

MEMO# 1592

December 13, 1989

INVESTMENT ADVISER TO A FUND AND ITS PRESIDENT SANCTIONED FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

December 13, 1989 TO: SEC RULES MEMBERS NO. 69-89 INVESTMENT ADVISER MEMBERS NO. 60-89 RE: INVESTMENT ADVISER TO A FUND AND ITS PRESIDENT SANCTIONED FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

_____ An investment adviser to a fund and the president of the adviser, who is also an officer and director of the fund (the "president"), were sanctioned for violating provisions of the Securities Act of 1933 (the "1933 Act"), the Securities Exchange Act of 1934 (the "1934 Act") and the Investment Company Act of 1940 (the "1940 Act"). Attached is the SEC's Findings and Order Imposing Remedial Sanctions. The adviser and the president were found to have violated Section 17(a) of the 1933 Act, Section 10(b) of the 1934 Act and Rule 10b-5 thereunder, the general antifraud provisions under these Acts. The SEC found that the fund's prospectuses and statements of additional information ("SAIs") included false and/or misleading statements with respect to: (1) the composition of the board of directors with respect to the percentage of directors that were not "interested persons," as defined under the 1940 Act and (2) whether any persons owned more than 5% of the shares of the fund. In addition, it was found that the adviser and the president had engaged in practices not in accordance with the disclosures made in the fund's prospectuses and SAIs concerning the frequency of calculating the net asset value of the fund's shares, the method of calculating advisory fees and the method and timing of redemptions of the fund's shares. The SEC also found that the adviser and the president had violated provisions of the 1940 Act including: (1) Section 10(a) governing the composition of the board of directors; (2) Section 17(j) and Rule 17j-1(b)(1) thereunder, requiring the fund to file securities transaction reports by employees and affiliated persons of the fund; (3) Section 17(g) and Rule 17g-1(a) and (d) thereunder, requiring the fund to provide and maintain a fidelity bond; (4) Section 22(c) and Rule 22c-1(a) thereunder, requiring sales, redemptions and repurchases to be made at the net asset value next computed after receipt of the request; (5) Section 22(e) concerning the date of payment for redemptions of shares of the fund; (6) Section 17(f) and Rule 17f-1(b)(1) thereunder, concerning the custody requirements of the fund's securities; and (7) Section 31(a) and Rule 31a-1 thereunder, regarding the books and records of the fund. The sanctions imposed against the adviser prohibit it from acting as an investment adviser to any registered investment company for a period of 18 months, except under the circumstances outlined in the Order. In addition, the adviser is required to employ an independent consultant to review and report upon the adviser's internal controls, policies,

practices and procedures designed to achieve compliance under the applicable federal securities laws. The SEC's Order prohibits the president from acting as an officer or director of any registered investment company for a period of 18 months, except under the circumstances set forth in the Order. Finally, the adviser and the president agreed to comply with several undertakings, including distributing to shareholders a summary of the SEC administrative proceedings and the Findings and Order Imposing Remedial Sanctions issued by the SEC. Amy B. Rosenblum Assistant General Counsel Attachment

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