

**MEMO# 22644**

June 25, 2008

## **Revised Treasury Guidance On Auction Rate Preferred Stock**

[22644]

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 23-08  
TAX MEMBERS No. 25-08  
SEC RULES MEMBERS No. 55-08  
FIXED-INCOME ADVISORY COMMITTEE No. 17-08  
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 16-08    RE: REVISED TREASURY  
GUIDANCE ON AUCTION RATE PREFERRED STOCK

We are pleased to inform you that the Treasury Department has revised Notice 2008-55 (attached), which Treasury released originally on June 13 to address various tax issues involving auction rate preferred stock ("ARPS"). [\[1\]](#) This guidance, as we previously informed you, provides that the Internal Revenue Service ("IRS") will not challenge the equity characterization of certain ARPS issued by closed-end funds and supported by a liquidity facility.

The revised Notice (still numbered 2008-55) addresses four issues:

- First, a liquidity provider must hold the ARPS for only 6 months prior to putting them to the fund; the original Notice required that the ARPS be held for one year.
- Second, the guidance may be relied upon by any closed-end fund that invests "predominantly in debt instruments and whose other investments are incidental to their business of investing in the debt instruments"; the original Notice required that the fund invest "exclusively" in tax-exempt and/or taxable debt instruments.
- Third, the "trigger" that permits holders to sell the ARPS to the liquidity provider upon

a failure to renew, replace or extend a liquidity facility has been modified to provide that this trigger will occur at least two auction or remarketing dates before the “termination” date of the existing liquidity facility; the original notice was tied to the liquidity facility’s “stated expiration” date.

- Finally, a partnership seeking to qualify for the guidance must “reasonably expect” that at least 95 percent of its assets will consist of ARPS that meet the Notice’s conditions; the original notice did not include this “reasonable expectation” standard.

Keith Lawson  
Senior Counsel - Tax Law

## [Attachment](#)

### **endnotes**

[1] See ICI [Memorandum](#) (22610) to Closed-End Investment Company Members No. 20-08, Tax Members No. 23-08, SEC Rules Members No. 50-08, Fixed-Income Advisory Committee No. 14-08, and Money Market Funds Advisory Committee No. 13-08, dated June 16, 2008. See also ICI [Memorandum](#) (22615) to Closed-End Investment Company Members No. 21-08, Fixed-Income Advisory Committee No. 15-08, Money Market Funds Advisory Committee No. 14-08, SEC Rules Members No. 51-08, and Tax Members No. 24-08, dated June 17, 2008 (memorandum on no-action relief issued by the SEC staff to Eaton Vance Management regarding liquidity protected preferred shares).