

MEMO# 10378

October 15, 1998

SEC SANCTIONS COMMERCIAL FINANCE COMPANY AND MUTUAL FUND DIRECTOR IN CONNECTION WITH AFFILIATED TRANSACTIONS

* In the Matter of Concord Growth Corp., Admin. Proc. File No. 3-9732 (September 28, 1998); In the Matter of Reid Rutherford, Admin. Proc. File No. 3-9731 (September 28, 1998). The SEC has also instituted administrative proceedings against two other individuals, one of whom was an interested director and portfolio manager of the fund and president of the fund's investment adviser, and the other of whom was secretary, treasurer and portfolio manager of the fund and president of the fund's investment adviser. The latter proceeding alleges that these individuals violated Sections 17(a)(2) and (3) of the Securities Act of 1933 and Section 34(b) of the Investment Company Act by signing registration statements that they knew or should have known omitted material facts. In the Matter of Bryon G. Borgardt and Eric H. Banhazi, Release Nos. 33-7587& IC- 23468, Admin. Proc. File No. 3-9730 (September 28, 1998). [10378] October 15, 1998 TO: COMPLIANCE ADVISORY COMMITTEE No. 33-98 SEC RULES MEMBERS No. 84-98 RE: SEC SANCTIONS COMMERCIAL FINANCE COMPANY AND MUTUAL FUND DIRECTOR IN CONNECTION WITH AFFILIATED TRANSACTIONS

The Securities and Exchange Commission recently settled administrative proceedings and imposed sanctions against a commercial finance company and an independent director of a mutual fund with whom the finance company was affiliated, in connection with the mutual fund's purchase of its entire investment portfolio from the finance company.* The finance company and the fund director each consented to the entry of an order, without admitting or denying its findings. Copies of the orders are attached and they are summarized below. The order against the finance company states that from October 1992 to May 1994, the fund's entire investment portfolio consisted of loan participations purchased from, and originated and serviced by, the finance company. During this period, the independent fund director was simultaneously the finance company's chairman of the board, chief executive officer, and 20 percent owner. The Commission found that the finance company willfully violated Sections 17(a)(1) and 17(a)(2) of the Investment Company Act in that, while acting as a principal, it knowingly sold securities to the fund while affiliated with a person affiliated with the fund. The finance company was ordered to cease and desist from committing or causing any violation and any future violation of Sections 17(a)(1) and 17(a)(2) and to pay a civil penalty. The order against the independent fund director found that the director willfully aided and abetted and caused the finance company's violations of Sections 17(a)(1) and 17(a)(2) of the Investment Company Act. The Commission further found that

the director had signed fund registration statements that omitted the fact that the finance company was the sole provider, originator and servicer of loans for the fund. Thus, the director caused violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 and Section 34(b) of the Investment Company Act in that he caused the fund to offer and sell its securities using registration statements that omitted material information. The director was ordered to cease and desist from committing or causing any violation and any future violation of Sections 17(a)(2) and 17(a)(3) of the Securities Act, and Sections 17(a)(1), 17(a)(2) and 34(b) of the Investment Company Act and to pay a civil penalty.

Frances M. Stadler Deputy Senior Counsel Attachment Note: Not all recipients of this memo will receive an attachment. If you wish to obtain a copy of the attachment referred to in this memo, please call the Institute's Library Services Division at (202)326- 8304, and ask for this memo's attachment number: 10378.

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