

MEMO# 1646

January 12, 1990

INSTITUTE AMICUS BRIEF IN BANK UNDERWRITING OF MORTGAGE-BACKED SECURITIES CASE

January 12, 1990 TO: BOARD OF GOVERNORS NO. 5-90 SEC RULES COMMITTEE NO. 3-90
RE: INSTITUTE AMICUS BRIEF IN BANK UNDERWRITING OF MORTGAGE-BACKED SECURITIES
CASE _____ The Institute has submitted
an amicus curiae brief in support of the SIA's petition for certiorari to the U.S. Supreme
Court in SIA v. Clarke. The SIA is appealing the decision of the U.S. Court of Appeals for the
Second Circuit that the sale of mortgage pass-through certificates by a national bank was a
permitted "incidental power" and not barred by the Glass-Steagall Act. Attached is a copy of
the Institute's brief. In the brief, the Institute argues that the Court of Appeals erred in
holding that any activity that is "convenient and useful" to a national bank cannot violate
the prohibitions on underwriting contained in the Glass-Steagall Act. The Institute states
that this decision, if upheld, would have the effect of sanctioning "wholesale administrative
dismantlement of the Glass-Steagall Act prohibitions". We will keep you informed of
developments. Craig S. Tyle Associate General Counsel Attachment

Copyright © by the Investment Company Institute. All rights reserved. Information may be
abridged and therefore incomplete. Communications from the Institute do not constitute, and
should not be considered a substitute for, legal advice.