

MEMO# 20517

October 30, 2006

Former Fund Adviser Executive and Board Chairman Settles SEC Market Timing Action Following Jury Verdict Against Him

©2006 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [20517] October 30, 2006 TO: COMPLIANCE ADVISORY COMMITTEE No. 17-06 INVESTMENT COMPANY DIRECTORS No. 26-06 SEC RULES MEMBERS No. 96-06 SMALL FUNDS MEMBERS No. 78-06 RE: FORMER FUND ADVISER EXECUTIVE AND BOARD CHAIRMAN SETTLES SEC MARKET TIMING ACTION FOLLOWING JURY VERDICT AGAINST HIM As we previously informed you, the Securities and Exchange Commission filed a civil action in federal district court against two federally registered fund advisers, an affiliated distributor, the advisers' chief executive officers, the former chairman of the board of trustees of the group of mutual funds managed and sub-advised by the advisers, and a portfolio manager for the funds.¹ In June 2006, the federal court jury found the former chairman of the board and CEO of one adviser and the affiliated distributor ("Respondent") liable for defrauding mutual fund investors through an undisclosed market timing arrangement with Canary Capital Partners LLC.² Specifically, he was found liable for violations of Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder, Sections 17(a)(2) and (3) of the Securities Act of 1933, Section 206(2) of the Investment Advisers Act of 1940, and Section 36(a) of the Investment Company Act of 1940. On October 26, 2006, the SEC announced that it filed the Respondent's consent to final judgment with the federal district court resolving the charges against him.³ The Respondent agreed to pay approximately \$572,000 in disgorgement, interest, and penalties, to be barred from serving as an officer or director of a registered investment company for one year, and to be enjoined from associating with any investment adviser, with the right to reapply after one year. The Commission settled charges against the adviser, sub-adviser and distributor on September 13, 2004,⁴ and

against the CEO of the sub-adviser and portfolio manager on June 13, 2006.⁵ Mara Shreck Assistant Counsel 4 See PIMCO Equity Mutual Funds' Adviser, Sub-Adviser, and Distributor to Pay \$50 Million to Settle Fraud Charges for Undisclosed Market Timing, Pr. Rel. 2004-127 (Sept. 13, 2004), available at <http://www.sec.gov/news/press/2004-127.htm>, and In the Matter of PA Fund Management LLC f/k/a PIMCO Advisors Fund Management LLC, PEA Capital LLC f/k/a PIMCO Equity Advisors LLC, and PA Distributors LLC f/k/a PIMCO Advisors Distributors LLC, Admin. Proc. File No. 3- 11645 (Sept. 13, 2004), available at <http://www.sec.gov/litigation/admin/34-50354.pdf>. 5 See SEC Settles Fraud Action Against Former CEO of Sub-Adviser to Pimco Equity Funds for Undisclosed Market Timing Arrangement, Lit. Rel. No. 19724 (June 13, 2006), available at <http://www.sec.gov/litigation/litreleases/2006/lr19724.htm>.

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