

MEMO# 2772

May 17, 1991

OCC INTERPRETATIONS CONCERNING ACCEPTANCE OF BENEFITS BY BANK FIDUCIARIES

May 17, 1991 TO: INSTITUTIONAL FUNDS COMMITTEE NO. 2-91 RE: OCC INTERPRETATIONS
CONCERNING ACCEPTANCE OF BENEFITS BY BANK FIDUCIARIES

As you may recall, several members of the Institutional Funds Committee had submitted to the Office of the Comptroller of the Currency a request that it reconsider several interpretations it had issued concerning the acceptance of benefits by bank fiduciaries from mutual fund sponsors. The project was begun prior to the formation of the Committee. At subsequent meetings of the Committee, it was decided that the project should not be pursued, out of concerns that it might conflict with the Institute's efforts in opposition to the OCC's proposal to permit the public offering of, and the assessment of management fees upon, bank common trust funds. Although it is our understanding that informal requests were made to the OCC by the group of institutional funds to "shelve" the project, the OCC did issue a response to the submission last month. The response, a copy of which is attached, rejected the proposal contained in the submission that the transactions in question be permitted if banks established procedures to review their fairness. However, the OCC's response did endorse the idea of banks establishing such procedures and noted that they may be useful in determining whether a certain transaction was permissible under local law. (The prior OCC interpretations stated that the transactions in question were prohibited unless otherwise permitted under local law, court order, or the governing instrument of the trust.) At the June 6 meeting of the Committee, we will discuss whether it would be advisable to reopen the issue of acceptance of benefits. In this regard, also attached is a memorandum from counsel to the Committee discussing the potential conflicts between that project and our common trust fund efforts. Craig S. Tyle Associate General Counsel Attachments