

MEMO# 2944

July 17, 1991

APPEALS COURT RULES THAT CLOSED-END FUND PROSPECTUS WAS NOT MATERIALLY MISLEADING

July 17, 1991 TO: CLOSED-END FUND MEMBERS NO. 30-91 RE: APPEALS COURT RULES THAT CLOSED-END FUND PROSPECTUS WAS NOT MATERIALLY MISLEADING

The U.S. Court of Appeals for the Second Circuit, affirming the lower court's decision to dismiss the securities fraud claims brought against a closed-end fund, concluded that the statement in the prospectus that shares of closed-end investment companies "frequently trade at a discount from or premium to their net asset values" was not materially misleading. The plaintiff in this case claimed that the statement was misleading because it suggested that shares were as likely to trade at a premium as at a discount when, in fact, shares of closed-end funds "usually and typically sell at discounts" from their net asset value, and not frequently at premiums. However, the appeals court concluded that, "read in context, [the statement] could not mislead any reasonable investor into believing that the Fund was predicting a bright trading future for its shares." In fact, the court found that the language was "remarkably direct." Moreover, the court stated that "evaluated against the facts about market performance of closed-end fund shares alleged in the complaint, the language...is literally true." The court further noted that the plaintiff "must strain to the breaking point the language 'shares trade at a discount or a premium' in order to present his argument that the Fund has actually communicated the message to investors that such shares 'are just as likely to trade at a premium as at a discount'." A copy of the court's decision is attached. Amy B.R. Lancellotta
Assistant General Counsel Attachment

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