

MEMO# 6902

May 4, 1995

SEC ADMINISTRATIVE PROCEEDINGS FOR ALLEGEDLY FALSE ADVERTISEMENTS

May 4, 1995 TO: COMPLIANCE COMMITTEE No. 20-95 INVESTMENT ADVISER MEMBERS No. 22-95 SEC RULES MEMBERS No. 32-95 SUBCOMMITTEE ON ADVERTISING No. 6-95 RE: SEC ADMINISTRATIVE PROCEEDINGS FOR ALLEGEDLY FALSE ADVERTISEMENTS

The Securities and Exchange Commission recently instituted administrative proceedings with respect to performance claims made in newsletter advertisements and investment company advertisements. A copy of the Commission's order instituting the administrative proceedings is attached. The Commission brought proceedings against an investment adviser (the "Adviser"), a general partner of the Adviser (the "Marketing Partner") that performs all marketing and other services for an investment company advised by the Adviser (the "Fund"), the publisher of an investment newsletter (the "Publisher") that is affiliated with these entities, various controlling persons of these entities (the "Controlling Persons"), and the marketing manager for the Marketing Partner (the "Marketing Manager"). The Commission alleges that advertisements in the newsletter claimed that an investor using a market-timing program developed by one of the Controlling Persons could have turned an investment of \$10,000 in 1980 into \$39,160,394 by 1992. The Commission alleges that an investor could have not done so, because the market-timing program has been "constantly adjusted and revised" since its inception, and because the claimed "earnings" were simulated results that could be obtained only by retroactively applying the continually updated version of the market-timing program. The Commission also alleges that the representation in the advertisement depended on using trading strategies that only became available long after 1980. The Commission further alleges that advertisements for the Fund were sent to subscribers of the newsletter. The Commission alleges that the Fund advertisements falsely implied that the results touted in the newsletter advertisements would be obtained by the Fund and falsely suggested that the Fund would use the same market-timing program in making Fund investments. The Commission alleges that the Marketing Partner violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, and Section 34(b) of the Investment Company Act of 1940, and that the Adviser, Publisher, Controlling Persons and Marketing Manager aided and abetted those violations. Thomas M. Selman Associate Counsel Attachment