

**UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT OF 1940  
RELEASE NO. 1870 / May 10, 2000**

**INVESTMENT COMPANY ACT OF 1940  
RELEASE NO. 24450 / May 10, 2000**

**SECURITIES ACT OF 1933  
RELEASE NO. 7857 / May 10, 2000**

**ADMINISTRATIVE PROCEEDING  
FILE NO. 3-10201**

**In the Matter of The Dreyfus Corporation and Michael L. Schonberg, Respondents.**

**ORDER INSTITUTING PROCEEDINGS, MAKING FINDINGS, IMPOSING REMEDIAL SANCTIONS AND ORDERING RESPONDENTS TO CEASE AND DESIST PURSUANT TO SECTIONS 203(e), 203(f), AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, SECTIONS 9(b) AND 9(f) OF THE INVESTMENT COMPANY ACT OF 1940, AND SECTION 8A OF THE SECURITIES ACT OF 1933**

**I.**

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be instituted against The Dreyfus Corporation ("Dreyfus") and Michael L. Schonberg (collectively "Respondents") pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act"), and Section 8A of the Securities Act of 1933 ("Securities Act").

In anticipation of the institution of these administrative proceedings, Respondents have submitted Offers of Settlement ("Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondents, by their Offers, admit the jurisdiction of the Commission over them and the subject matter of these administrative proceedings and consent to the entry of this Order Instituting Proceedings, Making Findings, Imposing Remedial Sanctions and Ordering Respondents to Cease and Desist pursuant to Sections 203(e), 203(f), and 203(k) of the Advisers Act, Sections 9(b) and 9(f) of the Investment Company Act, and Section 8A of the Securities Act ("Order"), without admitting or denying the Commission's findings contained in this Order, except those contained in Part III under the headings "Respondents" and "Related Entities," which are admitted.

**II.**

Accordingly, IT IS HEREBY ORDERED that proceedings pursuant to Sections 203(e), 203(f), and 203(k) of the Advisers Act, Sections 9(b) and 9(f) of the Investment Company Act, and Section 8A of the Securities Act are instituted.

**III.**

On the basis of this Order and Respondents' Offers, the Commission makes the following findings:

## **Respondents**

The Dreyfus Corporation was formed in 1947 and was at all relevant times registered with the Commission as an investment adviser. Dreyfus serves as investment adviser for the Dreyfus Aggressive Growth Fund ("DAG") and other investment companies ("Dreyfus Funds").

Michael L. Schonberg, 49, was at all relevant times employed by Dreyfus and an associated person of Dreyfus. He served as portfolio manager for five of the Dreyfus Funds, including DAG, at intervals between July 1995 and June 1998.

## **Related Entities**

Dreyfus Growth and Value Funds, Inc. ("the Company") is an open end, management investment company within the meaning of the Investment Company Act, comprising separate series, each of which is treated as a separate fund.

Dreyfus Aggressive Growth Fund, a mutual fund, is a separate diversified series of the Company. DAG's inception date was September 29, 1995. DAG's first semi-annual report was dated February 29, 1996. Its first fiscal year ended on August 30, 1996. In April 1997, DAG was merged with Dreyfus Special Growth Fund.

## **Summary**

Over the course of DAG's first fiscal year, Schonberg's allocations of securities purchased in initial public offerings -- especially "hot" IPOs -- had the overall effect of favoring DAG over three other funds Schonberg managed. Neither Dreyfus nor Schonberg disclosed this practice, notwithstanding DAG's prospectus disclosure that investment opportunities would be allocated equitably among Dreyfus funds. Dreyfus also did not review Schonberg's IPO allocations to assess whether their overall effect was to favor DAG over the other funds.

DAG achieved exceptional returns during its first fiscal year in large part because of the investments in IPOs. During the same time, DAG's net asset size increased from \$2 million at its inception to more than \$154 million eight months later. Nevertheless, Dreyfus did not disclose the large impact of the IPO investments, though it was questionable whether DAG could replicate its prior performance through continuing to invest in IPOs as the fund grew larger. In fact, DAG's performance began to decline in June 1996. Notwithstanding this downturn and the fund's increased asset size, during the last quarter of 1996 Dreyfus continued to advertise DAG's excellent total return since its inception in advertisements without disclosing the large impact of the IPOs on the fund's performance.

In addition, Dreyfus did not take appropriate steps and did not institute adequate procedures reasonably necessary to determine whether fund transactions in securities Schonberg held personally gave rise to a potential conflict of interest.

## **Facts**

### **Dreyfus**

During 1995 and 1996, Dreyfus broadened its managed investments product line to include additional equity funds. During that time, Dreyfus introduced 13 new equity funds and hired additional investment professionals, including Schonberg.

In July 1995, Schonberg was appointed portfolio manager of two preexisting funds: the Dreyfus Strategic Growth Fund ("Strategic Growth"), which then had net assets of \$100 million,<sup>1</sup> and the Dreyfus Premier Capital Growth Fund ("Capital Growth"), which then had net assets of \$500 million.<sup>2</sup> On September 29, 1995, DAG was offered to the public and Schonberg was appointed

DAG's portfolio manager. In February 1996, Schonberg assumed responsibility for another preexisting fund, the Dreyfus Special Growth Fund ("Special Growth"), which then had net assets of \$68.7 million. Although the net asset sizes of these four funds (the "Funds") differed significantly from each other during DAG's first fiscal year, the Funds had the same stated investment objective, capital appreciation, and all four could and did invest in IPOs.

### **Initial Public Offerings**

The price of IPO securities often increases from the offering price during the first day of trading. IPOs characterized as "hot" prior to the offering are those for which demand is particularly strong and trading is expected to occur at a significant premium in the immediate aftermarket. Therefore, IPOs in general, and hot IPOs in particular, represent valuable investment opportunities because they tend to increase in price during the first trading day.

### **Schonberg's IPO Allocations during DAG's First Fiscal Year**

DAG's prospectus during its first fiscal year stated that:

If . . . other investment companies [advised by Dreyfus] desire to invest in, or dispose of, the same securities as [DAG], available investments or opportunities for sales will be allocated equitably to each investment company.

Schonberg exercised investment discretion when allocating IPOs and could consider a variety of factors in doing so. Throughout DAG's first fiscal year ending August 30, 1996, however, IPO shares were not allocated equitably among the Funds. Instead, Schonberg's IPO allocations over the course of DAG's first fiscal year had the effect of favoring DAG over the other Funds in the allocation of IPOs in general and hot IPOs in particular.

During DAG's first fiscal year, Schonberg caused the Funds to invest in 109 IPOs. Each of the Funds was eligible to participate in these IPOs.<sup>3</sup> Of the 109 IPOs, DAG was allocated shares in 89 percent<sup>4</sup> (97 IPOs), Strategic Growth received shares in 25 percent (27 IPOs), Capital Growth received shares in 12 percent (13 IPOs) and Special Growth received shares in 5 percent (5 IPOs).<sup>5</sup>

Shares of the 32 most oversubscribed IPOs<sup>6</sup> during DAG's first fiscal year also were allocated favorably to DAG. Of these 32 IPOs, DAG was allocated shares in 88 percent (28 IPOs), Strategic Growth received shares in 9 percent (3 IPOs), Capital Growth received shares in 6 percent (2 IPOs) and Special Growth received no shares.<sup>7</sup>

During DAG's first fiscal year, Schonberg allocated IPOs disproportionately to DAG in view of its net asset size compared to the net asset sizes of the other Funds. In an average month the three Funds other than DAG, taken together, received IPO shares whose value at the offer price was \$0.38 per \$100 of their average daily net assets, while DAG received IPO shares whose value at the offer price was \$14.14 per \$100 of DAG's average daily net assets. Thus, relative to the Funds' average daily net asset sizes, Schonberg allocated to DAG during its first fiscal year IPO shares whose value at the offer price was on average approximately 37 times larger than the IPOs allocated to the other Funds combined.

The IPOs allocated to DAG also had average first day returns<sup>8</sup> of approximately 26 percent, while the IPOs allocated to the other Funds had average first day returns of approximately 14 percent.<sup>9</sup>

### **DAG's Total Return and Asset Growth**

According to Morningstar Mutual Funds, DAG was the top performing fund in its class for the first quarter of 1996. The first day returns from the IPOs that Schonberg allocated to DAG during its first fiscal year had a large impact on DAG's total return.<sup>10</sup> By February 29, 1996, the date of DAG's first Semi-Annual Report, when DAG's total return since inception was 67.44 percent, the

first day returns from the IPOs that Schonberg allocated to DAG contributed about 51.5 percentage points or approximately 76 percent of DAG's total return as of that date. By May 31, 1996, when the fund had reached its peak performance and net asset size, first day returns from the IPOs contributed about 83 percentage points or approximately 70 percent of the fund's total return of 118.96 percent as of that date.

This outstanding performance coincided with extraordinary asset growth that lasted until approximately May 1996. Between September 29, 1995 and May 31, 1996, DAG's net assets grew every month until, by May 31, 1996, its net assets had grown from \$2 million to a peak of \$154,401,000.

Beginning in June 1996, DAG's performance began to decline substantially, such that, by the end of DAG's first fiscal year on August 30, 1996, the fund's return for the three month period ending on that date was negative 17.03 percent.<sup>11</sup> As of August 30, 1996, DAG's net assets were \$121,495,000, still more than twice its size at the end of April, before the May peak.<sup>12</sup> Although Schonberg caused DAG to invest in additional IPOs after May 31, 1996, these IPOs did not have a significant impact on the fund's return because of the fund's increased net asset size.

Nevertheless, DAG finished its first fiscal year ranking first among 175 funds in Lipper, Inc.'s capital appreciation category. Its total return since inception, buoyed by the fund's high performance during its early months, was 81.68 percent as of August 30, 1996. The first day returns from IPOs that Schonberg allocated to DAG throughout the fiscal year contributed 70.3 percentage points, or approximately 86 percent of DAG's total return as of that date, with the greater component contributed by the IPOs purchased during the fund's early months, when DAG's net asset size was smaller.

### **Dreyfus's Disclosure**

During DAG's first fiscal year, neither Dreyfus nor Schonberg disclosed to the Funds' boards of directors or to the Funds' shareholders and prospective shareholders the effect of Schonberg's allocation of IPO shares.

Dreyfus and Schonberg also did not disclose to the Company's board of directors or to DAG's shareholders and prospective shareholders the large impact that IPOs had on DAG's total return during DAG's first fiscal year.

DAG's Semi-Annual Report dated February 29, 1996 reported DAG's total return since inception of 67.44 percent, and stated that DAG had invested in "a number of initial public offerings." The Semi-Annual Report also stated that DAG's return since inception "should not be regarded as routine." However, it did not disclose the large impact IPOs had on DAG's performance as of February 29, 1996, by which time first day returns from IPOs had contributed approximately 76 percent of DAG's total return since inception.

Dreyfus published DAG's performance in various advertisements, the first of which appeared in The Wall Street Journal on May 23, 1996 (the "May Ad"). The May Ad included DAG's return since inception as of March 31, 1996 (84.16 percent), as well as DAG's return for the first calendar quarter of 1996 (40.97 percent). The May Ad also stated that DAG's "relatively small asset size combined with a period of high stock market performance may have contributed to the Fund's success and may not be replicated over the long term." However, the May Ad did not mention the large impact that IPOs had on DAG's performance as of March 31, 1996, by which time first day returns from IPOs had contributed approximately 77 percent of DAG's total return since inception.

Beginning in October 1996 and continuing until December 1996, Dreyfus publicized DAG's total return of 81.92 percent as of September 30, 1996 in advertisements in ten different newspapers and periodicals (the "Autumn Ads"). One of these advertisements cited DAG's Number 1 ranking among 175 funds in Lipper, Inc.'s capital appreciation category. The Autumn Ads, however, did not

disclose the large impact that IPOs had on DAG's performance, although as of the end of DAG's first fiscal year on August 30, 1996 first day returns from IPOs throughout the fiscal year contributed approximately 86 percent of DAG's total return since inception of 81.68 percent.

### **Dreyfus's Supervision**

During DAG's first fiscal year, Dreyfus did not measure the impact of IPOs on DAG's performance and did not review the effect of Schonberg's allocation practices to ensure that, over time, the result was equitable.

### **Dreyfus's Code of Ethics**

Dreyfus's code of ethics prohibited a portfolio manager from participating "in any activity that causes a conflict of interest or gives the appearance of a conflict of interest." The code of ethics also required portfolio managers periodically to report to Dreyfus their securities holdings and transactions. When he joined Dreyfus, Schonberg held certain securities personally.<sup>13</sup> During the relevant time period, Schonberg reported his securities holdings and transactions in compliance with the code. After joining Dreyfus, Schonberg engaged in transactions on behalf of his funds involving the securities of seven companies in which he continued to hold a position acquired before his employment by Dreyfus. In addition, twice while at Dreyfus, Schonberg purchased securities for his personal account after preclearing those purchases in compliance with Dreyfus's code of ethics,<sup>14</sup> and at some time thereafter engaged in transactions in those securities on behalf of certain funds under his management. These circumstances created a potential conflict of interest between Schonberg and the funds he managed. Dreyfus, however, did not take appropriate steps, and had not instituted adequate procedures reasonably necessary, to prevent violations of its code of ethics relating to such potential conflicts of interest.<sup>15</sup>

### **Violations**

An investment adviser such as Dreyfus has a fiduciary duty to act in the utmost good faith with respect to its clients, to provide full and fair disclosure of all material facts, and affirmatively to employ reasonable care to avoid misleading clients. *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963). A fact is material if there is a "substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information available." *Basic, Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988), quoting *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

Reasonable investors would consider allocation practices that had the overall effect of favoring DAG over the other Funds as significantly altering the total mix of information available. See *Account Management Corp.*, Advisers Act Release No. 1529 (Sept. 29, 1995) and *McKenzie Walker Investment Management, Inc.*, Advisers Act Release No. 1571 (July 16, 1996). Thus the failure to disclose this practice of preferentially allocating IPOs was a material omission. Moreover, DAG's prospectus disclosure regarding equitable allocation of investment opportunities became materially false and misleading as a result of the IPO allocation favoritism.

Under the facts and circumstances of this case, disclosure that a large portion of DAG's total return during its first fiscal year was attributable to investments in IPOs also would have been material to an investor's decision whether to invest in DAG where, given the growth in DAG's total assets, it was questionable whether DAG could continue to experience, by investing in IPOs, substantially similar performance as DAG had previously experienced. See *Van Kampen Investment Advisory Corp.*, Advisers Act Release No. 1819 (September 8, 1999).

Under the facts and circumstances of this case, the failure to disclose in the Autumn Ads the large impact of the IPOs on DAG's performance during DAG's first fiscal year made those advertisements materially false and misleading where: (1) DAG's net asset size had increased to the point that DAG was no longer experiencing, by investing in additional IPOs, substantially similar performance

as DAG had previously experienced; (2) DAG's return for the final three months of DAG's first fiscal year was negative 17.03 percent; and (3) while the Autumn Ads were being published, DAG's return for each of the three month periods ending September 30, 1996, October 31, 1996 and November 29, 1996 remained negative.<sup>16</sup>

Based on the foregoing, Dreyfus, by use of the mails or other means or instrumentalities of interstate commerce, engaged in transactions, practices or courses of business that operated as a fraud or deceit upon the Company and upon DAG's shareholders and prospective shareholders. Thus Dreyfus willfully<sup>17</sup> violated, and Schonberg caused and willfully aided and abetted Dreyfus's violation of, Section 206(2) of the Advisers Act.<sup>18</sup>

Based on the foregoing, Dreyfus and Schonberg, in the offer and sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails, engaged in transactions, practices or courses of business that operated as a fraud or deceit upon DAG's shareholders and prospective shareholders. Thus Dreyfus willfully violated, and Schonberg willfully violated and caused and willfully aided and abetted Dreyfus's violation of, Section 17(a)(3) of the Securities Act.<sup>19</sup>

Based on the foregoing, Dreyfus failed reasonably to supervise Schonberg in connection with his IPO allocations, with a view to preventing Schonberg's violations of the federal securities laws, and Dreyfus did not establish procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by Schonberg.

Former Rule 17j-1(b)(1)<sup>20</sup> promulgated under Section 17(j) of the Investment Company Act required Dreyfus to adopt a written code of ethics and to "use reasonable diligence, and institute procedures reasonably necessary, to prevent violations of such code." Although Dreyfus had adopted a written code of ethics that prohibited actual or apparent conflicts of interest, for the reasons stated above Dreyfus willfully violated Section 17(j) of the Investment Company Act and former Rule 17j-1(b)(1).<sup>21</sup>

#### **IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions that are set forth in the Offers submitted by Dreyfus and Schonberg.

Accordingly, IT IS ORDERED THAT:

- A. Dreyfus and Schonberg are censured.
- B. Pursuant to Section 203(k) of the Advisers Act and Section 8A of the Securities Act, Dreyfus and Schonberg cease and desist from committing or causing any violation and any future violation of Section 206(2) of the Advisers Act and Section 17(a)(3) of the Securities Act.
- C. Pursuant to Section 9(f) of the Investment Company Act, Dreyfus cease and desist from committing or causing any violation and any future violation of Section 17(j) of the Investment Company Act and Rule 17j-1(c) thereunder.
- D. Pursuant to Section 203(i) of the Advisers Act, Dreyfus shall, within ten days of the entry of this Order, pay a civil penalty in the amount of \$950,000 to the United States Treasury. Such payment shall be: (a) made by United States postal money order, certified check, bank cashier's check or bank money order; (b) made payable to the Securities and Exchange Commission; (c) hand delivered or mailed to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Suite B, Mail Stop 0-3, Alexandria, Virginia 22312; and (d) submitted under cover letter which identifies Dreyfus as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to

Richard C. Sauer, Assistant Director, Securities and Exchange Commission, 450 Fifth Street, N.W., Room 8411, Washington, DC 20549-0803.

E. Pursuant to Section 203(i) of the Advisers Act and Section 9(d) of the Investment Company Act, Schonberg shall, within ten days of the entry of this Order, pay a civil penalty in the amount of \$50,000 to the United States Treasury. Such payment shall be: (a) made by United States postal money order, certified check, bank cashier's check or bank money order; (b) made payable to the Securities and Exchange Commission; (c) hand delivered or mailed to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Suite B, Mail Stop 0-3, Alexandria, Virginia 22312; and (d) submitted under cover letter which identifies Schonberg as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Richard C. Sauer, Assistant Director, Securities and Exchange Commission, 450 Fifth Street, N.W., Room 8411, Washington, DC 20549-0803.

F. Pursuant to Section 203(f) of the Advisers Act, Schonberg is suspended from association with any investment adviser, and pursuant to Section 9(b) of the Investment Company Act, Schonberg is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter, for a period of nine months, effective on the second Monday following the entry of this Order.

G. Dreyfus, at its own expense, shall comply with its undertakings to:

- retain an independent consultant ("Consultant") not unacceptable to the staff of the Divisions of Enforcement and Investment Management (the "Staff"), within 30 days of the date of this Order to, among other things, conduct a comprehensive review of: (a) Dreyfus's policies, procedures, and practices relating to its allocation of shares of IPOs among the Dreyfus Funds and the Dreyfus Fund managers; (b) Dreyfus's policies, procedures and practices relating to Dreyfus's performance advertising; (c) Dreyfus's disclosure of its policies and practices relating to the allocation of shares of IPOs; (d) Dreyfus's code of ethics concerning its portfolio managers' personal securities holdings and transactions, and Dreyfus's implementation of procedures reasonably necessary to prevent and detect actual or apparent conflicts of interest in connection with its portfolio managers' personal securities holdings and transactions; and (e) Dreyfus's supervision of such activities. Such review will be for the purpose of determining compliance with the terms of this Order and federal securities laws and to recommend policies and procedures reasonably designed to ensure compliance with the federal securities laws. Such recommended policies and procedures shall include, but not be limited to, as appropriate, training programs, manuals, and other measures reasonably designed to ensure that Dreyfus employees, officers, and agents understand and are capable of performing their obligations and responsibilities with respect to the allocation of investment opportunities and performance advertising;
- arrange for the Consultant to make conclusions and recommendations within 90 days from the date of engagement in the form of a report (the "Report") which shall set forth in detail the nature and scope of the review conducted, as well as the conclusions and recommendations of the Consultant. Dreyfus may apply to the Staff for an extension of whatever time period it deems appropriate, but in no event shall the review be completed and the Report submitted to Dreyfus more than 120 days from the date of the Order. Dreyfus undertakes to cooperate fully with the Consultant and undertakes to provide such person with access to its files, books, records, and personnel as reasonably requested for such person's review;
- adopt and implement, with the approval of the board of directors of each Dreyfus Fund, by no later than 90 days after receipt of the Report, such policies and procedures and practices recommended by the Consultant which Dreyfus reasonably determines do not constitute an undue burden on Dreyfus, provided, however, that as to any of the Consultant's

recommendations that Dreyfus determines are unduly burdensome or impractical, Dreyfus may suggest an alternative procedure designed to obtain the same objective, submitted in writing to the Consultant and to the Staff. The Consultant shall reasonably evaluate Dreyfus's alternative procedure and approve the alternative if it is not unreasonable. Dreyfus, with the approval of each board of directors of the Dreyfus Funds, shall abide by the Consultant's determination with regard thereto and adopt those recommendations. Dreyfus shall set forth in an affidavit submitted to the Staff a certification that such alternative procedure(s) has been approved by each board of directors of the Dreyfus Funds;

- authorize and direct the Consultant to provide a copy of the Report to the Staff within 10 days after its submission to Dreyfus. Dreyfus shall, within 60 days of delivery of the Report to the Staff, submit to the Staff an affidavit setting forth the details of its implementation of the recommendations contained in the Report;
- require the Consultant to enter into an agreement, providing that: (a) for the period of engagement and for a period of two years from the completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Schonberg or Dreyfus or any of Dreyfus's present or former affiliates, directors, officers, employees, or agents acting in their capacity as such; and (b) any firm with which the Consultant is affiliated or of which either is a member, and any person engaged to assist the Consultant in performance of their duties under this Order shall not, without prior written consent of the Staff, enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Schonberg or Dreyfus, or any of Dreyfus's present or former affiliates, directors, officers, employees, or agents in their capacity as such for the period of the engagement and for a period of two years after the engagement; and
- disclose to each member of each board of directors of the Dreyfus Funds the terms of this Order by delivering to each such member a copy of this Order within 30 days of entry of this Order.

By the Commission.

Jonathan G. Katz  
Secretary

### **Footnotes**

1 All net asset figures in this Order are approximate.

2 Starting in August 1995, Schonberg also managed another preexisting fund, the Dreyfus Large Company Growth Fund, which then had \$10 million in net assets. This fund focused on investments in companies with greater than \$900 million in market capitalization, which made it ineligible to participate in many IPOs. Because of this difference from the other funds Schonberg managed, it is not included within the meaning of "Funds" as defined in this Order.

3 Dreyfus's records from 1996 show that, in anticipation of IPOs, Schonberg often initially indicated to the Dreyfus trading desk that he was interested in purchasing IPO shares for other Funds as well as DAG.

4 This and similar percentages in this Order are approximate, due to rounding.

5 Of the 97 IPOs in which DAG participated, Schonberg allocated IPO shares only to DAG, and not to any of the other Funds, in 72 IPOs, or 66 percent of the 109 IPOs.



6 These 32 IPOs, a subset of the total 109 IPOs, were those in which the actual overall Dreyfus allotment of shares from the underwriting syndicate was, at most, 10 percent of the total number of shares Dreyfus requested. Schonberg usually knew at the time of his allocations whether the underwriters had allotted to Dreyfus a small number of IPO shares relative to the total number of shares Dreyfus had requested. Schonberg also often learned about an IPO's oversubscription from information supplied by the underwriters to the Dreyfus trading desk before the offering date, which the trading desk frequently noted in writing and made available to interested portfolio managers, including Schonberg.

7 Of the 28 very oversubscribed or "hot" IPOs in which DAG participated, Schonberg allocated IPO shares only to DAG, and not to any of the other Funds, in 27 IPOs, or 84 percent of the 32 hot IPOs.

8 The "first day return" from an IPO is the change, expressed as a percentage, between the offering price and the closing price on the first trading day or between the offering price and the sales price if the security is sold during the first trading day. During DAG's first fiscal year, Schonberg did not sell during the first trading day any of the securities he purchased in IPOs.

9 Empirical research indicates that, on average, first day returns for IPOs historically have approximated 13 percent. See Smith, *Investment Banking and the Capital Acquisition Process*, 15 J. Fin. Econ. 3 (1986)(over 15 percent during period reviewed); Ritter, *The Long-Run Performance of Initial Public Offerings*, 46 J. Fin. 3 (Mar. 1991)(14.3 percent); Kirgman, et al., *The Persistence of IPO Mispricing and the Predictive Power of Flipping*, 54 J. Fin. 1015 (June 1999)(12.3 percent); Aggarwal, *Stabilization Activities by Underwriters after Initial Public Offerings*, J. Fin. (forthcoming)(16.2 percent).

10 The daily return for a fund equals the weighted average of the returns from all the assets in the fund, and includes the first day return from an IPO on the day when the fund invested in an IPO, whether or not the securities purchased in the IPO are held or promptly sold. Total return as of any particular date equals the daily returns cumulated through that date. Thus, the first day returns from IPOs are a component of the total return of a fund that invests in IPOs, and they can be the predominant component, especially when a fund's net asset size is small.

11 DAG's return remained negative for every three month period concluding at the end of each of the remaining months of 1996, as follows: September 30, 1996 (negative 7.71 percent); October 31, 1996 (negative 7.79 percent); November 29, 1996 (negative 16.25 percent); December 31, 1996 (negative 13.37 percent).

12 DAG's net assets as of June 30, 1996, were \$128,940,000, and as of July 31, 1996, they were \$106,454,000.

13 Schonberg had purchased five of these securities in private placements between November 1991 and February 1995. He purchased two of these securities in open market transactions between October 1992 and December 1994. These purchases did not involve IPOs.

14 Schonberg purchased one of these securities in a private placement in December 1995, and the other in an open market transaction in February 1998. These purchases did not involve IPOs.

15 Information that a Dreyfus portfolio manager was personally holding securities while engaging in transactions in the same securities on behalf of funds he managed did not normally come to the attention of Dreyfus's chief compliance officer in connection with either Dreyfus's preclearance procedures or its requirement that portfolio managers submit an annual report of securities holdings.

16 Although the Autumn Ads complied with Rule 482 of Regulation C (17 C.F.R. § 230.482), such advertisements are subject to the general antifraud provisions of the federal securities laws and must not be false and misleading.

17 In applying the term "willful" in Commission administrative proceedings instituted pursuant to Sections 15(b), 15B, 15C, 17A and 19(h) of the Exchange Act, Section 9(b) of the Investment Company Act, and Sections 203(e) and (f) of the Advisers Act, the Commission evaluates on a case-by-case basis whether the respondent knew or reasonably should have known under the particular facts and circumstances that his conduct was improper. In this case, as in all Commission administrative proceedings charging a willful violation under these statutory provisions, the Commission applies this standard to persons -- specifically, securities industry professionals -- who are directly subject to Commission jurisdiction and who have a responsibility to understand their duties to the investing public and to comply with the applicable rules and regulations which govern their behavior.

18 Section 206(2) of the Advisers Act does not require a showing of scienter. *Capital Gains Research Bureau*, 375 U.S. at 192.

19 Section 17(a)(3) of the Securities Act does not require a showing of scienter. *Aaron v. SEC*, 446 U.S. 680, 697 (1980).

20 The Commission's recent amendments to Rule 17j-1 redesignated former Rule 17j-1(b) as Rule 17j-1(c) without changing the substance of this provision. See *Investment Company Act Release No. 23958* (Aug. 20, 1999).

21 See footnote 17 above.