

MEMO# 4485

February 5, 1993

PLAINTIFF VOLUNTARILY DISMISSES SECTION 36(B) CASE

February 5, 1993 TO: BOARD OF GOVERNORS NO. 10-93 SEC RULES MEMBERS NO. 17-93
RE: PLAINTIFF VOLUNTARILY DISMISSES SECTION 36(b) CASE

A mutual fund shareholder who filed a Section 36(b) lawsuit in 1989 against the investment manager to a family of mutual funds has voluntarily agreed to dismissal of the case. According to the Order of Dismissal issued by the U.S. District Court for the Western District of Missouri (a copy of which is attached), the plaintiff's counsel concluded that "the allegations contained in the various complaints filed in this action could not be proved at trial and therefore are not meritorious. . . ." (In an earlier order in this case, *Batra v. Investors Research Corporation*, the court had ruled that the plaintiff, a shareholder of one fund that was part of a series investment company, had standing to bring this suit for excessive management fees with respect to a different series, from which he had exchanged his shares prior to filing the lawsuit. (See Memorandum to SEC Rules Members No. 50-91, dated October 17, 1991.) The attached Order of Dismissal states that the defendants had provided evidence to the plaintiff pursuant to pretrial procedures "tending to establish that defendants have rendered extensive services of the highest quality to the Fund and its shareholders; that the Fund's performance has been superb; that the profitability to the defendants of managing the Fund is reasonable, not excessive, and well within the range of industry standards; that defendants do not realize significant economies of scale in managing the Fund; that defendants do not receive "fall out" benefits from managing the Fund; that the Fund's expenses are less than those of many comparable Funds in the industry; that the mutual fund industry is highly competitive; and that the "non-interested" directors of the Fund are people of the highest caliber and integrity, that they have received extensive information relevant to their annual consideration of the Fund's management agreement and were fully informed about all relevant facts bearing upon the management agreement, and that they have carefully and conscientiously performed their duties in considering and renewing the Fund's management agreement each year." In view of this evidence, the order indicates, the plaintiff concluded that if the case were tried, the court would determine that the compensation received by the defendants was "reasonable and fair in light of the surrounding circumstances" and that no Section 36(b) violation had occurred. The case was dismissed with prejudice and without costs to any party. Craig S. Tyle Vice President-Securities Attachment

should not be considered a substitute for, legal advice.