INVESTMENT COMPANY INSTITUTE

MEMO# 17776

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SEC FILES AMENDED COMPLAINT AGAINST FORMER BROKERS, BRANCH MANAGER RELATING TO MARKET TIMING OF MUTUAL FUND SHARES

[17776] July 16, 2004 TO: COMPLIANCE ADVISORY COMMITTEE No. 73-04 PRIMARY CONTACTS - MEMBER COMPLEX No. 71-04 SEC RULES MEMBERS No. 104-04 SMALL FUNDS MEMBERS No. 80-04 RE: SEC FILES AMENDED COMPLAINT AGAINST FORMER BROKERS, BRANCH MANAGER RELATING TO MARKET TIMING OF MUTUAL FUND SHARES The Securities and Exchange Commission announced the filing of an amended complaint against former brokers and a former branch manager involving allegations that the brokers misrepresented their identities or the identities of their customers in order to continue to engage in the market timing of mutual funds after the mutual funds in question had sent letters and emails concerning excessive trading by the brokers and their customers.∗ The amended complaint alleges that from at least January 2001 through September 2003, five brokers formerly employed by a registered broker-dealer defrauded more than 50 mutual fund companies and the funds' shareholders by placing thousands of market timing trades worth more than a billion dollars. During this same time period, the fund companies sent more than a thousand letters and emails to the broker-dealer imposing blocks on further market timing activity by the brokers. To evade these restrictions, the brokers allegedly disguised their own identities by establishing numerous broker identification numbers and disguised their customers' identities by opening nearly two hundred customer accounts under various names for seven of their market timing customers. According to the amended complaint, the former branch manager assisted the brokers by, among other things, approving new broker identification numbers and new customer accounts for the other defendants, whom he supervised, and failing to enforce the broker-dealer's policies against market timing. ∗ See SEC v. Martin J. Druffner, Justin F. Ficken, Skifter Ajro, John S. Peffer, Marc J. Bilotti and Robert E. Shannon, No. 03- 12154-NMG (D. Mass. July 14, 2004) and SEC v. Martin J. Druffner, et al., Litigation Release No. 18784 (July 15, 2004). Copies of the complaint and litigation release are available at http://www.sec.gov/litigation/complaints/comp18784.pdf and http://www.sec.gov/litigation/litreleases/lr18784.htm, respectively. The defendants were formerly employed by Prudential Securities, Inc. The release notes that the SEC amended its prior complaint in this action in response to a court order dismissing the complaint for insufficient specificity about the fraudulent acts allegedly committed by the defendants. For a summary of the prior complaint, see Institute Memorandum to Compliance Advisory Committee No. 96-03, Investment Adviser Members No. 40-03, SEC Rules Members No.

154-03, and Small Funds Members No. 65-03 [16766], dated November 11, 2003. 2 The amended complaint charges the brokers with violations of the antifraud provisions of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 under that Act. The SEC's amended complaint also charges the branch manager with aiding and abetting the brokers' violations of Section 10(b) and Rule 10b-5. The SEC is seeking injunctive relief, disgorgement, penalties, and such other relief as the court deems appropriate. Jane G. Heinrichs Assistant Counsel

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