

MEMO# 2339

November 20, 1990

RECENT OCC LETTERS ON ACCEPTANCE OF BENEFITS

-1- November 20, 1990 TO: INSTITUTIONAL FUNDS COMMITTEE NO. 5-90 RE: RECENT OCC LETTERS ON ACCEPTANCE OF BENEFITS

Attached are three interpretive letters recently issued by the Office of the Comptroller of the Currency concerning acceptance of benefits by bank trust departments. Interpretive Letter No. 519 (January 12, 1990) addressed the granting of credits by a fund sponsor to customers, including national banks, for the investment of custodial funds. No credits would be available for the investment of fiduciary assets. The OCC staff stated, however, that a conflict may still exist because the bank may be tempted to invest discretionary fiduciary assets in order to provide the minimum investment necessary to warrant establishment of the fund (i.e., to "seed" the fund) or to maintain a contractual relationship with the fund sponsor. The staff stated that the conflict was not cured by prospectus disclosure. Interpretive Letter No. 520 (January 30, 1990) discussed the permissibility of certain activities under Banking Circular No. 233, Acceptance of Benefits by Bank Trust Departments (February 3, 1989). The letter concerned a bank trust department that leased unused computer capacity, primarily for word processing, at below-market rates. (The OCC has permitted use of free automated order entry systems by trust departments provided the availability of these systems is not dependent on the investment of trust assets in particular investments.) The letter stated that even if the leasing arrangement was not inconsistent with Banking Circular 233, it still could be violative of OCC regulations if the benefits might affect adversely the ability of the trustee to make investment decisions based exclusively on the best interest of its customers. Interpretive Letter No. 521 (January 30, 1990) also concerned the practice of providing computer hardware and software for purposes other than order entry. Although the bank represented that the availability of the service (which was provided by an investment company sponsor) was not contingent -2- upon investment of trust assets in shares of any investment company sponsored by that firm, the OCC stated that the practice created a conflict of interest. In each letter, the OCC staff stated that the practice in question was impermissible unless authorized by the underlying trust document, court order or local law. Craig S. Tyle Associate General Counsel Attachment