

MEMO# 972

February 10, 1989

SEC AND CFTC RELEASES REGARDING DISCLOSURE BY ISSUERS AND OPERATORS OF COMMODITY POOLS

- 1 - February 10, 1989 TO: SEC RULES MEMBERS NO. 11-89 OPTIONS AND FUTURES TASK FORCE NO. 1-89 RE: SEC AND CFTC RELEASES REGARDING DISCLOSURE BY ISSUERS AND OPERATORS OF COMMODITY POOLS

The SEC and CFTC have issued simultaneous releases regarding the disclosure requirements applicable to commodity pool operators ("CPOs") under the Commodity Exchange Act, the Securities Act of 1933 and the Securities Exchange Act of 1934. As you may know, investment companies investing in commodities which do not meet the conditions for exemption set forth in CFTC Rule 4.5 must register with the CFTC as CPOs. (See Institute Memorandum to SEC Rules Members No. 25-85 and Options and Futures Task Force, dated April 24, 1985). Disclosure documents for commodity pools required to be registered with both the CFTC and the SEC must comply with the requirements of both the federal securities and commodity laws. The attached releases set forth the views of the SEC and the CFTC regarding the disclosures considered appropriate in commodity pool disclosure documents describing the past performance and fees, commissions and expenses of commodity pools. In addition, the releases request comments on a variety of performance and expense reporting issues. Specifically, comments have been requested with respect to (1) whether the length of period covered by performance tables should be increased from three years to some longer period; (2) whether performance records should be kept on a monthly rather than a quarterly basis; (3) whether modifications should be made to the presentation of composite performance and other performance data; (4) the feasibility of requiring that rates of return be computed by dividing net performance by average daily equity rather than by beginning net asset value; and (5) the manner in which disclosure of fees, commissions and expenses should be made. Commentators are invited to address any other disclosure modifications that might be warranted. The comments on these releases must be submitted by April 7, 1989. Since the SEC and CFTC seek to maintain consistent, - 2 - coordinated requirements for publicly offered commodity pools, the releases note that commentators may wish to make the same submissions to both agencies. We will keep you informed of developments. Keith D. Lawson
Assistant General Counsel Attachment - 1 -