

**MEMO# 10923**

April 26, 1999

# **SEC SANCTIONS FUND ADVISER AND ITS PRINCIPALS IN CONNECTION WITH VIOLATIONS OF RULE 12B-1 AND OTHER PROVISIONS OF THE SECURITIES LAWS**

\*In the Matter of Terence Michael Coxon, SEC Admin. Proc. File No. 3-9218, Initial Decision Rel. No. 140 (April 1, 1999). A petition for review of the initial decision may be filed within 21 days of service of the decision. The SEC's order initiating proceedings in this matter was summarized in Institute Memorandum to Compliance Advisory Committee No. 3-97 and SEC Rules Members No 11-97, dated February 3, 1997. [10923] April 26, 1999 TO: COMPLIANCE ADVISORY COMMITTEE No. 15-99 SEC RULES MEMBERS No. 28-99 RE: SEC SANCTIONS FUND ADVISER AND ITS PRINCIPALS IN CONNECTION WITH VIOLATIONS OF RULE 12b-1 AND OTHER PROVISIONS OF THE SECURITIES LAWS

A Securities and Exchange Commission administrative law judge (ALJ) recently ordered a fund's investment adviser and its principals to cease and desist from violating certain provisions of the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Act of 1933, and the Securities Exchange Act of 1934. The ALJ also suspended the registration of the adviser, suspended its principals from association with any investment adviser or investment company, ordered disgorgement, and assessed civil penalties. The initial decision,\* a copy of which is attached, is summarized below. The ALJ found that the fund reimbursed the adviser from its 12b-1 plan for ordinary operating expenses of the fund that the adviser was obligated to pay. Based on this reimbursement, and the inadequacy of the information provided to the fund's directors and the minutes of its deliberations concerning the 12b-1 plan, the ALJ concluded that the fund violated Section 12(b) of the Investment Company Act and Rule 12b-1 thereunder. In addition, the ALJ found that the adviser and its principals willfully caused and aided and abetted the fund's violations. The ALJ also found that the fund purchased a call option from a private account client of one of the adviser's principals that was prohibited under its fundamental policies. The ALJ found that the fund's purchase of the call option violated Section 13(a)(3) of the Investment Company Act and that the adviser and its principals willfully caused and aided and abetted the fund's violation. Furthermore, the ALJ concluded that the adviser and its principals willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 34(b) of the Investment Company Act, by including material misrepresentations and/or omissions in the fund's prospectuses and statements of additional information concerning (1) the allocation of the fund's operating expenses; (2) the allocation of certain fund distribution expenses; and (3) the fund's investment policies. In addition, the ALJ found violations of a number of other provisions of the Investment

Company Act. Specifically, the ALJ concluded that the adviser entered into two joint transactions with its affiliates in violation of Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder. The ALJ also found that for an approximately two-year period of time the board of directors did not have the required number of disinterested directors, in violation of Section 10(b) of the Investment Company Act. Finally, the ALJ cited numerous violations of Section 206(2) of the Advisers Act. The ALJ ordered the adviser and its principals to cease and desist from committing or causing any violations or any future violations of Section 206(2) of the Investment Advisers Act, Sections 10(b), 12(b), 13(a)(3), 17(d), and 34(b) of the Investment Company Act and Rules 12b-1 and 17d-1 thereunder, Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. In addition, the ALJ suspended the registration of the adviser for three months, suspended its principals from association with an investment adviser or investment company for a period of three months, ordered disgorgement of over \$2.8 million and assessed civil penalties of \$100,000 against the adviser and \$20,000 against each of the principals. Amy B.R. Lancellotta Senior Counsel Attachment Note: Not all recipients receive the attachment. To obtain a copy of the attachment referred to in this Memo, please call the ICI Library at (202) 326-8304, and ask for attachment number 10923. ICI Members may retrieve this Memo and its attachment from ICINet (<http://members.ici.org>).

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