

MEMO# 1709

February 7, 1990

COMPTROLLER PROPOSES REMOVING RESTRICTIONS ON BANK COMMON TRUST FUNDS

February 7, 1990 TO: BOARD OF GOVERNORS NO. 11-90 SEC RULES COMMITTEE NO. 11-90
RE: COMPTROLLER PROPOSES REMOVING RESTRICTIONS ON BANK COMMON TRUST FUNDS

The Office of the Comptroller of the Currency has proposed amendments to its regulations governing common trust funds managed by national banks. The proposed amendments would eliminate current restrictions on advertising of common trust funds. The proposed amendments also would remove other restrictions on common trust funds. The Comptroller had sought comment on proposed amendments to its common trust fund regulations in 1982, but suspended consideration of them in 1984, as a result of the Institute's legal challenge to its approval of national bank collective IRA funds. The Office of the Comptroller subsequently announced its intent, in light of the "favorable resolution" of those cases (which held that the operation of such funds by national banks did not violate the Glass-Steagall Act), to remove advertising and other restrictions on bank common trust funds. In proposing the removal of the prohibition on advertising, the Comptroller states that banks and trust companies manage significant amounts of trust assets and that the proposal would "increase the quantity and quality of financial information available". The Comptroller also states that the Glass-Steagall Act does not require restrictions on advertising and claims that a bank offering fiduciary services otherwise permissible under state and federal law "may advertise such service without restriction and without violating the Glass-Steagall Act." The Comptroller notes that the SEC has taken the position that the promotion or advertising of a common trust fund "seriously jeopardizes" its ability to meet the exemptions for such funds under the Securities Act and the Investment Company Act. However, the Comptroller states that the SEC's criteria "need not be employed to determine whether the trust activity is permissible." The proposal also would codify the court decisions with respect to collective IRA funds by expressly authorizing the establishment of funds for the investment of assets of IRAs, Keogh or H.R. 10 Accounts, or other tax-deferred retirement accounts under Sections 401 and 408 of the Internal Revenue Code. Such funds that are registered under the Investment Company Act would be exempt from the Comptroller's regulations concerning exclusive management and audit requirements, which conflict with corresponding requirements under the Investment Company Act. The proposal also would, among other things, (1) eliminate the requirement for prior specific approval of common trust funds by a bank's board of directors and the requirement to file fund plans with the OCC, (2) broaden the authority to establish "closed end" common trust funds, (3) eliminate limitations on charging fees and expenses to a collective investment fund and (4) eliminate certain investment restrictions. Comments on the proposal are due 90 days after

publication in the Federal Register. We will keep you informed of developments. Craig S. Tyle Associate General Counsel

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