

MEMO# 4308

December 8, 1992

PORTFOLIO MANAGER'S FAILURE TO DISCLOSE AGREEMENT TO RESELL SECURITIES TO BROKER-DEALER VIOLATES 1940 ACT

December 8, 1992 TO: SEC RULES MEMBERS NO. 67-92 COMPLIANCE COMMITTEE NO. 24-92 RE: PORTFOLIO MANAGER'S FAILURE TO DISCLOSE AGREEMENT TO RESELL SECURITIES TO BROKER-DEALER VIOLATES 1940 ACT

The SEC has imposed sanctions on a former high yield bond fund portfolio manager based on alleged violations of the books and records provisions of the Investment Company Act of 1940. A copy of the order instituting proceedings, making findings and imposing sanctions is attached. Specifically, the portfolio manager allegedly purchased from a broker-dealer, and subsequently sold back at an agreed upon time and rate of return, certain notes underwritten by the broker-dealer that were being used to finance a leveraged buyout. The SEC found that the portfolio manager willfully violated Section 34(b) of the Investment Company Act of 1940 by failing to record the arrangement with the broker-dealer on the fund's books and records. Instead, the transactions were recorded as an unrelated purchase and sale of the underlying securities. As a result, according to the attached order, the transactions caused the fund to have undisclosed obligations to the broker-dealer. The SEC ordered the portfolio manager permanently to cease and desist from committing or causing any violation, and from committing or causing any future violation of Section 34(b), and suspended him from association with any broker, dealer, investment adviser, investment company or municipal securities dealer for a period of 120 days. As we previously informed you, the SEC several months ago instituted proceedings against and imposed sanctions on another high yield bond fund portfolio manager under very similar circumstances. (See Memorandum to SEC Rules Members No. 16-92 and Compliance Committee No. 3-92, dated April 8, 1992.)

Frances M. Stadler Assistant Counsel Attachment