

MEMO# 2258

October 16, 1990

INSTITUTE TESTIMONY ON OCC COMMON TRUST FUND PROPOSAL

October 16, 1990 TO: BOARD OF GOVERNORS NO. 75-90 SEC RULES COMMITTEE NO. 56-90
RE: INSTITUTE TESTIMONY ON OCC COMMON TRUST FUND PROPOSAL

On October 4, the Institute testified before the Telecommunications and Finance Subcommittee of the House Committee on Energy and Commerce on proposed amendments to the Office of the Comptroller of the Currency's rules governing bank common trust funds. In its testimony, the Institute stated that the proposed changes, which would allow banks to publicly advertise common trust funds, would convert these funds from administrative devices into publicly offered mutual funds. The Institute also stated that, since the proposal would grant banks mutual fund powers without imposing necessary safeguards, it raises many potential abuses from an investor protection standpoint. The Institute's testimony also emphasized that allowing banks to unilaterally assess additional management fees on common trust funds would greatly increase possibilities for breaches of fiduciary duty. SEC Chairman Breeden testified that funds established by banks pursuant to the proposed increased authority would be the "functional equivalent of public investment companies" and indicated that these funds would be required to register under both the Securities Act and Investment Company Act. In addition, Chairman Breeden called for legislation to (1) require banks that conduct investment company activities to conduct these activities in separate affiliates subject to SEC regulation and (2) amend the Investment Company Act to eliminate conflicts of interest posed by bank sponsorship of investment companies. Comptroller of the Currency Clarke testified that no final decision had been reached on the proposal, although he argued that the revisions would not expand bank powers. Also testifying at the hearing were the Attorney General of Alabama, and representatives of NASAA, the Consumer Federation of America and the Community Bankers Association of Illinois (each of whom opposed the proposal) and representatives of two banking trade associations (who supported the proposal). A copy of the Institute's testimony is attached. We will keep you informed of developments. Craig S. Tyle Associate General Counsel Attachment