

MEMO# 3321

December 5, 1991

INVESTMENT ADVISER AND PRINCIPAL OFFICER CENSURED FOR VIOLATIONS INVOLVING USE OF SOFT DOLLARS

December 5, 1991 TO: INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 52-91 INVESTMENT ADVISER MEMBERS NO. 53-91 RE: INVESTMENT ADVISER AND PRINCIPAL OFFICER CENSURED FOR VIOLATIONS INVOLVING USE OF SOFT DOLLARS

_____ An administrative law judge ("ALJ") recently censured an investment adviser and one of its principal officers for violations under the Investment Advisers Act and for breaching the adviser's fiduciary duty in connection with the adviser's use of soft dollars as payment for services involving the hiring and subsequent training of an employee of the advisory firm. The investment adviser and its principal were found to have violated certain of the Advisers Act's antifraud provisions (Sections 206(1) and (2)) as well as certain reporting and disclosure provisions (Sections 204 and 207 and Rules 204-1 and 204-3 thereunder) for failing to disclose to the Commission and the adviser's clients the particulars of the soft dollars arrangement. In addition, the ALJ found that the adviser breached its fiduciary duty since the services that the adviser acquired with the use of soft dollars -- the interviewing and training of the adviser's new employee -- were designed simply to enhance the adviser's ability to market its money management services; were beneficial only to the adviser; and, did not constitute "research" within the safe harbor of Section 28(e) of the Securities Exchange Act. The SEC had previously censured another investment adviser in a matter involving the adviser's use of client commission dollars for the same services that were involved in this instance. (See Memorandum to Investment Adviser Members No. 31- 90 and Investment Adviser Associate Members No. 28-90, dated July 13, 1990). A copy of the ALJ's decision is attached. Amy B.R. Lancellotta Associate General Counsel Attachment

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