

**MEMO# 3012**

August 14, 1991

## **SEC REVOKES REGISTRATION OF ADVISER TO CLOSED-END FUND AND SANCTIONS THE ADVISER'S PRESIDENT**

August 14, 1991 TO: CLOSED-END FUND MEMBERS NO. 36-91 INVESTMENT ADVISER MEMBERS NO. 33-91 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 32-91 RE: SEC REVOKES REGISTRATION OF ADVISER TO CLOSED-END FUND AND SANCTIONS THE ADVISER'S PRESIDENT \_\_\_\_\_ The SEC recently revoked the registration of an investment adviser to a closed-end fund (the "Adviser") and imposed remedial sanctions against the Adviser's president and sole shareholder (the "President"), who was also the president, treasurer and a director of the fund, for violations of the federal securities laws. A copy of the SEC's Order is attached. The SEC found that the President had caused the fund to make material misrepresentations in its registration statement, prospectus and advertising by stating that (1) the fund's investment objective was to achieve capital appreciation by "exclusively" investing in equity securities that comprise a fixed portfolio of 80 issues of common stock, when he intended to invest, and had invested since the fund's inception, solely in treasury bills and cash or cash equivalents; and (2) the fund's distributions would be tax-advantaged when such distributions, to the extent they reflected return of capital, would simply reflect a return of the shareholder's own money, which is a tax neutral event and, to the extent they reflected income on invested capital, would enjoy no tax benefits. The SEC also found that the Adviser and President had violated provisions of the Advisers Act governing advertisements by investment advisers by (1) failing to disclose prominently limitations in the President's investment formula; (2) failing to disclose that performance results did not reflect the effect of the deduction of advisory fees, brokerage or other commissions, and any other expenses that a client would have paid; (3) suggesting the potential for profits from application of the Adviser's and President's investment formula without disclosing the possibility of loss; (4) failing to disclose whether and to what extent the results portrayed reflect the reinvestment of dividends and other earnings; and (5) failing to disclose prominently the limitations inherent in model results, particularly the fact that such results do not represent actual trading and that they may not reflect the impact that material economic and market factors might have on the Adviser's decision-making if the Adviser were actually managing clients' money. In addition, the SEC found that the Adviser and President violated a number of provisions of the Investment Company Act, including serving as investment adviser to the fund without a written contract that was properly approved and renewed under Section 15 and selling shares of the fund below net asset value in violation of Section 23(b). Amy B.R. Lancellotta Assistant General Counsel Attachment

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