

MEMO# 5896

May 19, 1994

OCC'S APPROVAL OF BANK ACQUISITIONS OF MUTUAL FUND ADVISERS; INSTITUTE'S COMMENT LETTER

May 19, 1994 TO: BANK INVESTMENT MANAGEMENT MEMBERS NO. 20-94 BOARD OF GOVERNORS NO. 42-94 RE: OCC'S APPROVAL OF BANK ACQUISITIONS OF MUTUAL FUND ADVISERS; INSTITUTE'S COMMENT LETTER

The Office of the Comptroller of the Currency recently issued two orders approving Mellon Bank's acquisition of The Dreyfus Corporation and First Union National Bank's acquisition of Evergreen Asset Management Corporation. The Institute had submitted a letter to the OCC commenting on the agency's notice of the banks' applications. A copy of the orders and the Institute's comment letter are attached and summarized below.

1. The Institute's Letter The Institute's letter states that the Mellon Bank application, which contained detailed commitments concerning the new mutual fund activities, suggests itself as a model that the OCC should consider in connection with future applications. (At the time, it was unclear whether First Union's application contained similar commitments.)

2. The OCC's Orders The orders include certain conditions, such as the following:

- the banks and their affiliates (the "Bank Companies") will be subject to the Interagency Statement regarding sales of nondeposit investment products when sales are made by Bank employees, by the affiliates' employees on Bank premises, or by the affiliates' employees when the Bank has referred the sale;
- no director, officer, or employee of the banks (and, under the Mellon order, no director, officer, or employee of Dreyfus) will serve as director, officer or employee of any fund advised by a Bank Company;
- the Bank Companies generally will not extend credit to a fund advised by a Bank Company;
- the advisers and their affiliates will be maintained as separate corporate entities registered as broker-dealers or investment advisers; and
- the Bank Companies will be subject to OCC examination and supervision.

In addition, the Mellon Bank order includes the following conditions:

- all persons recommending or selling mutual fund shares in Mellon Bank branches will be registered as broker-dealers, broker-dealer representatives, or investment advisers;
- if a Mellon Company is underwriting or placing any security, it will not sell the security to a fund advised by a Mellon Company;
- no Mellon Company advising a fund will recommend the purchase by the fund of securities being issued if a Mellon Company employee knows that the proceeds will be used to retire debt to a Mellon Company; and
- Mellon Bank will not make a loan for the purpose of purchasing shares of a fund advised by a Mellon Company.

The orders also state that the OCC now interprets the suitability standards in the Interagency Statement to be identical to the NASD's suitability rule. Paul Schott Stevens General Counsel Attachments

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