

MEMO# 17122

February 20, 2004

NEW JERSEY FILES CHARGES AGAINST FUND ADVISERS, DISTRIBUTOR, AND PARENT COMPANY RELATING TO MARKET TIMING, SELECTIVE DISCLOSURE

[17122] February 20, 2004 TO: COMPLIANCE ADVISORY COMMITTEE No. 22-04 SEC RULES MEMBERS No. 27-04 SMALL FUNDS MEMBERS No. 21-04 RE: NEW JERSEY FILES CHARGES AGAINST FUND ADVISERS, DISTRIBUTOR, AND PARENT COMPANY RELATING TO MARKET TIMING, SELECTIVE DISCLOSURE The Attorney General of New Jersey announced the filing of civil charges against two federally-registered investment advisers, an affiliated distributor, and a parent company of the three entities based on allegations that the defendants fraudulently permitted a hedge fund and its affiliates to engage in market timing activity in mutual funds managed by the advisers.* The complaint alleges that from late 2001 until May 2003, the advisers entered into two undisclosed arrangements that gave the hedge fund market timing capacity in certain mutual funds and that one of those arrangements involved the hedge fund's investment of "sticky assets" in a separate mutual fund. The agreements allegedly allowed the hedge fund to engage in several round-trip transactions per month, even though: (1) the funds' prospectuses created the impression that the fund managers discouraged and worked to prevent market timing, including by limiting an investor to six round-trip transactions per year; and (2) during the same time period, the distributor was identifying and stopping market timing activity by other fund investors. The complaint also alleges that one of the advisers regularly provided material nonpublic information about the funds' portfolio holdings to the hedge fund's introducing broker. The complaint charges the defendants with antifraud violations of the New Jersey Uniform Securities Law. The Attorney General is seeking: (1) a declaration that the defendants engaged in the alleged violations; (2) injunctive relief; (3) civil penalties; (4) restitution and disgorgement of all profits; and (5) any additional relief the court may deem just and equitable. Rachel H. Graham Assistant Counsel * See Attorney Gen. ex rel. NJ Bureau of Securities v. Allianz Dresdner Asset Mgmt. of America, L.P., PIMCO Advisors Distributions, LLC, PEA Capital, LLC, and Pacific Invest. Mgmt. Co., LLC, Civil Action No. ____ (N.J. Super. Feb. 17, 2004). A copy of the complaint is available on the Attorney General's website at http://www.njpublicsafety.com/oag/complaint_pimco_04.pdf.

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