

MEMO# 2113

August 13, 1990

INVESTMENT ADVISER CENSURED FOR FAILURE TO DISCLOSE CERTAIN FEES TO CLIENTS

August 13, 1990 TO: INVESTMENT ADVISER MEMBERS NO. 41-90 RE: INVESTMENT ADVISER CENSURED FOR FAILURE TO DISCLOSE CERTAIN FEES TO CLIENTS

_____ A registered investment adviser recently settled charges brought against it by the Securities and Exchange Division for failing to properly disclose certain fees charged customers. A copy of the Commission's order is attached. Specifically, the Commission found that the adviser violated the antifraud provisions of the Advisers Act by failing to disclose adequately the payment of multiple fees to it. The adviser, in addition to managing individual clients' accounts, is the manager of a cash accumulation fund which pays it a fee based on a percentage of the assets in the fund. Pursuant to "sweep" arrangements with an affiliated broker, the adviser invested cash balances of certain customers in the fund. Thus, those customers paid both a direct management fee to the adviser and an indirect management fee through the fund under the "sweep" arrangement. The receipt of these multiple fees was not adequately described to customers. The Commission also found that the affiliated broker-dealer earned "float benefits" on certain customers' funds prior to the investment for the benefit of the customers. The receipt of float benefits was not violative, but the Commission found that the adviser failed to make effective disclosure to its clients of those benefits. In addition, the Commission found that the adviser failed to offer certain disclosure documents and to maintain certain records required under the Advisers Act. The Commission, noting that the affiliated broker's retail business had been sold and that it no longer earns float benefits, censured the adviser requiring it to maintain certain internal controls, procedures and records to ensure compliance with the Advisers Act. Amy B. Rosenblum Assistant General Counsel Attachment