

MEMO# 1229

June 20, 1989

COURT DISMISSES EXCESSIVE FEE CLAIM IN MEYER CASE

June 20, 1989 TO: SEC RULES MEMBERS NO. 30-89 RE: COURT DISMISSES EXCESSIVE FEE CLAIM IN MEYER CASE _____ The United States District Court for the Southern District of New York has dismissed the complaint of the plaintiff in Meyer v. Oppenheimer Management Corp., in which the plaintiff, a fund shareholder, had alleged a breach of fiduciary duty due to excessive fees under Section 36(b) of the 1940 Act. The court previously had held that both the advisory fees charged the fund and 12b-1 payments made by the fund were fair. The remaining issue to be decided by the court was whether the aggregate of the advisory fees and 12b-1 payments was nevertheless excessive. The court stated that where both payments had been found to be fair separately, "aggregation is not a necessary or appropriate consideration", especially where the 12b-1 payments had been found to be less than the services rendered. However, the court noted that there have been decisions to the contrary. Accordingly, it applied the Gartenberg test to the combined payments and found that the plaintiff had failed to show that such payments could not have been the result of arms-length bargaining. The court also noted that the profitability of the advisory and distribution services for the years in question was less than that approved in the Schuyt and Gartenberg cases. A copy of the court's opinion is attached. The decision in Meyer represents the second case in recent weeks to apply the Gartenberg standard in rejecting a shareholder's claim under Section 36(b). As we previously informed you, the Court of Appeals for the Second Circuit applied the same test in affirming the dismissal of the plaintiff's claims in Krinsk v. Fund Asset Management, Inc. (See Memorandum to SEC Rules Members No. 29-89, dated June 12, 1989). Craig S. Tyle Assistant General Counsel

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