordered a 45-day suspension of the registration of a broker-dealer affiliate of the adviser for violating Section 17(a)(1) of the Investment Company Act by knowingly selling securities to the Funds as principal. Frances M. Stadler Assistant General Counsel Attachment