

**MEMO# 9138**

August 7, 1997

## **COURT DISMISSES CLAIM AGAINST FUND REGARDING A LOST DIVIDEND CHECK**

\* Robert N. Shamansky v. Massachusetts Financial Services Co., et al., Case No. 96CVH12-9373. [9138] August 7, 1997 TO: COMPLIANCE ADVISORY COMMITTEE No. 22-97 SEC RULES MEMBERS No. 57-97 ABANDONED PROPERTY TASK FORCE RE: COURT DISMISSES CLAIM AGAINST FUND REGARDING A LOST DIVIDEND CHECK

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Common Pleas Court recently dismissed a class action suit against a fund, its adviser and affiliated service center alleging that they had breached their duty regarding a lost dividend check.\* A copy of the courts order is attached. According to the order, in October 1989, the fund sent the plaintiff a dividend check in the amount of \$65.58. The check was mailed, but apparently never received by the plaintiff. In March 1995, the funds service center sent a letter to the shareholder regarding the dividend check, prior to escheating the unclaimed funds to the state. The plaintiff then requested that the defendants issue him a new check and pay him interest for the period between 1989 and 1995. The defendants issued him a new check but did not pay interest. The shareholder alleged in his complaint that the defendants breached a duty they owed him by not following up when the check was not timely delivered, and that by not doing so the defendants kept and used moneys that belonged to the plaintiff and other similarly situated shareholders. In granting the defendants motion to dismiss, the court found that the defendants only had a duty to exercise reasonable care in getting the payment to the plaintiff, and that the plaintiff did not allege that the defendants failed to exercise ordinary care in mailing the check. In addition, the court found that the funds prospectus included disclosure stating that the fund assumes no responsibility for tracking down uncashed checks and determining if they are uncashed because of an unreported address change or because of some other reason. Specifically, the funds prospectus stated: If a shareholder has elected to receive dividends and/or capital gain distributions in cash and the postal or other delivery service is unable to deliver checks to the shareholders address of record, such shareholders distribution option will automatically be converted to having all dividend and other distributions reinvested in additional shares...No interest will accrue on amounts represented by uncashed distribution or redemption checks (emphasis added). Amy B.R. Lancellotta Associate Counsel Attachment (in .pdf format) Note: Not all recipients of this memo will receive an attachment. If you wish to obtain a copy of the attachment referred to in this memo, please call the Institute's Information Resource Center at (202)326-8304, and ask for this memo's attachment number: 9138.

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