

MEMO# 4118

September 23, 1992

SEC REVOKES REGISTRATION OF ADVISER FOR FAILURE TO REIMBURSE FUND EXPENSES

September 23, 1992 TO: INVESTMENT ADVISER MEMBERS NO. 41-92 SEC RULES MEMBERS NO. 39-92 COMPLIANCE COMMITTEE NO. 12-92 RE: SEC REVOKES REGISTRATION OF ADVISER FOR FAILURE TO REIMBURSE FUND EXPENSES

_____ The Securities and Exchange Commission recently sanctioned an investment adviser and its president for the adviser's failure to reimburse certain expenses to a mutual fund client. The SEC found that the adviser violated Sections 206(1) and 206(2) of the Investment Advisers Act by failing to timely repay the fund's 1989 expenses that exceeded the adviser's portion of a voluntary expense limitation agreement with the mutual fund. The SEC also found that the adviser had (1) violated Section 17(a)(3) of the Investment Company Act in that the adviser's failure to reimburse the fund constituted an unlawful borrowing of money from the fund, (2) continued to accept its full management fees from the fund for ten months of 1990, despite the adviser's failure to reimburse the fund's 1989 expenses, (3) violated Sections 206(1) and 206(2) of the Investment Advisers Act by allowing the accumulation of 1990 expense reimbursements due to the fund, and (4) committed related violations, or aided and abetted the fund's commission of related violations, of the Investment Company Act and the Investment Advisers Act. Finally, the SEC found that the adviser's president (who also was the fund's president) had aided and abetted some of the adviser's violations. Without admitting or denying the allegations, the adviser and its president consented to (1) revocation of the adviser's registration, (2) a cease and desist order against the president, and (3) the president's bar from association with any investment adviser or investment company with a twelve-month right to reapply, and six-month suspension from association with any broker-dealer or municipal securities dealer. A copy of the SEC's order is attached. Thomas M. Selman Assistant Counsel Attachment