

**MEMO# 5910**

May 23, 1994

## **RECEIVER APPOINTED TO ADMINISTER MUTUAL FUND**

May 23, 1994 TO: COMPLIANCE COMMITTEE NO. 10-94 SEC RULES MEMBERS NO. 38-94 RE: RECEIVER APPOINTED TO ADMINISTER MUTUAL FUND

The U.S. District Court for the Southern District of Florida granted the Securities and Exchange Commission's motion for, among other things, the appointment of a receiver to take custody of the assets of a mutual fund and to take prompt action regarding the future of the fund. The court also enjoined the fund from effecting offers, sales or redemptions of fund shares. The Commission alleged in its complaint that at the December 29, 1993 board meeting, the investment advisory agreement was terminated and all but two members of the board had resigned. In addition, the president, the secretary/treasurer, fund counsel and the fund's underwriter had resigned. These resignations and the floundering status of the fund were not disclosed to shareholders. As a result, the fund's transfer agent ceased honoring further sales until the fund's prospectus was updated to make such disclosure. On April 1, 1994, one of the two board members resigned. Under the fund's by-laws, the fund's board must have at least two members and, thus, did not have a functioning board. In addition, the Commission alleged that as a result of the fund's deadlocked board, the fund did not hire auditors to audit the fund's financial statements for the fiscal year ended December 31, 1993 until February 18, 1994, which resulted in the fund missing its 60 day financial and shareholder reporting deadlines under the Investment Company Act of 1940. Finally, the Commission alleged that the fund was delinquent in its filings with the Commission and had failed to make the required disclosures to shareholders as required by the Securities Act of 1933 and the Investment Company Act. A copy of the Commission's complaint and the court's order is attached. Amy B.R. Lancellotta Associate Counsel Attachments