

**MEMO# 3197**

October 17, 1991

## **COURT HOLDS SHAREHOLDER OF SERIES FUND CAN BRING SECTION 36(B) SUIT WITH RESPECT TO DIFFERENT SERIES**

October 17, 1991 TO: SEC RULES MEMBERS NO. 50-91 RE: COURT HOLDS SHAREHOLDER OF SERIES FUND CAN BRING SECTION 36(b) SUIT WITH RESPECT TO DIFFERENT SERIES

The U.S. District Court for the Western District of Missouri has held that an individual who was a shareholder of one fund that is part of a series investment company has standing to bring a suit for excessive fees with respect to a different series of the same investment company. The plaintiff in the case, *Batra v. Investors Research Corporation*, owned shares in a single fund of a series investment company that comprised twelve different funds when he initiated the lawsuit. Subsequently, the plaintiff exchanged his shares for shares of another series. The defendants argued that the plaintiff could not assert a Section 36(b) claim with respect to any series other than the series in which he held shares at the time the suit was filed (i.e., the first series). They also argued that, since the plaintiff had exchanged out of that series, he could no longer assert a claim with respect to it, on the grounds that a plaintiff must remain a shareholder throughout the litigation. In denying the defendants' motion for summary judgment, the District Court found for the plaintiff on both issues. First, the court held that the plaintiff's standing to bring a Section 36(b) suit was not limited to the series in which he held shares. The court stated that Section 36(b) allows a securityholder of a "registered investment company" to file suit on behalf of "such company" and that since the entire investment company, and not the individual series, is registered under Section 8 of the Investment Company Act, the plaintiff had standing with respect to the entire company. On the second point, the court rejected the defendants' argument that the plaintiff was required to remain a shareholder for the duration of the litigation, since he retained a financial interest in the outcome of the litigation through his ownership of shares in the series into which he had exchanged. In this regard, the court noted that there was a single management agreement between the adviser and the entire investment company. The management fee was based on the aggregate assets of all series of the investment company. A copy of the court's decision is attached. Craig S. Tyle Deputy General Counsel Attachment

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