

MEMO# 6157

August 22, 1994

SEC NO-ACTION LETTER CONCERNING COMMON TRUST FUND CONVERSION

August 22, 1994 TO: BANK INVESTMENT MANAGEMENT MEMBERS NO. 27-94
INSTITUTIONAL FUNDS COMMITTEE NO. 13-94 SEC RULES COMMITTEE NO. 97-94 RE: SEC
NO-ACTION LETTER CONCERNING COMMON TRUST FUND CONVERSION

The Division of Investment Management recently issued the attached no-action letter under Section 17(a) of the Investment Company Act permitting a bank, acting as fiduciary of common trust funds and collective investment funds (together, "Common Trusts"), to engage in certain securities transactions with mutual funds for which it serves as investment adviser. The funds requested no-action assurance with respect to the sale of the assets of the Common Trusts to the mutual funds in exchange for fund shares. The funds stated that (a) except for the requirement that the transaction be a purchase or sale for cash, each transaction would comply with Rule 17a-7 under the Investment Company Act, (b) no fund affiliate (and no affiliate of an affiliate) would have a beneficial interest in the Common Trust involved in the transaction with the fund, (c) the transactions would be consistent with the funds' investment objectives and policies, and (d) the transactions generally would not involve payment of any brokerage commission or other remuneration. Unlike a previous no-action letter, the staff's position was not conditioned upon a representation that the bank would pass through voting powers with respect to shares held by a fiduciary account (or vote those shares in the same proportion as shares held by all other fund shareholders). (See Memorandum to Bank Investment Management Members No. 9-92; Institutional Funds Committee No. 28-92; SEC Rules Committee No. 86-92, dated November 9, 1992.) In this regard, the staff stated, "While we remain concerned about potential conflicts of interest when an adviser can control the voting of fund shares, we have reconsidered our position. Because the proposed transaction itself does not require the adviser to vote fund shares, we have not conditioned . . . no- action relief on this type of undertaking, and will not do so in response to future requests for substantially similar relief." Thomas M. Selman Assistant Counsel Attachment