BEFORE THE OFFICE OF THE
COMPTROLLER OF THE CURRENCY

In The Matter of	)	
	)	
Fiduciary Powers of National Banks	)	Docket No. 90-3
and Collective Investment Trusts	)	

Comments of the Staff of the Bureau of Economics of the Federal Trade Commission[1]

I. Introduction

The staff of the Bureau of Economics of the Federal Trade Commission (FTC) appreciates this opportunity to comment on the Office of the Comptroller of the Currency's (OCC) proposed amendments to its regulations governing the exercise of fiduciary powers by national banks. One of the proposals contained in the OCC's Notice of Proposed Rulemaking would lift the regulatory restrictions that limit the ways in which national banks can advertise their trust services to the public.[2] For example, the proposed changes would allow, for the first time, a national bank to compare the financial performance of its collective investment trust with the performances of similar trusts managed by other financial institutions.

Restrictions on truthful advertising claims can harm consumers by increasing their costs of collecting useful information and can burden firms by hindering their efforts to bring innovations to the market. Consequently, we believe the OCC's proposal to relax the restrictions on truthful advertising by national banks is likely to benefit consumers.

II. Interest and Experience of the Staff of the Federal Trade Commission

The FTC is an independent regulatory agency charged with maintaining competition and safeguarding the interests of consumers.[3] The staff of the FTC, upon request by federal, state, and local government bodies, regularly analyzes regulatory or legislative proposals that may affect competition or the ability of consumers to make informed purchase decisions. In the course of this work, the staff has gained considerable experience in analyzing the likely costs and benefits of various governmental restrictions on competition. In particular, the staff has commented on federal proposals to restrict mutual fund

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[1] These comments are the views of the staff of the Bureau of Economics of the Federal Trade Commission. They are not necessarily the views of the Commission or any individual Commissioner. Inquiries regarding these comments should be directed to Timothy P. Daniel, Assistant Director for Economic Policy Analysis, Bureau of Economics, (202) 326-3520.

[2] 55 Fed. Reg. 4184, February 7, 1990. While the notice contains several proposed regulatory changes, our comments are limited to the likely effects from OCC's proposal to remove paragraph (b)(5)(v) from 12 CFR 9.18, which contains the advertising restrictions currently in place.

[3] 15 U.S.C. §§ 41 *et seq.*

advertising,[4] and on state proposals to restrict rental car advertising.[5] The staff has also conducted research to examine the effects on consumers of the dissemination of truthful, nondeceptive health claims in advertisements for and on labels of ready-to-eat cereals.[6]

III. Analysis Of Proposed Changes in Advertising Restrictions

One of the services that some national banks offer to the public is establishing and managing a financial trust. Banks offering trust services assume a myriad of responsibilities and obligations to individuals who purchase these services. An important element of the bank's trust services involves investing the funds placed into the trust in ways that conform with the trust agreement. In carrying out this investment function, banks often combine the financial assets from several individuals into a collective investment trust.[7]

Currently, national banks are restricted in the ways in which they can advertise the financial performance of their collective investment trusts. The OCC has interpreted the regulations to *permit* national banks to compare the financial performance of their collective investment trusts with the average performance of all funds of a particular type (e.g., fixed-income funds or municipal bond funds), and with national performance indices (e.g., the Standard & Poor's index of 500 leading stocks.) However, the regulations currently *prohibit* national banks from comparing the performance of their collective investment trusts with the performances of specific trusts managed by other financial institutions.

The proposed amendments would lift the remaining restrictions on collective investment trust advertising, subject to the provisos that the advertisements (1) be truthful and nondeceptive and (2) promote the banks'

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[4] See, Comments of the Bureaus of Competition, Consumer Protection and Economics of the Federal Trade Commission to the Securities and Exchange Commission on Proposed Regulations Governing Performance Claims in Advertising by Investment Companies, December 22, 1986.

[5] See, e.g., Letter from Paul K. Davis, Director, Atlanta Regional Office, to the Honorable Elaine Gordon, Florida House of Representatives (April 17, 1989); and Letter from C. Steven Baker, Director, Chicago Regional Office, to the Honorable James R. Thompson, Governor of Illinois (December 22, 1988).

[6] Pauline M. Ippolito & Alan D. Mathios, Health Claims in Advertising and Labeling, A Study of the Cereal Market, FTC Bureau of Economics Staff Report (1989).

[7] According to the Federal Register Notice, 514 national banks currently administer collective investment trust funds. In total, 675 institutions administered collective investment trusts in 1988, with over $345 billion in assets from more than 1.675 million accounts. Approximately one quarter of these collectively invested assets were managed for personal (as opposed to employee benefit) trusts. See, 55 Fed. Reg. 4187 (February 7, 1990).

legitimate fiduciary services and not a particular investment fund.[8] We believe that such an amendment would be likely to benefit consumers of financial trust services by increasing the quality and quantity of information available to them.

Consumers in the market for trust services face differing circumstances and have varying preferences. Thus, they seek various types of information. At the same time, sellers of trust services (in this case, national banks) offer a number of options. Restrictions on truthful advertising, such as those currently being reconsidered by the OCC, may increase consumers' costs of locating the most suitable combination of goods and services at the lowest possible price. If these restrictions were lifted, consumers would be likely to benefit because they could more easily locate a preferred seller and make superior purchase decisions. Furthermore, with a greater ability to inform consumers about specific features of their trust services, banks will be better able to attract new customers and, as a result, it is possible that the variety of available products may be increased.

The effects of advertising restrictions in other industries support these propositions. Economic research conducted by the staff of the FTC shows that regulations restricting the dissemination of nondeceptive truthful information harm consumers by increasing their costs of collecting information on the array of goods and services available to them.[9] In addition, numerous other economic studies have demonstrated that price advertising enhances competition and lowers prices.[10] We believe that this body of research provides strong support for the conclusion that the removal of restrictions on nondeceptive truthful advertising could benefit consumers.

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[8] The latter requirement stems from the restrictions on national bank practices imposed by, among other things, the Glass-Steagall Act. These restrictions erect a regulatory barrier between the banking industry and the securities industry. The proposed amendments would not affect this distinction, or the requirement that national banks' advertising promote their legitimate fiduciary services and not particular investment funds. While we claim no expertise in the issue of determining the bounds of permissible national bank practices, we note that according to the OCC, "there is no basis in law or policy to restrict the advertisement of collective trust funds." (55 Fed. Reg. 4189 (February 7, 1990))

[9] The FTC staff's research on advertising restrictions includes: W. Jacobs et al., Improving Consumer Access to Legal Services: The Case for Removing Restrictions on Truthful Advertising (1984); R. Bond, et al., Effects of Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry (1980); and A. Masson & R. Steiner, Generic Substitution and Prescription Drug Prices: Economic Effects of State Drug Product Substitution Laws, (1985).

[10] See, e.g., J. Schroeter et al., Advertising and Competition in Routine Legal Service Markets: An Empirical Investigation, 36 Journal of Industrial Economics 49 (1987); J. Kwoka, Advertising and Price and Quality of Optometric Services, 74 American Economic Review 211 (1984); J. Cady, An Estimate of the Price Effects of Restrictions on Drug Price Advertising, 14 Economic Inquiry 493 (1976); and L. Benham, The Effects of Advertising on the Price of Eyeglasses, 15 Journal of Law and Economics 337 (1972).

In addition, we believe that the experience of the Securities and Exchange Commission (SEC) in regulating the advertising of performance claims is instructive. In the late 1970s and early 1980s the SEC abandoned many of the long-standing restrictions it had imposed on advertising of performance claims by investment companies. The agency recognized that revising its regulations to keep pace with innovations in financial instruments was extremely difficult. This deregulatory effort was also intended to increase investor interest and access to information about no-load funds. Following these reforms, the market share of no-load funds increased dramatically and many innovative funds were established.[11]

IV. Conclusion

Consumers generally benefit from the free flow of truthful nondeceptive information. The OCC's proposal to lift restrictions on national bank advertising of collective investment trusts would appear likely to benefit consumers by reducing their costs of collecting information on the various options available and by allowing national banks to advertise the existence of new services involving collective investment trusts.

[11] A narrative of these events can be found in the Investment Company Institute's comments to the SEC concerning File No. S7-23-86 (December 22, 1986). These comments responded, in part, to SEC staff proposals to ban truthful mutual fund advertising that did not appear in a proscribed format. The SEC voted to delete this provision of the SEC staff's proposals.