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To Our Clients:

Control Persons of Registered Advisers to be Subject to IAA. Release IA-353 (Dec. 18, 1972) asserts that control persons or persons affiliated with control persons (parents) of a registered adviser are, depending, on the circumstances of each case, advisers within the definition of § 202(a)(11) and proposes new Rule 202-1 setting forth the conditions under which the parents will not be deemed to be an adviser. Control is defined by incorporation of the 25% presumption test of § 2(a)(9) of the ICA. The conditions for exclusion are:

(1) A majority of the directors of the adviser are not directors, officers or employees of the parents and such independent directors are paid by the adviser. (There is an ambiguity in the proposal which makes possible a reading that an independent director could not receive compensation from anyone other than the adviser instead of the apparently intended proscription of compensation from the parents).

(2) A majority of the independent directors determine that the adviser is adequately capitalized and all liabilities to parents are subordinated to all other claims against the adviser.

(3) Except for officers of the adviser who perform for it administrative functions, exclusively, the officers of the adviser are not directors, officers or employees of the parents.

(4) The advisory employees of the adviser are not connected with, and do not consult with, the parents.

(5) None of the parents furnishes the adviser with advisory services other than statistical and other factual information, advice regarding economic factors and trends or advice as to occasional transactions in specific securities and none of the parents of the adviser generally furnish advice or make recommendations regarding the purchase or sale of securities. (The second aspect of this condition effectively precludes exemption for an adviser subsidiary of any insurance company or financial company an officer of which is in charge of its portfolio).

Release IA-353 also proposes changes and additions to Rule 204-2(a) so as to require advisers to keep records of securities transactions by their parents and the parents' officers

and employees who in connection with their duties receive information about the investment recommendations by the adviser. Advisers who are principally engaged in a non-advisory business could exclude officers and employees who do not in connection with their duties receive investment information from the record keeping category.

Proposed Amendment to Rule 22d-1 to Permit Quantity Discounts. Release IC-7571 (Dec. 21, 1972) proposes a new paragraph (b) to Rule 22d-1 the effect of which would be to permit quantity discounts on group sales except to groups not in existence for at least six months prior to the sale or groups having no purpose other than to purchase mutual funds at a discount. The proposal is specifically related to the pending SEC consideration of the repeal of § 22(d).

Proposed Rule 17j Regulating Trading by Fund Insiders and Requiring Codes of Ethics. Proposed Rule 17j prohibits an "access person" (officer, director or person whose duties give him knowledge of fund transactions) of the fund or its adviser from trading (defined as including acquiring any direct or indirect beneficial interest) in any class of securities one of which the access person knows the fund is trading or contemplating trading.

Excluded are direct obligations of the U.S., exercise or sale of rights received on previously held securities and trading in accounts over which the access person has no influence or control.

Each access person is required to file a quarterly report of all securities transactions.

Funds and advisers are required to adopt codes of ethics to implement the foregoing. The code may provide for preclearance of all trades by access persons and waiver of the trading ban upon a finding that the "proposed transaction shall not result in any disadvantage" to the fund.

Code violations must be reported immediately to the board of the fund and the action taken by the fund must be reported by it to the SEC within ten days of the board being informed. The fund or adviser would not be responsible for a code violation by an access person if the fund or adviser had instituted adequate procedures and used reasonable diligence to police the code.

Comment is invited on the requirement of reports of securities transactions by disinterested directors.

A particularly troublesome aspect of the rule is the inclusion of acquisition of any direct or indirect beneficial interest and the limitation of the exclusion only to accounts over which the access person has no direct or indirect influence or control. This appears to pick up transactions by entities in which the access person has only a minor (say less than 10%) beneficial interest and fail to make an exception even though the access person does not in fact exercise his power to influence or control. Practical illustrations of the application of these problems are:

(1) Many fund complexes have encouraged officers and employees to invest in one of the funds instead of individual securities so as to avoid the conflicts 17j is aimed at. 17j would require a determination of no disadvantage anytime two or more of the funds in the complex acquire the same security.

(2) Trusts, estates, pension plans and other entities in which access persons, particularly disinterested directors, have a beneficial interest and the power to influence or control but which in fact are independently managed, would, nevertheless, be subject to 17j. The chief executive of any company with a pension plan would probably find it too burdensome to serve as a disinterested fund director.

Proposed Rule 10b-13 Amendment to Eliminate Recapture of Tender Offer Soliciting Dealer Fees. Release 34-9920 (Dec. 27, 1972) proposes an amendment to Rule 10b-13 which would prohibit investment companies (or, apparently, anyone else other than arbitrageurs) from recapturing tender offer soliciting dealer fees.

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