

MEMO# 4246

November 9, 1992

SEC NO-ACTION LETTER CONCERNING TRANSACTIONS BETWEEN FIDUCIARY ACCOUNTS AND MUTUAL FUND CLIENTS

November 9, 1992 TO: BANK INVESTMENT MANAGEMENT MEMBERS NO. 9-92
INSTITUTIONAL FUNDS COMMITTEE NO. 28-92 INVESTMENT ADVISER MEMBERS NO. 60-92
SEC RULES COMMITTEE NO. 86-92 RE: SEC NO-ACTION LETTER CONCERNING
TRANSACTIONS BETWEEN FIDUCIARY ACCOUNTS AND MUTUAL FUND CLIENTS

The Division of Investment Management recently issued a no- action letter in which it stated that it would not recommend an enforcement action under Section 17(a) of the Investment Company Act if a bank, acting as trustee, fiduciary, or agent of certain accounts, engages in securities transactions with its mutual fund clients. The funds requested no-action assurance with respect to the sale of portfolio securities by the funds to the fiduciary accounts for cash, and the sale of securities by the fiduciary accounts to the funds for cash or fund shares having a net asset value equal to the purchase price. The funds stated that (a) the transactions would comply substantially 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 any fiduciary account, and (c) the bank generally 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). The funds asserted that unless they were permitted to exchange fund shares for portfolio securities in the fiduciary accounts, the fiduciary account holders would have to sell their portfolio (thereby incurring brokerage commissions) in order to obtain cash to purchase fund shares, and the funds would have to buy securities from third parties (and also incur brokerage commissions) when the cash from fiduciary accounts came in. Both the funds and the fiduciary accounts thus would have to incur unnecessary transactions costs, and the fiduciary account holders would be subject to market timing risk. A copy of the funds' request and the staff's response letter is attached. Thomas M. Selman Assistant Counsel Attachment