

MEMO# 2135

August 22, 1990

INSTITUTE SUBMITS LETTER TO SEC ON OCC "DOUBLE FEE" PROPOSAL

August 22, 1990 TO: INSTITUTIONAL FUNDS COMMITTEE NO. 4-90 RE: INSTITUTE SUBMITS
LETTER TO SEC ON OCC "DOUBLE FEE" PROPOSAL

As you may recall, one of the items included in the Comptroller of the Currency's recent proposed amendments to its regulations of bank common trust funds concerned the ability of a bank to assess a separate management fee on the assets of its common trust funds. Currently, OCC regulations permit such a fee to be assessed only if the portion of that fee charged to each participant, when added together with any other fees charged to that participant, would not exceed the total fees assessed such participant if his or her assets had not been invested in a common trust fund. The proposed amendments would remove this restriction and allow banks, in effect, to "double charge" by collecting a separate fund level fee. Attached is a copy of a letter that the Institute submitted to the Chairman of the SEC concerning the OCC's proposal on management fees. The letter urges the SEC to state, in any interpretive release it issues on the common trust fund amendments, that any common trust fund that is assessed a second fee in the above manner would be required to register under the Securities Act and the Investment Company Act. (In its comment letter to the OCC on its proposal, the SEC indicated that it would require common trust funds that advertised or included non-fiduciary accounts to register under both Acts. However, it did not address the fee issue.) The Institute's letter notes that the SEC has never considered the effects of a separate management fee on the exemptions for common trust funds under the federal securities laws, since such a fee previously has been prohibited by law. The letter states, however, that since the justification for the statutory exemptions for common trust funds is that the funds are simply administrative conveniences for pre-existing trust assets, the existence of an additional fee would demonstrate that the funds have gone beyond the scope of the exemptions. We will keep you informed of developments. Craig S. Tyle
Associate General Counsel Attachments