

**MEMO# 2582**

March 5, 1991

## **CLASS ACTION COMPLAINT ALLEGING OMISSION OF MATERIAL INFORMATION IN PROSPECTUS DISMISSED**

March 5, 1991 TO: SEC RULES MEMBERS NO. 17-91 RE: CLASS ACTION COMPLAINT  
ALLEGING OMISSION OF MATERIAL INFORMATION IN PROSPECTUS DISMISSED

\_\_\_\_\_ The United States District Court for the Southern District of New York recently granted summary judgment to a fund defendant and dismissed a class action complaint that alleged the fund wrongfully omitted critical information from its prospectus. The court considered whether, as a matter of law, information with respect to the tolling of the time period for assessment of the contingent deferred sales charge had to appear in the prospectus itself, or whether it was permissible for it to appear in the statement of additional information ("SAI"), as incorporated into the prospectus by reference. The court concluded that placement of this information in the SAI is consistent with the SEC's goal in promulgating Form N- 1A since this type of information is of interest to only a limited class of investors. Therefore, particularly in light of Form N-1A's instruction that responses to Part A should be as simple and direct as reasonably possible, the court had no trouble holding as a matter of law that this type of information is not a "fundamental characteristic of the Registrant" but rather the sort of "excessive detail" the SEC sought to relegate to the SAI. \* \* \* A copy of the court's memorandum opinion and order is attached. Patricia Louie Assistant General Counsel Attachment

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