

MEMO# 6686

February 22, 1995

INSTITUTE LETTER TO OCC ON INCONSISTENT OR DUPLICATIVE REGULATION

February 22, 1995 TO: BANK INVESTMENT MANAGEMENT MEMBERS No. 9-95 BOARD OF GOVERNORS No. 32-95 SEC RULES COMMITTEE No. 26-95 SUBCOMMITTEE ON ADVERTISING No. 2-95 RE: INSTITUTE LETTER TO OCC ON INCONSISTENT OR DUPLICATIVE REGULATION

The attached letter and memorandum, recently sent by the Institute to the Office of the Comptroller of the Currency, reviews various bank regulatory agency requirements that conflict with or duplicate the regulation of bank mutual fund activities under the federal securities laws. The memorandum reflects the concerns expressed by the Institute's bank members, members who sell through the bank channel, and others. It covers three areas -- sales activities, mutual fund operations, and bank regulatory agency guidance.

1. Sales Activities Institute members have expressed concern about various requirements imposed on bank sales activities. For example, even when mutual fund sales material has been approved by the NASD and conforms with the bank regulatory agencies' Interagency Statement, bank examiners appear to have imposed technical, highly-detailed requirements, without offering much flexibility in the manner in which compliance is achieved. Institute members also have expressed concern that a provision of the Interagency Statement obligating a bank that has entered into a networking or affiliate relationship to monitor the broker-dealer could undermine the effectiveness of the broker-dealer's supervisory procedures. Institute members have recommended that the bank regulatory agencies only require that banks obtain a commitment from broker-dealers that they will maintain the supervisory procedures required by the securities laws.

2. Mutual Fund Operations The Institutes memorandum states that bank examiners also have become more inquisitive about the operation of bank-sold and bank-advised mutual funds, particularly about the ability of funds to meet redemptions and about the composition of fund portfolios. The Institutes letter notes that the federal securities laws already address these concerns, and the fact that a fund is advised by or sold through a bank does not warrant additional scrutiny or the adoption of specialized or more restrictive rules. In addition, concern has been expressed about the request by bank regulatory agencies that banks and their affiliates adopt detailed compliance procedures, often in reaction to specific concerns that could be better addressed in other ways.

3. Bank Regulatory Agency Guidance Institute members also have expressed concerns about the process by which the bank regulatory agencies issue regulatory pronouncements and examine banks and their affiliates. For example, members indicate bank regulatory agencies sometimes impose requirements that are so vague that they cause unnecessary confusion and inefficiency. Bank members also receive multiple and duplicative examinations of their securities

business, often within a short period of time, by different bank and securities regulators. Finally, bank regulatory agencies may significantly alter their requirements without any advance warning, causing considerable confusion and imposing unnecessary costs on bank sales activities. * * * The Institute intends to supplement its memorandum on a periodic basis as appropriate. If you have further examples of the types of concerns addressed in our submission, please provide them to me or to Tom Selman (202/326-5819). Paul Schott Stevens General Counsel Attachments

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