

MEMO# 8606

February 3, 1997

SEC INSTITUTES PROCEEDINGS AGAINST A FUND'S ADVISER AND ITS AFFILIATES FOR VIOLATIONS OF FEDERAL SECURITIES LAWS

1 Release No. IC-22460; Administrative Proceeding File No. 3-9218 (Jan. 13, 1997). February 3, 1997 TO: COMPLIANCE ADVISORY COMMITTEE No. 3-97 SEC RULES MEMBERS No. 11-97 RE: SEC INSTITUTES PROCEEDINGS AGAINST A FUND'S ADVISER AND ITS AFFILIATES FOR VIOLATIONS OF FEDERAL SECURITIES LAWS

The Securities and Exchange Commission has instituted proceedings against an investment adviser to a series fund, two of the advisers principals and a wholly-owned broker-dealer subsidiary of one of the funds portfolios (the "Respondents") alleging that the Respondents violated numerous provisions of the federal securities laws.¹ The Commission's order instituting the proceedings is summarized below, a copy of which is attached. According to the order, the adviser unlawfully received reimbursement from the funds 12b-1 plan for ordinary operating expenses of the fund that the adviser was obligated to pay. In addition, the order alleges that the fund purchased a call option from a private account client of one of the advisers principals that was prohibited under its fundamental policies. As a result of these and other activities, the order alleges that for fiscal years 1989 through 1992, the Respondents defrauded actual and potential investors in the fund in violation of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Sections 206(1) and (2) of the Advisers Act and Section 34(b) of the Investment Company Act, by including material misrepresentations and/or omissions in the funds prospectuses and registration statements concerning (1) the allocation of the funds operating expenses; (2) the allocation of certain fund distribution expenses; and (3) the funds investment policies. In addition, the order alleges violations of a number of other provisions of the Investment Company Act. Specifically, the order alleges that the broker-dealer Respondent entered into a selling agreement with the funds adviser to offer and sell shares of two of the funds portfolios. As a result of the portfolios distribution expenses exceeding the amount permitted to be paid by each under the funds 12b-1 plan, a third portfolio incurred some of the other two portfolios distribution expenses in violation of Section 17 of the Investment Company Act and Rule 17d-1 thereunder. In addition, the order alleges that the funds board of directors did not fulfill its duties to evaluate on a quarterly basis the funds 12b-1 expenses and that for an approximately two-year period of time the board of directors did not have the required number of disinterested directors. Amy B.R. Lancellotta Associate Counsel Attachment (in .pdf format)

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