

MEMO# 6631

February 7, 1995

SEC RESPONSE TO INSTITUTE LETTER ON OCC COMMON TRUST FUND REGULATION

February 7, 1995 TO: BANK INVESTMENT MANAGEMENT MEMBERS No. 5-95 BOARD OF GOVERNORS No. 21-95 INSTITUTIONAL FUNDS COMMITTEE No. 3-95 RE: SEC RESPONSE TO INSTITUTE LETTER ON OCC COMMON TRUST FUND REGULATION

As we previously reported, the Institute recently submitted the attached letter to SEC Chairman Levitt concerning the Office of the Comptroller of the Currency's review of its Regulation 9.18 and other rules relating to the fiduciary activities of national banks. The Institute's letter expressed concern that as a result of this review process the OCC might amend its rules so that common trust funds, for the first time, could operate as mutual funds without being subject to the investor protection provisions of the federal securities laws. Chairman Levitt recently sent the attached response to the Institute's letter. In his response, Chairman Levitt stated, "The Commission views a bank's advertisement or promotion of a common trust fund (apart from the promotion of the bank's general fiduciary services) as indicating that the fund is established primarily as a vehicle for general investment by the public, and that it is therefore not exempt from registration under the federal securities laws." Chairman Levitt's letter also states that the Commission has discussed with the OCC whether it is contemplating any revision to Regulation 9.18 "that would expand a bank's ability to advertise or market common trust funds." The Commission has been told that "the OCC is not currently revisiting its common trust fund rules as they relate to advertising and has no plans to do so in the future." Chairman Levitt indicated the Commission will be in contact with the OCC periodically about its review of other rules pertaining to the operation of common trust funds. Paul Schott Stevens General Counsel Attachment

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