

MEMO# 2849

June 19, 1991

INSTITUTE STATEMENT ON TAX ISSUES IN FINANCIAL SERVICES REFORM

June 19, 1991 TO: BOARD OF GOVERNORS NO. 43-91 TAX COMMITTEE NO. 17-91 RE:
INSTITUTE STATEMENT ON TAX ISSUES IN FINANCIAL SERVICES REFORM

Recently, the House Ways and Means Committee held a hearing on tax aspects of legislation to modernize the financial services industry. One of the provisions of this legislation would amend section 3(c)(3) of the Investment Company Act of 1940 (the "Act") to require bank common trust funds to register under the Act unless they meet three conditions, including a prohibition on advertising, that are designed to ensure that common trust funds exempt from the Act are used exclusively to assist banks in the administration of their fiduciary accounts and not as investment vehicles for the public. The legislation would also direct a study regarding the appropriate securities law treatment of bank collective investment funds. In the attached statement submitted to the Ways and Means Committee, the Institute urges clarification that the tax law treatment applicable to bank common trust and collective investment funds mirrors the treatment of such funds under banking and securities laws. Thus, to the extent that a bank common trust fund remained exempt from the Act, as amended by the legislation, such fund would remain eligible for pass-through tax treatment under section 584 of the Internal Revenue Code, which provides such treatment for bank common trust funds. However, in the case of a common trust fund required to register under the Act, such fund should be ineligible for taxation under section 584 and should qualify for pass-through tax treatment only under the Subchapter M rules applicable to investment companies. Similarly, a bank collective investment fund required to register under the Act should be free from an entity-level tax only if it complies with Subchapter M. We will keep you informed of developments regarding this legislation. Keith D. Lawson Associate Counsel - Tax Attachment