

MEMO# 31140

March 20, 2018

ICI Letter to Treasury and IRS on Proposed Mark-to-Market Election for Section 988 Transactions

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March 20, 2018 TO: ICI Members

Tax Committee SUBJECTS: Tax RE: ICI Letter to Treasury and IRS on Proposed Mark-to-Market Election for Section 988 Transactions

The Institute has submitted the attached letter to the Treasury Department and the Internal Revenue Service (IRS) regarding recently proposed regulations under section 988. Among other things, the proposed regulations permit taxpayers to elect to use a mark-to-market method of accounting for foreign currency gain or loss attributable to section 988 transactions.

To enhance the administrability and usefulness of the election, the Institute requests three clarifications that will provide mutual funds with the certainty and consistency that they need. The Institute believes that applying the proposed regulations in this manner would be appropriate absent additional guidance, but confirmation by the government would be welcome.

Specifically, we ask the Treasury Department and the IRS to clarify in the final regulations:

- 1) The application of the netting rule of section 988(b) and Treas. Reg. § 1.988-2(b)(8), by including the examples suggested in the comment letter (or similar examples reflecting the same principles);
- 2) That the straddle rules are inapplicable (or otherwise without effect) when a taxpayer that makes the mark-to-market election has one or more section 988 transactions that diminish currency risk on one or more other section 988 transactions; and
- 3) That the mark-to-market election can be applied with respect to the full amount of section 988 gain or loss on all section 988 transactions held during or following the taxable year in which the mark-to-market election is made.

In addition, the Institute understands the “Applicability Dates” section of the preamble to

the proposed regulations to permit taxpayers to make the mark-to-market election for taxable years ending on or after December 19, 2017. The Institute recently spoke with a Treasury Department official who confirmed this understanding. Accordingly, the letter notes that some mutual funds may make the mark-to-market election for taxable years ending December 31, 2017 or thereafter.

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[Attachment](#)

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