

**MEMO# 6639**

February 8, 1995

## **DISMISSAL OF INSTITUTE CASE CONCERNING INDEXED CDS**

February 8, 1995 TO: BANK INVESTMENT MANAGEMENT MEMBERS No. 6-95 BOARD OF GOVERNORS No. 22-95 RE: DISMISSAL OF INSTITUTE CASE CONCERNING INDEXED CDS

The United States District Court for the District of Columbia recently dismissed a case brought by the Institute against the Office of the Comptroller of the Currency in 1987. The suit had been pending decision by the district judge on cross-motions for summary judgment since 1987. A copy of the court's memorandum opinion and order is attached. In its complaint, the Institute had sought declaratory and injunctive relief from a final OCC ruling that authorized a bank to offer its customers a certificate of deposit the interest rate of which is tied to the Standard & Poor's 500 Composite index. The OCC had found that the CD is a permissible banking product under the applicable banking statutes. In its opinion, the court stated, "If based upon a 'permissible construction' of a statute not explicitly clear as to Congress' intent to the contrary, the Comptroller's interpretation is to be given controlling weight." In light of the district court's action, the Institute voluntarily dismissed a companion proceeding that had been filed in 1987 in the Court of Appeals for the District of Columbia Circuit. Paul Schott Stevens General Counsel Attachment

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