

MEMO# 1339

August 11, 1989

OCC INTERPRETATION CONCERNING INVESTMENT OF FIDUCIARY ACCOUNTS IN FUND ADVISED BY BANK

August 11, 1989 TO: SEC RULES MEMBERS NO. 41-89 CLOSED-END FUND MEMBERS NO. 37-89 UNIT INVESTMENT TRUST MEMBERS NO. 43-89 PENSION MEMBERS NO. 41-89 RE: OCC INTERPRETATION CONCERNING INVESTMENT OF FIDUCIARY ACCOUNTS IN FUND ADVISED BY BANK _____ The Office of the Comptroller of the Currency has issued an interpretation (Trust Interpretation No. 217, a copy of which is attached), concerning the investment of fiduciary accounts in an investment company advised by the fiduciary bank or an affiliate. The OCC found that the bank had a fiduciary duty to disclose the specific dollar amount of any advisory fees, although it noted that line item disclosure might not be required for ERISA accounts. In the transaction at issue, the bank had terminated certain common trust funds and invested the proceeds in certain "private label" mutual funds advised by a bank subsidiary. For accounts over which the bank exercised full discretion there was no prior notification. While the bank deducted the advisory fee from its trustee's fee, there was no disclosure of the advisory fee on customer account statements. In addition to finding that separate disclosure of advisory fees was required, the OCC raised other concerns, including (1) that if overall fees and expenses had increased, the bank might have engaged in self-dealing, (2) that the OCC is currently reviewing whether there are inherent conflict of interest considerations where a fiduciary bank is adviser to a mutual fund for both fiduciary and non-fiduciary investors, (3) that the deduction of the advisory fee from the trustee's fee might violate the Uniform Principal and Interest Act and (4) that the bank had a fiduciary duty to determine if the transaction could have been structured as a non-taxable event. Craig S. Tyle Assistant General Counsel Attachment