National Society of Compliance Professionals
2003 National Membership Meeting
October 29-31, 2003
Washington, D.C.

Personal Trading Policies and Procedures
Including Insider Trading Rules

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NATIONAL SOCIETY OF COMPLIANCE PROFESSIONAL
2003 NATIONAL MEMBERSHIP MEETING

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PERSONAL TRADING POLICIES AND PROCEDURES INCLUDING INSIDER TRADING RULES

I. Introduction

The Securities and Exchange Commission ("SEC") has placed a significant amount of enforcement and examination emphasis on personal trading and insider trading policies and procedures of investment advisers. The SEC enforcement staff has been very active in pursuing violations involving personal trading and insider trading. The SEC and state securities administrations have a great array of rules and weapons to use against violators.

As explained in more detail below, investment advisers are required to have written supervisory procedures to prevent insider trading and to prevent vicarious liability for personal trading. To implement these supervisory procedures, the firm's policies regarding personal trading and prevention of insider trading must be clearly spelled out to employees in a policy statement or a code of conduct regarding personal trading. The absence of procedures and policies or the failure to enforce them can readily result in senior management being the subject of an enforcement case for failure to supervise. The SEC has an array of statutory provisions and rules governing personal trading and to prevent insider trading, but of equal importance, are the general policies that apply to all types of conflicts involving trading by the adviser or its personnel in conflict with clients of the investment adviser.

II. The Regulator's Perspective and Key Concepts

While the SEC has a number of rules dealing with specific types of personal trading described below, the key concept underlying all of them and the one that compliance personnel must always keep in mind, is the avoidance of undisclosed conflicts between the clients and the advisers and its personnel. An investment adviser is, in the words of the Supreme Court, a "fiduciary" in relation to his clients.[1] While the Supreme Court's use of the word "fiduciary" is probably an overstatement or incorrect from a theoretical standpoint, it does emphasize the SEC's view that a high level of ethical responsibility is required and conflicts must be avoided with clients or disclosed to them meaningfully and, for serious conflicts, written or oral consent obtained before an adviser or its personnel may engage in a transaction that conflicts with the potential interest of the client.

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A more appropriate legal analysis is that the investment adviser, as an agent, has a duty of loyalty and a duty of care with respect to its clients. That same duty runs from the personnel of the adviser to the client. The duty of loyalty requires that the adviser, and its personnel as agent, avoid any conflict, potential or actual, with the client unless the client waives or consents to the conflict. Since the investment adviser relationship is contractual, the duty of loyalty to avoid conflicts may be modified by contract, but the modification must be a knowledgeable modification or waiver by the client. Knowledgeable means that there must be adequate disclosure of the conflict to the client before the client effects the waiver. Most of the SEC rules, while they are technical and spell out various prohibitions or requirements, are designed to implement the duty of loyalty and the duty of care.

If there is an actual or potential conflict between the adviser and the client, then transactions must be avoided unless the conflict and its ramifications are meaningfully disclosed to the client and the client agrees to expressly or impliedly waive the conflict. The greater the degree of conflict, the more disclosure required.

III. Summary of Specific Laws and Rules Involving Personal Trading

A. The Investment Advisers Act of 1940 ("Advisers Act") and the Rules Thereunder.

1. Anti-Fraud Provisions. Section 206(3) is a general anti-fraud provision that, as mentioned above, has specific "fiduciary" concepts.

2. Form ADV. Section 206 prohibits material misstatements in SEC filings, particularly Form ADV regarding personal trading policies.

3. Principal Transactions and Certain Agency Transactions. Section 206(3) of the Advisers Act prohibits an adviser from acting as principal in purchasing or selling any security to or from a client, or from acting as a broker for a person other than a client to purchase or sell any security for its client without prior disclosure, in writing, to the client of the capacity in which the adviser is acting and obtaining the consent of the client before completion of such transaction. This prohibition in the SEC staff view applies to any person controlled by an adviser such as an officer or employee of the adviser who engage in a transaction with a client. The prohibitions do not apply if the transaction is for a client on a non-advisory basis. The disclosure should include, at a minimum, (a) the capacity in which the adviser is acting, (b) in the case of a sale, the cost to the adviser or in the case of a buy, the resale price expected to be secured, and (c) any better price at which the transaction could be effected by or for the client elsewhere.

4. Non-Tailored Recommendation Exemption from Section 206(3). Rule 206(3)-1 exempts an investment adviser that is also a registered broker-dealer "acting solely (1) by means of publicly-distributed written statements or publicly-made oral statements, or (2) by written material or oral statements that do not purport to meet the objectives of specific individuals or accounts, or (3) through the issuance of statistical information containing

no expressions of opinion as to the investment merits of a particular security, or (4) a combination of any of the above". However, the materials and statements must include a disclosure that the adviser may be acting as principal for its own account or agent for another in the event the reader of an advisory communication uses the adviser in connection with a purchase or sale of a security, which is the subject of communication.

5. Records. Rule 204-2 of the Adviser's Act mandates records that the adviser must keep with respect to trading activities. They include:

(a) A memorandum of each portfolio order (normally referred to as an order or trade ticket).

(b) Originals of all written communications received and copies of all written communications sent by the adviser, including any receipt, disbursement of delivery of funds, securities and writings covering the placement or execution of orders to purchase or sell any security.

(c) Securities transactions of the adviser and "advisory representative" includes any transaction in which the adviser or the "advisory representative" acquires any direct or indirect beneficial ownership.

(i) "'Advisory representative' shall mean any partner, officer or director of the investment adviser; any employee who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations: (i) any person in a control relationship to the investment adviser, (ii) any affiliated person of such controlling person, and (iii) any affiliated person of such affiliated person."

(ii) "'Beneficial ownership' will be interpreted in the same manner as it would be under Exchange Act Rule 16a-1(a)(2) in determining whether a person has beneficial ownership of a security for purposes of Section 16 of the Securities Exchange Act and the rules and regulations thereunder.

(iii) "'Control' shall have the same meaning as that set forth in Section 2(a)(9) of the Investment Company Act of 1940, as amended." This definition of "control" is extremely broad and can be achieved

in many ways, either through direct or indirect control or just by influence. "Control" is presumed if there is beneficially owned, directly or indirectly, 25% or more of the securities of the entity. It also includes the power to exercise a controlling influence over the management or policies of the company.

(iv) Transactions that are exempted:

(A) Transactions in which the investment adviser or advisory representative have no direct or indirect influence or control.

(B) Transactions and direct obligations of the government of the United States; banker's acceptance, bank certificates of deposit, commercial paper and high quality short debt instruments, including repurchase agreements or shares issued by registered open-end investment companies.

(v) Prior to no later than ten days after the end of a calendar quarter in which a transaction occurred, the adviser must have a record of each transaction including the title, amount of the security involved, the date and nature of the transaction, the price at which it was effected and the name of the broker-dealer or bank through which the transaction was effected. Alternatively, the broker-dealer may maintain copies of an account statement or confirmation for the time period provided it contains the required information. However, the alternative requires that the confirmations or account statements be indexed so that they are readily available and accessible. Most investment advisers maintain copies of confirmations and account statements and receive them directly from the broker-dealer executing transactions for any of its personnel. As explained below, such provisions should be included in any supervisory procedures and code of conduct.

(d) All records be kept readily accessible for five years (the first two years in the office of the adviser). If the adviser advises a registered investment company, the records must be maintained for six, rather than five, years pursuant to Rule 31a-2(e) of the Investment Company Act of 1940 ("1940 Act").

6. Written Supervisory Procedures. Under Section 203(e) of the Advisers Act, the adviser and supervisors are liable for any violations by supervised employees or agents. Section 203(e)(6) provides a defense for failure to supervise if the adviser has established written procedures which are reasonably designed to prevent and detect insofar as possible any violation, and if the adviser or supervisor reasonably discharges its duties and obligations by reason of such procedures and systems without reasonable cause to believe that such procedures and system were not being followed.

7. Written Supervisory Procedures (Insider Trading). Section 204(a) of the Advisers Act specifically requires advisers to maintain written policies and procedures reasonably designed to prevent violations of the Advisers Act and Securities Exchange Act of 1934 ("the 34 Act") as it relates to trading on the basis of material non-public information (insider information).

B. Provisions Under the Investment Company Act of 1940.

1. Codes of Conduct. Section 17(j) of the Investment Company Act of 1940 ("the 1940 Act") requires registered investment companies, their investment advisers and principal underwriters to adopt codes of ethics that are reasonably designed to prevent fraudulent, deceptive or manipulative activity and certain other acts, practices or courses of business. Rule 17j-1 specifies that such codes must cover "Access Persons" (generally directors, officers or general partners of the fund, advisers, principal underwriters or a fund, its advisers or their control persons, employees whose regular functions or duties provide access to research, recommendations or trades of "covered securities"). Natural control persons are also included. "Covered securities" including any security defined as such by the Investment Company Act , but does not include the same securities exempted from Rule 204-2 (See Section III.5(c)(iv) above.) Rule 17j-1 requires fund board approval of the ethics code and requires certain standards, including:

(a) A report from the fund, its adviser and principal underwriter, in writing, at least annually to the funds board of material code or procedure violations and sanctions imposed.

(b) SAI and prospectus disclosure of the fund's policy on personal investing as well as the policies of its investment adviser or principal underwriter.

(c) Reporting by Access Persons of their security holdings when they become Access Persons and transactions thereafter at least quarterly. (Duplicate confirmations may be used.)

(d) Pre-clearance of IPO transactions or private placements by Access Persons.

(e) A review procedure at the fund, its adviser and principal underwriter for all transactions and reports submitted by Access Persons. There are various types of transactions exempted from the rule. See Section VI. D below.

(f) Prohibitions of fraudulent, deceptive or manipulative conduct.

2. Recordkeeping Under the Code of Conduct.

   (a) Copy of each code in effect.

   (b) Detail memorandum of any violation and action taken as a result thereof.

   (c) Copy of each report made by any Access Person, including confirmations and account statements.

   (d) Details regarding each initial, annual or quarterly report of transactions and record of all persons who are responsible for reviewing the reports.

   (e) Copy of the report submitted annually to the Board of Directors.

   (f) Record of every decision and the reasons therefore to approve investments in IPOs or private placements.

   (g) All of the above records must be maintained for at least five years and be readily available.

3. Definitions of "Affiliate" and "Control". The terms "affiliate" and "control" are defined very broadly in the 40 Act and usually include most officers and key employees of the fund's adviser.

   Section 2(a)(3) of the 40 Act defines as affiliated person as including (a) any person directly or indirectly owning, controlling or holding power to vote 5 percent or more of the outstanding voting securities, (b) any person's 5 percent or more of whose voting securities are directly or indirectly owned, controlled or held with power to vote, (c) any person directly or indirectly controlled by or under common control, (d) any officer, director, partner, co-partner, employee, and (e) if the company is an investment company, any investment adviser or any member of any advisory board of the adviser. Control is presumed if there is beneficially owned, directly or indirectly, or more than 25 percent or more of the securities of the company. It also includes the power to exercise a controlling influence over the management or policies of the company.

4. Principal Transactions. Section 17(a) of the 40 Act prohibits an affiliated person of a registered investment company or an affiliate of that company (including employees of the adviser) from knowingly selling securities or property or purchasing securities or property from an investment company, or borrowing money or property from the company. The SEC may exempt transactions if the transaction is reasonable and fair and it does not involve overreaching. Exceptions by Rules 17a-7 and 17a-8 have been created, but are not relevant to personal trading.

5. Joint Transactions. Section 17(d) and Rule 17d-1 prohibit affiliated persons of a registered investment company or any affiliated person (including employees) of an investment adviser from acting as principal to effect any transactions in which the registered investment company is a joint or several participant with such person unless exempt by SEC order. The SEC construes this provision very broadly and it prohibits any joint transaction that create a conflict of interest where the adviser or an affiliate (including its employees) derives a personal benefit without the SEC's express prior approval.

6. Commission Transactions. Section 17(e) of the 40 Act generally prohibits affiliates or any affiliated person (including employees) of an affiliate from, (a) acting as agent and receiving compensation with respect to the purchase or sale of any property except in the course of that person's business as an underwriter or broker, and (b) acting as a broker in connection with sale of securities by or to an investment company to receive any compensation. Rule 17e-1 provides a safe harbor for receipt of compensation in brokerage transactions by an affiliate effected on an exchange.

7. Books and Records. The 40 Act and Rules 31a-1 and 31a-2 thereunder requires significant books and records regarding a variety of different activities that impact personal trading, including daily journals and summary journals, general and auxiliary ledgers, memorandum for each securities transaction, copies of order tickets, records of all options and records on allocation of executions. Copies must be maintained for six years.

C. Other Federal Securities Laws.

1. Generally. The 34 Act and the Securities Act of 1933 ("the 33 Act") contain extensive provisions that may be violated in connection with personal transactions, including the anti-manipulation, anti-fraud provisions and the prohibitions against insider trading.

2. 34 Act. The principal provisions under the 34 Act that might involve personal trading by employees of an adviser are the following:

   (a) Section 10(b) and Rule 10b-5, the general anti-fraud provisions, which prohibit insider trading, manipulation, fraud, front-running and a variety of other things in connection with the purchase or sale of any security.

   (b) Section 20A of the 34 Act buttresses Rule 10b-5 by providing liability if a person buys or sells a security in the possession of material non-public information. The liability will run to any person contemporaneously trading in the same security on the other side of the transaction.

   (c) Section 21 of the 34 Act empowers the SEC to bring actions against persons trading on inside information and seek penalties up to three times the profit gain or loss avoided.

3. <u>33 Act.</u> The 33 Act in Sections 12 and 17 contain anti-fraud provisions that may be applicable in connection with personal transactions in connection with distributions of securities, including unregistered distributions that are not exempt from registration.

D. <u>State Laws.</u>

1. State securities laws contain numerous anti-fraud and anti-manipulation provisions, which prohibit abuse by an adviser of its "fiduciary" responsibilities to clients by personal or proprietary trading by an investment adviser or its personnel.

2. State common law (such as fraud or deceit) or state statutory consumer protection laws may be violated by abusive personal trading.

E. <u>NASD Rules.</u>

The NASD has a rule and interpretation that prohibits free riding and withholding of securities in connection with initial public offerings. The interpretation is designed to insure that there is a bone fide public distribution of securities at the offering price and that prices are not artificially raised by broker-dealers purchases or holdings of securities. Under this interpretation a member or person associated with a member (broker-dealers) may not sell securities to senior officers of investment advisers or persons in a securities department who may influence or whose activities are related to the function of buying and selling securities for an advisory firm, a bank or similar type of investment vehicle.[2]

F. <u>Research Analysts Who are Affiliated with an Investment Adviser that is also a Broker-Dealer</u>.

The NASD and the New York Stock Exchange, to address conflicts involving published and distributed research reports on equity securities, have adopted NASD Rule 2711 and NYSE Rule 472. These rules were designed to address conflicts involving investment banking and other relationships between broker-dealers and issuers of securities if the broker-dealer creates or distributes research. The rules are applicable to an investment adviser only if it is also a registered broker-dealer. With respect to personal trading, there are significant restrictions on personal trading of securities that are the subject of a research report by the research analyst and his immediate family as defined in the rules. A research analyst is defined as a person who is principally responsible for a research report and any other associated person who directly or indirectly reports to such analyst in connection with the preparation of the substance of a research report regardless of job title. The rules as amended recently apply also to a research supervisor, including the director of research, any supervisory analyst or any member of a committee who has direct influence or control with respect to preparation of a research report or establishing or changing a rating of a security or price target of an equity security. The restrictions on the

purchase or sale of securities by research analysts, research supervisors and their household members ("Prohibited Persons") are again relatively dacronian.

The rules prohibit a Prohibited Person from purchasing or receiving any securities before an IPO if the issuer is principally engaged in the same type of business as companies that the research analyst follows. Prohibited Persons may purchase or sell a security issued by a company that the research analyst follows or any option or derivative of any such security provided it is purchased or sold prior to thirty calendar days before and ending five calendar days after the publication of a research report concerning the company or any change in a recommendation, rating or price target. Notwithstanding such restrictions, a member firm may:

1. permit a Prohibited Person to sell all of the securities that are issued by a company that the research analyst follows within thirty calendar days after the research analyst began following the company;

2. permit a Prohibited Person to purchase or sell any security issued by a subject company within thirty calendar days before the publication of a research report, change in rating or price target due to significant news or a significant even concerning the company provided the legal or compliance department pre-approves the research report and any change.

A Prohibited Person account may not purchase or sell any security, option or derivative of a security inconsistent with the research analyst's recommendation as reflected in his most recent report that has been published by the member.

A member's legal or compliance department may authorize a transaction that is otherwise prohibited during the blackout period or that may not be purchased or sold because it is inconsistent with the research report based upon significant personal financial circumstances of the beneficial owner or owners of the account. This relief, however, is subject to a number of conditions as follows:

1. The legal or compliance department must authorize the transaction before it is entered.

2. Each exception granted must be in compliance with supervisory procedures and policies adopted by the member reasonably designed to ensure that the transactions do not result in a conflict of interest between the professional and personal activities of the Prohibited Person.

3. The member must retain written records concerning the transaction and the justification for a period of three years following the date on which the transaction is approved.

The prohibitions on securities transactions by the Prohibited Person do not apply to the purchase or sale of securities of:

1. diversified investment companies registered under Section 5(b)(1) of the Investment Company Act of 1940;

2. any other investment fund over which neither the research analyst nor a member of the analyst's household has any investment discretion or control provided:

   (a) the analyst's account collectively owned an interest representing no more than one percent of the assets of the fund;

   (b) the fund invests no more than twenty percent of its assets in securities of issuers principally engaged in the same type of business as companies that the research analyst follows; and

   (c) the investment fund does not distribute securities in kind to the research analyst or household member before the issuer's initial public offering unless the research analyst or household member either divests those securities immediately or refrains from participation working on a research report regarding the issue.

The NASD Interpretation Memo[1] provides that investment funds purchased or received prior to July 9, 2002 are excluded from the trading restrictions. However, any further investment in the fund would bring into play all of the trading restrictions.

IV. Typical Problems and SEC Enforcement

A. IPO Allocations.

The SEC enforcement staff has been very aggressive in pursuing enforcement cases against advisers that have allocated IPOs to benefit certain accounts, such as allocating IPOs to in-house affiliated accounts,[3] or allocating IPOs to certain high profile politicians and friends of the firm, whose accounts were managed without charge.[4]

B. Priority to Affiliated or Proprietary Accounts.

Another area of concern is allocation of more favorable trades to an in-house retirement plan in which the managers had an interest and less favorable trades to other clients.[5]

C. Execution of Trades and Allocating Better Prices to Affiliated Portfolios.

Another problem area is execution of trades and allocating better prices to affiliated or proprietary accounts.[6]

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[1] NASD Interpretation Memo, p. 372.

D. Front-Running.

This practice involves execution of transactions for affiliates or Access Persons prior to client transactions.[7]

E. Principal Trades Between Proprietary Persons and Clients Without Client Consent.

As noted above, this is a prohibited area.[8]

F. Private Placement Conflicts.

The SEC staff has pursued claims involving employees who purchased private placement securities of companies prior to making purchases of public traded securities.[9]

G. Seizing Client Opportunity.

When a portfolio manager bought blocks of bonds and resold them, the SEC found that this was an opportunity that belonged to the fund.[10]

H. Conflict of Interest Involving Options and Other Securities.

Portfolio manager purchase of certain derivative securities prior to purchase of securities for clients has been the subject of SEC proceedings.[11]

I. Insider Trading Violations.

Recently advisers and their personnel have been held liable for insider trading by employees because the management did not maintain adequate supervisory procedures.[12]

J. Hedge Funds.

If an investment adviser manages either individual accounts, mutual funds or institutional accounts and also manages a hedge fund, conflicts may arise that need to be addressed in personal trading policies. For example, in most cases hedge fund managers receive a percentage of the gains as opposed to a percentage of the net asset value. This creates an inherent conflict with other clients who are paying investment advisory fees based on a percentage of net assets as opposed to a performance fee. Because of this conflict, trades for the hedge funds may in some cases, because of the potential conflict, be deemed to be personal trading by the adviser because of the performance fee. This is a hotly contested area but codes of conduct and supervisory procedures should address this area and provide a methodology for resolving the conflict that does not prejudice clients that pay a fee on a net asset value.

V. The 1994 Reports

In 1994 the Investment Company Institute created a blue ribbon panel to study the policies and procedures involving personal securities trading and to make related recommendations. The report of this panel entitled "Report of the Advisory Group on Personal Investing"[13] ("ICI Report") focused primarily on investment companies, but impacts all investment advisers. Not long after the ICI Report, the SEC itself conducted a study entitled "Personal Investment Activities of Investment Company Personnel". While the SEC endorsed the ICI Report, the SEC's report did not go as far nor did it mandate the recommendations of the ICI Report. The ICI Report has not been uniformly implemented by either investment companies or investment advisers for a variety of reasons, including the nature of some of the recommendations. Furthermore, some of the recommendations are not applicable to investment advisers that do not advise investment companies. However, the SEC by Rule 17j-1 has recently mandated some of the provisions of the ICI Report. Certain basic principles that were recommended in the ICI Report and SEC report are worthy of note and any compliance officer should be familiar with and should have read both reports. While the ICI Report did not suggest banning all trading by access and other key personnel, it did recommend a number of activities, including:

A. Pre-clearing trades of Access Persons.

B. Blackout or ban periods before and after client trades.

C. Possible holding or profit ban periods during which employees cannot profit from personal trades.

D. Reporting of personal securities transactions.

E. Complete bar of personal trades in IPOs by Access Persons.

F. Special approval for privately placed securities transactions.

G. Initial and annual certification of holdings, reporting and compliance.

H. Written compliance procedures with respect to personal trading.

I. Codes of ethics. (Codes of ethics are required under Rule 17j-1 under the 40 Act, but they are not required of other advisers that do not advise investment companies, but they would be well advised to have them.)

Recently, the SEC ran a significant sweep of hedge funds and found a large number of conflicts. The SEC's report on the sweep has not been published. However, in various speeches the SEC staff and Commissioners have talked about conflicts involving hedge funds, personal trading and other activities of hedge funds.

VI. **Development of Practical Supervisory Procedures and Codes of Conduct Relating to Personal Trading**

A. In General.

The development of personal trading supervisory procedures, including those designed to deter insider trading, varies widely by type of firm. Different procedures, as explained and discussed below, are needed depending upon the size of the adviser, the type of order execution facilities of the adviser and, importantly, the type of securities that are executed as well as the markets in which these securities are traded. The starting point for procedures should be the ICI Report. The key elements of any program must include:

1. Written supervisory procedures.
2. Code of conduct for employees and Access Persons.
3. Education and training of employees, officers, directors and central persons.
4. Pre-clearance of trading by all Access Persons and, in some cases, all employees.
5. Blackout periods, both before and after client trades, during which prohibited persons may not trade for their own account.
6. Prohibitions or restrictions against personal trades in IPOs.
7. Special procedures for personal trades in privately placed securities.
8. Reporting of all personal trades inside or outside of the firm.
9. Review of all client trading and trading inside and outside the firm by Access Persons to detect possible conflicts with client transactions, manipulation, fraud, insider trading or other violations of the federal securities laws.
10. Order entry execution time stamping.
11. Initial and annual certification of personal holdings, accounts and compliance.
12. Records for all of the above.

The SEC takes a position that supervisory procedures are deficient unless they clearly designate the supervisor, what that supervisor must do as part of his supervision and what records that must be maintained to demonstrate supervision. In the absence of clear lines of supervisory responsibility, the SEC will name all possible supervisors, including compliance personnel, as supervisors of a particular

person. It is important to note that a code of conduct is different than supervisory procedures. The supervisory procedures set forth the methodology of supervising compliance with a code of conduct. A code of conduct should be in a format that it can easily be provided to employees and others and written as clear as possible in plain English.

B. Policy of Fair and Equitable Treatment of Clients.

The supervisory procedures and code of conduct should contain statements of principles specifically stating that both the firm and its employees have an obligation to treat clients fair and equitably. The code should explain that there may be conflicts of interest and in connection with client conflicts of interest, clients' interests must come first unless the client has made a knowledgeable waiver after adequate disclosure, such as in connection with directed brokerage. The code should specify in particular that certain types of activities, such as manipulation, front running, trading on material public information and similar practices are prohibited. Material conflicts may be involved in

1. Who obtains IPO allocations.

2. Participation in bunched orders do not get executed.

3. Clients that pay different fees.

4. Performance objectives of one group of clients versus another.

5. Different investment objectives among clients may create conflicts in certain situations.

Conflicts may result from activities of affiliates of an investment adviser or entities with which personnel of the investment adviser are affiliated. These and other conflicts should be reviewed in formulating supervisory procedures and a code of conduct and should address specific procedures and policies to provide for fair and equitable treatment to clients and either avoiding conflicts or for obtaining specific waivers, preferably in writing, after adequate disclosure of any material conflict. Likewise, expected conflicts and the procedure to avoid or address them should be covered in the code of conduct.

C. Education and Training.

A key element of any effective supervisory procedures and code of conduct is education and training. It is particularly important that Access Persons and others subject to personal trading restrictions understand the reasons for the restrictions and the concepts behind the restrictions. It is important that they understand what material conflicts may arise and how to handle those particular conflicts. In connection with a number of areas, particularly in connection with material nonpublic information, the concepts are not intuitive and consequently need to be explained carefully and fully. The ordinary layman's view of insider trading is

much narrower than the legal definition and certainly the definition of the enforcement authorities. Likewise manipulation and other similar concepts that should be explained.

D. Defining the Access Person.

Under the 40 Act, Access Persons include officers, directors or similar managers, at the fund, its adviser, principal underwriter and anyone who would have access to the information with respect to securities recommended. In small to medium size investment advisers, Access Persons may include virtually everyone in the firm. In such cases, it is generally wise to define all employees of the firm as Access Persons unless they are clearly clerical and do not have access to recommendations. For purposes of other rules, affiliates of an adviser would include all employees or controlled persons. An Access Person's accounts should include: (i) any account that is controlled by the Access Person or by anyone who resides in the same household as the Access Person; and (ii) any account in which the Access Person or anyone in the same home has a beneficial interest if the Access Person or anyone residing in the home has the ability to effect or influence transactions. Some procedures permit accounts that are not controlled by an Access Person, such as a trust account managed by a corporate trust in which the Access Person has a beneficial interest, but no ability to influence transactions.

The broad definition of Access Person can create various problems where a portfolio manager lives with his or her parents, who may have their own investments and do not wish to disclose them or be subject to the prohibitions of a personal trading program. There are many variations of this problem. Information walls may, in some situations, be adequate to create an exception. If a person is not being supported and does not exchange information or the trading is done by third parties who would not receive the information, exceptions may be created. However, these exceptions need to be carefully crafted after a full investigation.

E. Capturing the Data Necessary for a Personal Trading Supervisory Program.

Most advisers, by reason of today's computer processing systems, have access to all transactions executed on behalf of their clients. It is equally necessary that the firm have access to all transactions by firm personnel that fall within the personal trading procedures. To implement the latter, many firms prohibit Access Persons from executing transactions except through the adviser's trading desk. This facilitates capturing personal trading data by persons subject to the personal trading guidelines and allows personal trades to be reviewed on a real-time basis against client transactions for compliance. More importantly, problems may be promptly corrected. However, many advisers permit Access Persons to trade through personal brokerage accounts at unaffiliated broker-dealers. In such case, it is necessary that the adviser promptly obtain the data with respect to such trading and review it against the client transactions for personal trading violations.

Any program should specifically require that the adviser receive copies of all Access Person confirmations and account statements directly from the executing

broker-dealer. The new employee should be asked to list all accounts in which securities or other financial instruments are held and provide a list of all current holdings of securities or other financial instruments, including private placements. Most personal trading procedures require confirmations and account statements, not only from broker-dealers, but also from other financial institutions, such as futures commission merchants and banks effecting securities transactions through trust accounts. Reporting should include all securities, including privately placed securities, swaps, options and other financial instruments, such as futures. If the firm does not require all executions to be executed through its trading desk and does not receive real-time confirmation of executions by Access Persons, then the firm should promptly review confirmations. See Section VI. G for review suggestions.

F. Options, Warrants, Convertibles and Other Derivative Securities That May Impact a Client.

Even though an option, warrant, swap, convertible preferred or convertible debt is not the same security as the underlying security, transactions by Access Persons in these instruments may result in a conflict of interest because they may impact an underlying equity security or debt security of the same issuer. Likewise, transactions in junk bonds or other debt may move in relationship to equities of the same issuer depending upon characteristics. Consequently, prohibitions may need to be applied to those types of securities. Thus, all such transactions in any derivative or other security that may be impacted by a relationship to another security should be considered as part of personal trading program. These securities have to be considered in reviewing personal trading against client trading. For example, if the adviser is executing equity securities transactions for clients, then the prohibitions on personal trading should go into effect with respect to any derivative security, such as an option or warrant, for the underlying equity security.

G. Securities Generally Excluded From Personal Trading Programs.

1. Excluded Securities. Rule 17j-1 under the 40 Act dealing with codes of conduct for Access Persons of investment companies, their advisers and principal underwriters, and Rule 204-2(b)(12) & (13) under the Advisers Act exclusions excludes from the definition of securities the following types of securities:

(a) Direct obligations of the United States.

(b) Bankers' acceptance, bank certificates of deposit, commercial paper and high grade short-term debt instrument, including repurchase agreements.

(c) Shares issued by open-end funds.

These are excluded from most codes and personal trading supervisory policies whether or not the adviser advises an investment company.

2. Waiver. The procedures and code should provide provisions for waivers, de minimus exceptions and certain other possible exclusions. If a code is to have a provision allowing waivers, the waivers should be decided by someone who is a compliance person or lawyer or outside firm. There should be reasonable standards for the waiver established and most importantly the reasons for all waivers must be appropriately documented and kept as part of the supervisory procedures.

3. De Minimus Exceptions. It is also possible to consider a de minimus exception for a code and set of procedures. However, de minimus exceptions have to be handled very carefully because they can be abused. They would also have to be monitored. These exceptions may be based on the dollar amount of the trade, the number of shares and in some cases the capitalization of the issuer. There are other factors that could be considered for a de minimus exception. Normally, a de minimus exception would be something that would be executed in the ordinary course of business and would be so small that it could not affect the price of the security. For example, 100 shares of General Motors could fall within a de minimus exception.

4. Involuntary Transactions. Most codes also provide that involuntary transfers resulting from divorce or inheritance are not covered. Likewise, automatic dividend reinvestment, stock splits, conversions, dividends of shares may be excluded.

H. Review of Personal Trading.

In connection with any personal trading supervisory procedures, including those of insider trading, review of personal trading by Access Persons and other employees is critically important. Furthermore, it is also important to review client transactions for detecting other possible violations. The reviewer should review personal transactions to detect (1) conflicts with client transactions (this can be done only by comparing the transactions with client transactions), (2) violations of the SEC rules discussed above in Section III, including possible front-running, scalping and other conflict transactions, and (3) trading on material non-public information.

The review of trading both client and personal trading should include a review for manipulation and fraud. While this is difficult to detect even by a highly experienced reviewer, large transactions at the end of the day or on the opening in a relatively liquid security are the type of activities that may indicate manipulation. Manipulation is more of a possibility in the over-the-counter pink sheet stocks and bulletin board stocks. It is also possible in connection with the relatively illiquid and non-transparent municipal bond markets. A pattern of in and out trading should be a signal of a problem, absent a very good reason to the contrary. In connection with highly liquid securities, manipulation would generally be more unlikely, if not impossible.

Personal trading should be reviewed for possible use of material non-public information. See Section VI.S.5.

Account statements or confirmations of personal transactions and client transactions should be reviewed as soon as possible. The sooner the firm does the review and knows of the problem, the less chance that the securities will have moved in price creating disparities resulting in problems in unwinding a trade that violates the firm's policy.

All transactions for clients or personal trades executed by the adviser should be time stamped. For a variety of reasons time stamping is important for evaluating the quality of executions and proving errors by executing brokers. However, it is also important in evaluating if a personal trade is in conflict with client trades. Without the time stamping, it is difficult, if not impossible, to adequately review personal trading.

Reviews should be documented. All suspect transactions that are noted should be thoroughly investigated and the results of the investigation documented. All disciplinary action or client restitution should also be documented.

I. Banning All Personal Trading.

While a number of studies, including the ICI Report, have considered banning personal trading by all Access Persons, most firms have found a ban impractical because investing is the life blood and business of many Access Persons. For that reason, many people believe it is inherently unfair to ban trading by them.

J. Blackout Periods.

If Access Person trading is to be allowed, it needs to be effected only in a manner that will not conflict with client transactions. One method of avoiding conflict is to provide that all client transactions will be executed prior to an Access Person executing a transaction in the same security or any derivatives or convertibles of that security. See Section VI.F above. The ICI Report recommended a seven-day ban in connection with equity securities either before or after the purchase or sale, as the case may be. It is the author's experience that most firms do not use a seven-day ban in their personal trading procedures.

If there is a blackout period, it may be different for different types of securities. The blackout period for a particular type of securities may be, as noted above in Section VI. A, a variable time period, depending upon both the market and the security. For highly liquid equity securities traded on Nasdaq or the New York Stock Exchange ("NYSE"), provided the Access Person's transaction is insignificant in relationship to the market, the trading could be executed shortly after executing all client orders or even with client orders, without creating a market impact. See also Section VI.R for a discussion of order bunching. It certainly could be executed the next day. If, however, the order for an Access Person is of a size that may effect the market pricing, there are other considerations as to whether it may be manipulative to

execute Access Person transactions shortly after client transactions. In such case, the personal transaction should be executed in small increments in a way that there is no question of manipulation of the market or an attempt to raise or lower prices for any reason.

Executions in illiquid markets, such as the pink sheets and OTC bulletin board stocks, may create other problems or accentuate a problem because a transaction for a small number of shares may cause prices to move. In such case, it is best to put more time between the client's transactions and the Access Persons' transactions. Many firms limit the amount of securities that can be executed for Access Persons at a given point in time to be certain that such transactions are not designed to increase or decrease the price of client securities transactions.

The over-the-counter bond markets for a municipal, a U.S. treasury and other debt securities also create certain issues, particularly in connection with municipal securities that may not be available with any frequency. Bonds may only be available in large size and with some infrequency through only one or two dealers at a particular time. Consequently, the bonds will not be available to clients or Access Persons at all unless a bunched order is executed. If so, this creates a number of problems because by hindsight, it is always possible for a regulator to argue that other clients should have been given participation in a large bond purchase if a firm Access Person participates in a transaction or if only certain clients participate. See Section VI.R. Such transactions must be very clearly documented and are not recommended.

K. Research Analysts and their Supervisors Prohibited Trading.

As explained above, NASD Rule 2711 and New York Stock Exchange Rule 472 prohibit Prohibited Persons (i.e., research analysts, their immediate household and supervisors) from trading during certain periods of time when research reports are being distributed before an IPO. Monitoring this is a significant job for any compliance department and poses new challenges. The compliance department will need to be able to determine when any research analyst report is prepared, the timing of IPOs and the Prohibited Persons' trading will have to be reviewed against the securities that are the subject of research reports or IPOs. Because of the complications, particularly in connection with IPOs, some firms are prohibiting Prohibited Persons from purchasing or selling securities except in very limited time frames or requiring approval of any purchase or sale of securities.

L. Lack of Central Trading Desk.

Some advisers do not have a central order execution desk. Orders are executed by individual portfolio managers for individual clients and executions are not coordinated among portfolio managers or, if coordinated, orders are not bunched. This creates numerous problems for the compliance officer and the development of an effective personal trading policy. In the first instance, the compliance officer may not know of individual client trades and, likewise, other portfolio managers may not know of other client trades until the end of the day. As a result, it

essentially makes it very difficult to coordinate Access Person transactions because there is no central place where the executions of client transactions are handled. One way to do that is to notify all portfolio managers that if they have any client transactions to execute in the stock they should be executed by a particular time because other Access Persons propose to buy or sell a particular security after execution of client transactions. This creates a number of problems because of market movements and other possible developments. For example, a portfolio manager may decide it is important to eliminate a security from a client's portfolio or a client may direct that a security be added or eliminated from the portfolio. It is highly recommended that an adviser, as part of its personal trading policy, have a central trading desk.

M. <u>New Money & Withdrawals.</u>

Personal trading programs should have a procedure to document unexpected purchases of client securities after a personal transaction or the sale of client securities after a personal transaction. There are a number of situations where additional securities may be unexpectedly bought or sold for a particular portfolio. For example, if a client unexpectedly adds additional funds to his account or an unexpected new client provides substantial funds for investment, the firm may wish to immediately execute transactions, which might be shortly following an Access Person's transactions. Likewise, if a client unexpectedly needs funds and securities must be sold, the client transaction may be executed after an Access Person just sold. Consequently, there will always be circumstances where there will be transactions executed after an Access Person's executions. When that happens, an explanation of the reason for the client's execution after the Access Person must be documented and maintained. Further, many firms in such situations give the client the benefit of any better price received by an Access Person.

N. <u>Holding Periods or Profit Bans.</u>

Some personal trading policies require that an Access Person must hold securities for a period of time. If sold sooner, all profit must be forfeited. This is usually very unpopular with Access Persons and is probably not necessary, although it may prevent short-term trading. The ICI Report recommended a 60-day ban on selling after a purchase. There are many reasons why Access Persons may need to liquidate a position after acquiring the position. A holding period of several weeks may be appropriate, but generally, the author has not seen such provisions except in connection with investment advisers of large mutual fund groups.

Profit bans are included in many personal trading supervisory programs in the sense that if there is a personal trade that is executed outside the permitted parameters resulting in profit, the trades are reversed and the profit is given to the clients. This creates, however, a number of problems as to how the adviser reallocates the profit and to which client. If a firm has several hundred accounts participating in a trade, to give each a fractional percentage adjustment to their accounts is possible, but involves a lot of bookkeeping work. The alternative of adjusting an advisory fee for the clients is possible, but also involves a lot of bookkeeping work. Another

alternative is to donate the money to a charity. The alternative for the firm to keep the profit would be frowned upon by the SEC. Nevertheless, if there is a violation, one of these alternatives is recommended.

O. Initial Public Offerings.

The ICI Report for good reasons recommended a prohibition against personal trades in IPOs. A number of investment advisers have followed and adopted that advice as part of their personal trading supervisory procedures because it is a much simpler solution than trying to implement procedures. With the hot IPO markets over the last several years, it is very difficult to argue against giving all IPOs to clients because there is almost always a client for whom an IPO would be suitable. However, there may be circumstances where an initial public offering is not hot or, even if hot, is not suitable for any client in the firm. In such case, some firms permit Access Persons to participate in an IPO. Generally, this is done only with special permission after reviewing the particular offering and the accounts that might possibly be eligible. In any such case, detailed records of the decision to permit participation by Access Persons and the reasons for the decision, need to be retained. If Access Persons may invest in IPOs, disclosure in Form ADV is recommended and a waiver consent obtained in the advisory agreement with clients.

P. Privately Placed Securities.

Personal trades in privately placed securities have created a number of problems. A conflict arises because an adviser almost always has clients for whom a private placement would be appropriate and suitable. Further, conflicts may arise if the company is public or becomes public and the adviser wants to invest client funds in equities or debt of the public company. Such transactions may substantially benefit the Access Person holding the privately placed securities creating a difficult conflict. For these reasons, some personal trading programs prohibit any participation in privately placed securities by Access Persons.

It is generally impossible to obtain waivers of the conflicts when a private offering is available unless there is a prior clear disclosure in the adviser's Form ADV or brochure that private placements will not be offered to clients or only to selected clients together with Access Persons. The disclosure should point out that if a company goes public and the adviser might recommend securities to clients directly or indirectly benefiting Access Persons. An express waiver by the client should also be contained in the advisory agreement.

Q. Initial and Annual Certification.

Almost all personal trading programs and insider trading programs require that employees acknowledge receipt and review of the personal trading compliance procedures, including those dealing with receipt of material non-public information when the employee is employed. The new employee certification usually also covers a representation that the new employee has reported all financial institution accounts and holdings of securities or other financial instruments, except those

exempt from the program. Thereafter, on an annual basis Access Persons are required to acknowledge review of the procedures (including any changes), certification of compliance with the personal trading procedures and the reporting of all accounts and transactions.

R. Bunching of Orders and Allocation Involving Personal and Proprietary Trades.

1. Bunching Proprietary Trades. Bunching of orders provides many advantages to clients. Bunching generally results in a single average price for all clients. Bunching may provide a superior execution because of size, although the reverse may be true. In many cases, the larger order will receive special handling on a particular trading market, resulting in a good execution under certain circumstances. Bunching also generally will result in a lower net commission on average for the transactions.

The SEC has evolved to a position where accounts of principals, employees and associates of an adviser may participate with clients in a bunched order under certain conditions.[14] This relief was conditioned upon the adviser disclosing its bunching and allocation policy in the adviser's Form ADV and separately to each client. The adviser is required, in each circumstance, to determine that, (1) bunching is consistent with best execution and the client's objection, (2) no client will be favored (i.e. average pricing will be used), (3) before a bunching execution, all accounts that will participate must be listed, and (4) any partially filled order must be allocated pro rata. The adviser's records must also report the client securities separately and the adviser is not permitted to keep custody of the client securities in an omnibus account. Each client must receive individual investment advice and, last but not least, the commission must be an average commission for all accounts. If orders are not generally bunched, it also must be disclosed.[15]

Although not mandated by the SEC, a good practice is not to fill any proprietary orders if there is a partial fill. Allocation procedures may provide that no order will be filled below a certain de minimus amount because advisers generally do not want to have small pieces (usually under 500 to 1000 shares) in accounts. If the order cannot be fully executed, the procedures should provide that non-proprietary accounts will be filled with a minimum amount of the specific program (either 500 or 1000 shares). The clients that do not receive a fill participate ahead of any other clients and before other proprietary transactions the next time the adviser attempts to execute orders in a similar security. In some cases, investment company orders are given priority over individual clients if there is a partial fill. If any type of account is to be given priority in execution, it should be clearly spelled out in the procedures. Whatever the allocations methodology is, it should be disclosed to clients in the Form ADV Part II.

2. Disclosure of Priority of Execution. A firm should have a policy regarding priority of order execution if all orders are not simultaneously executed. For example, an adviser that advises both mutual funds and individual clients

may disclose that for discretionary accounts, transactions will be bunched and executed ahead of orders for non-discretionary accounts. In other cases, the adviser may use a different priority of execution. Whatever the priority, it should be disclosed to clients.

S. Insider Trading Prevention Procedures.

1. General.

As part of a firm's personal trading policies and procedures, insider trading prevention procedures must be incorporated. These procedures should cover the following areas:

(a) Education and explanation of what is material non-public information and possible liability.

(b) Control of non-public information.

(c) Prohibitions on use of material non-public information.

(d) Review of client and personal trading.

(e) Detecting and reviewing for violation of policies.

(f) Records.

(g) Sanctions.

2. Education.

Education as part of the procedures should include an explanation about what is public information, what is non-public information and the fragile concept of materiality under the federal securities laws. Particular emphasis should be given to explaining that not all non-public information will disseminate from an issuer. In some circumstances, material non-public information may be market information with respect to a large offer or a tender offer by a third party. These sources of information are often not understood by portfolio managers. The procedures should emphasize that if one is in possession of material non-public information, one must disclose the information and disseminate it to the public before trading. The concept of public dissemination should also be explained. The procedures should also explain that one may not pass on material non-public information because both a tipper and tippee will have liability if either effects trades. Further, the chain of liability can extend from tippee to other tippees.

3. Control of Information.

The control of information section should specifically discuss that a portfolio manager or research analyst, in contacting an issuer, may inadvertently receive material non-public information. Another source of material non-public information is, of course, affiliates that are engaged in investment banking, mergers and acquisitions or other relationships. Last, but not least, tippee information sometimes comes to portfolio managers or research analysts from other analysts or from the street. The same rules apply as if it came from the issuer. All of these sources of information should be explained in the procedures.

The procedures should have specific requirements that receipt of non-public information from any issuer or other source be immediately reported to a senior manager and the head of compliance. In such case, the adviser should have a procedure as to how to contact the issuer or third party to force dissemination of the information to the public. If that is not possible, the firm is precluded from trading, which is usually a most serious problem, particularly if something is happening to the issuer's stock and the firm has an obligation to its clients to sell or take other action with respect to securities.

4. Detection of Violations.

Detection of violations is an integral element of the program. Detection usually requires review of the personal trading records of all employees of the firm, including Access Persons. For that reason, many firms require all employees, including those that might have access to information to report their personal trades as discussed in Section VI.C above. Because the reporting of personal transactions and the capturing of the data is necessary for other provisions of the Advisers Act, it is usual that personal trading policies also incorporate the insider trading procedures.

5. Review of Data.

The review of data is somewhat different in connection with material non-public information than for other purposes. It is difficult for a compliance officer or reviewer to know all of the important corporate finance and other market developments concerning client securities of Access Persons; however, the reviewer should attempt to be aware of important corporate developments for client securities and monitor trading to the extent possible for violation of the material non-public information policies. Review of personal data should focus on usual trades or patterns of trading such as options trades before important corporate finance events like a merger, tender offer or other announcement by the issuer or third party that may have a material impact on stock price. For example, if a portfolio manager does not usually effect transactions in options and suddenly there are options,

even a relatively small number (10 to 20), the reason for the trades should be investigated and noted.

6. Records Regarding Insider Trading Procedures.

See Section VI.R below.

T. Records.

As noted in III.A.5(d) above, an adviser must maintain its code of conduct or personal trading compliance procedures and the underlying documentation for a minimum of five years under the Advisers Act and if the adviser advises an investment company, for six years under the 40 Act. These records need to include the records detailed in III.A.5 and III.B. above. In addition, the adviser should specifically have available copies of its written supervisory procedures regarding personal trading and prevention of misuse of material non-public information. The review of client and personal trading should be evidenced on the records reviewed or by a separate record. A separate memorandum should be prepared and maintained with respect to any discrepancies found and the resolution of those discrepancies, including any disciplinary action taken. Further, the initial and annual certifications by Access Persons should be retained.

U. Violations.

Any set of supervisory procedures should very specifically for dealing with violations of the firm's code of conduct. With respect to specific violative activity, the procedures should indicate that it will be promptly and thoroughly investigated and in some cases it's appropriate to provide who will do the investigation. Anything involving manipulation, insider trading, front running or more serious fraud should involve outside counsel in connection with the investigation. It is important to interview all employees involved. It is also important to do an in depth interview of the employee involved. When the investigation is complete, it is important to discuss any violations with the employee directly involved in the violations. However, the results of the investigation should be kept confidential for a variety of reasons until a decision is made with respect to sanctions. Whether or not sanctions will be imposed is discussed in Section VI.T below. After sanctions have been imposed, it may be appropriate under certain circumstances to disclose the sanction and the violation to other employees. In most cases, if this is done, it should be done without the name or identification of the employees involved in the violation.

V. Sanctions.

Sanctions for violations present a dilemma. I recommend that any procedures and code of conduct involving personal trading should have an express statement that the adviser may impose sanctions, including fines, forfeiture of profit, suspensions or termination for violations. When or how an adviser imposes such sanctions for violation is a complex and difficult matter. In the event that there is a violation of

the policy, the firm may impose sanctions and, in most cases, should impose sanctions absent unusual circumstances. Furthermore, the adviser may be under an obligation to report the violations and if not under an obligation, may wish to do so to protect supervisory or other personnel who did not know of the violation by an employee. This is usually a difficult decision and should be made with the advice of experienced securities law counsel. Internal sanctions may result in the SEC or other regulators foregoing disciplinary action against the firm and supervisors and, in some cases, the employee. However, in audit examinations, the SEC staff routinely asks for details with respect to any internal sanctions. This may result in proceedings by the SEC, but not usually if the firm has documented the violation and the sanction is appropriate. If the activity involves manipulation, insider trading or other activities that the SEC normally refers for criminal prosecution, a different result would normally be expected. If there is any client disadvantage as a result of a violation, the SEC would expect that the client will have been compensated by the adviser. In any event, counsel should be consulted before imposing sanctions.

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[1] *See* SEC V. Capital Gains Research, Inc., 375 U.S. 191-92 (1963).
[2] *See* NASDR Rule 2110 and interpretation IM-2110-1.
[3] In Re: Monetta Financial Services, Inc., Advisers Act Rel. No. 1702, 66 SEC Docket 1221 (February 26, 1998).
[4] In Re: Account Management Corporation, Advisers Act Rel. No. 1529, 60 SEC Docket 962 (September 29, 1995); In Re: McKenzie Walker Investment Management, Inc., Advisers Act Rel. No. 1571 (July 16, 1961).
[5] In Re: Kemper Financial Services, Inc., Advisers Act Rel. No. 1387 [1993 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 85,237 (October 20, 1993).
[6] In the matter of Timothy J. Lyons, Advisers Act Rel. No. 1882 (June 20, 2000); In the matter of Thomas H. Ricker, Advisers Act Rel. No. 1495 (June 6, 1995).
[7] In the matter of Rodger W. Honour, Advisers Act Rel. No. 1527 (September 29, 1995). *See also* SEC v. Frederick Augustus Moran, et al, Litigation Rel. No. 14861, 61 SEC Docket 1681, 1996 WL 153898 (April 3, 1996).
[8] In Re: Smith Hayes Financial Service Corp., Advisers Act Rel. No. IA-1456 (February 2, 1995).
[9] In Re: Chancellor Capital Management, Inc., Advisers Act Rel. No. 1447 [1994-95 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶85,437 (October 18, 1994).
[10] In Re: Ronald V. Speaker, Advisers Act Rel. No. IA-1605 [1997 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶85,901 (January 13, 1997).
[11] In Re: Joan Conan, Advisers Act Rel. No. IA-1446, 57 SEC Docket 1952 (September 30, 1994).
[12] *See* In the matter of Gabelli & Co., Exchange Act Rel. No. 35057, [1994-95 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶85,467, 1994 WL683654 (December 8, 1994). Likewise, with respect to tipping, *see* for example, SEC v. Moran, Litigation Rel. No. 14532, 1995 WL369097 (June 15, 1995). *See* In Re: Fax-Pit, Kelton, Inc., Rel. No. 34-3794 (November 12, 1996).
[13] Investment Company Institute (May 1994).
[14] SMC Capital, Inc., No Action Ltr. [1995 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 77,049 1995 WL 529274(September 5, 1995).
[15] Pretzel & Stouffer, No Action Ltr. 1995 WL 737153 (December 1, 1995).