

MEMO# 2241

October 3, 1990

COURT HOLDS THAT ADVISER MAY BE LIABLE FOR CHURNING

October 3, 1990 TO: INVESTMENT ADVISER MEMBERS NO. 48-90 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 43-90 RE: COURT HOLDS THAT ADVISER MAY BE LIABLE FOR CHURNING _____ Attached is a decision by the U.S. District Court for the Southern District of New York refusing to dismiss a churning claim brought against an investment adviser. The court stated that even though the adviser did not receive commissions from the broker who executed the trades, the plaintiff demonstrated that the adviser did receive indirect benefits due to the volume he generated such as reduced commission rates for the adviser's own account and access to the broker's VIP lounge. The court dismissed a claim against the broker for secondary liability under an agency theory, but did not dismiss a controlling person claim or an aiding and abetting claim against the broker. We will keep you informed of developments. Amy B. Rosenblum Assistant General Counsel Attachment

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