STATE OF NEW YORK DEPARTMENT OF LAW

OFFICE OF ATTORNEY GENERAL ROBERT ABRAMS

MEMORANDUM

TO: REF Attorneys and Legal Assistants

DATE 2/25/86

FROM: Mary Sabatini DiStephan/Nancy Kramer MSD

RE: Changes in Subscription or Purchase Agreements after Execution

---

We sometimes find ambiguous language in offering plans which purports to give the sponsor the right to alter material terms (such as price) in already executed subscription or purchase agreements. Sponsors have taken the position that the price change language included in most offering plans in conformity with our regulation ("prices may change by duly filed amendment...") gives them the right if they raise the prices to charge a purchaser who contracted for the sale prior to such amendment, the higher price.

To allow such retroactive changes can subvert the full and fair disclosure of material terms requirement of the statute and our regulations. It would also make all offers binding on the purchaser but subject to change at sponsor's whim.

MSD/NK/bw