

MEMO# 1338

August 11, 1989

STAFF DENIES SECOND REQUEST FOR NO-ACTION FOR BANK COMMON TRUST FUND

August 11, 1989 TO: SEC RULES MEMBERS NO. 40-89 RE: STAFF DENIES SECOND REQUEST FOR NO-ACTION FOR BANK COMMON TRUST FUND

_____ The Staff of the Division of Investment Management has denied a second request for no-action assurances by a bank that wished to contribute monies received from unaffiliated bank common trust funds for which it served as trustee to common trust funds maintained by the bank. (Northern Trust Corp., pub. avail. July 21, 1989.) In denying the original request, the staff stated the proposed arrangement involved the use of a trust "guise" prohibited by the Federal Reserve Board and that the bank's intention to advertise its services would be outside the scope of the common trust fund exception. (See Memorandum to SEC Rules Members No. 19-89, dated March 21, 1989). In its request for reconsideration, the bank argued that its request was consistent with past no-action positions of the staff. It also stated that it would limit its advertising so that it would not constitute "general advertising or solicitation" under Regulation D under the 1933 Act. The staff replied that the bank's proposal presented differences with prior no-action letters, including that in the prior letters, the bank requesting relief was either a trustee or a co-trustee of the monies in question (The bank in this case argued that it was an "effective" co-trustee.) In addition, the staff stated that it had never applied Regulation D standards to advertising issues under Section 3(c)(3) of the 1940 Act. Copies of the request and response are attached. Craig S. Tyle Assistant General Counsel Attachment