

MEMO# 1729

February 21, 1990

SEC PROPOSES REVISIONS TO ENFORCEMENT LEGISLATION; THE "SMALL INVESTOR PROTECTION ACT OF 1990"

February 21, 1990 TO: CLOSED-END FUND COMMITTEE NO. 7-90 SEC RULES COMMITTEE NO. 12-90 RE: SEC PROPOSES REVISIONS TO ENFORCEMENT LEGISLATION; THE "SMALL INVESTOR PROTECTION ACT OF 1990"

Set forth below are brief descriptions of (1) the SEC's proposed revised version of S. 647, the "Securities Law Enforcement Remedies Act of 1989" and (2) S. 2057, the "Small Investor Protection Act of 1990." A copy of each bill is attached. SECURITIES LAW ENFORCEMENT REMEDIES ACT In recent testimony before the Subcommittee on Securities of the Senate Committee on Banking, Housing, and Urban Affairs, SEC Chairman Richard Breeden recommended various changes to S. 647, the Securities Law Enforcement Remedies Act of 1989. As originally submitted, S. 647 would allow the SEC to impose civil monetary penalties through administrative proceedings and to seek such penalties in civil actions. In addition, the original bill would authorize the SEC and federal courts to bar violators of the securities laws from serving as officers or directors of reporting companies. On February 9, 1990, the SEC submitted to the Subcommittee a revised version of the bill incorporating those proposed changes. The most significant feature of the new proposal is its inclusion, for the first time, of cease-and-desist authority for the SEC. In addition, the new version of the legislation, in contrast to the existing proposal, would (1) expressly authorize the SEC to order disgorgement of illegal profits in both administrative proceedings and cease-and-desist proceedings, (2) delete the provisions of the earlier bill for director and officer bars through SEC administrative proceedings and limit a court's authority to bar directors or officers to cases involving scienter-based fraud, and (3) amend the Federal Criminal Code to require disclosure to the SEC of certain grand jury information. SMALL INVESTOR PROTECTION ACT OF 1990 The Small Investor Protection Act of 1990, introduced by Senator Bryan, is intended to address abuses in the penny stock market. It is our understanding that this bill may be offered as an amendment to S. 647. The bill would authorize the SEC under Section 12(a) of the Securities Exchange Act of 1934 to deny registration to a security if "80 percent or more of the net offering proceeds, as defined by the Commission, is not specifically allocated for the purchase, construction, or development of identified property or products, for the payment of indebtedness, or for other activities set forth in the issuer's business plan." The bill also would prohibit brokers and dealers from using any instrumentality of interstate commerce to effect transactions in such securities. Other provisions of the proposed legislation would impose disclosure obligations on registered

brokers and dealers, including requirements to (1) send monthly account statements to customers for any month in which a transaction occurs, (2) disclose, before opening a new account, any disciplinary action taken within the last 5 years for securities law violations and (3) disclose, before accepting a buy order, any "business relationship" with the issuer of the security. Finally, the bill contains certain of the enforcement provisions proposed by the SEC to be included in S.647. If you have any comments or questions regarding the above- described bills, please contact the undersigned. We will keep you informed of developments. Frances M. Stadler Assistant General Counsel Attachments

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