

MEMO# 29562

December 17, 2015

Draft Letter Requesting Clarification that RICs are not Brokers Under Section 871(m) -- Comments Requested

[29562]

December 17, 2015

TO: TAX COMMITTEE No. 44-15 RE: DRAFT LETTER REQUESTING CLARIFICATION THAT RICS
ARE NOT BROKERS UNDER SECTION 871(M) -- COMMENTS REQUESTED

Attached for your comment is a draft letter to the Treasury Department and the Internal Revenue Service ("IRS") regarding the definition of "broker" for purposes of the recently issued regulations under section 871(m). The definition of the term "broker" is important for purposes of section 871(m) because it is a significant factor in identifying the party to a potential section 871(m) transaction who is responsible for determining whether the transaction is a section 871(m) transaction and, if so, determining and reporting to the counterparty or customer the timing and amount of any dividend equivalent. Generally, if one party to a potential section 871(m) transaction is a broker or dealer (as defined under the tax law), that party is required to determine, report and retain the information required by the regulations. If both parties to a potential section 871(m) transaction are brokers or dealers, however, the short party is responsible for these requirements.

The regulations use the term "broker" as that term is defined in section 6045. Regulated investment companies ("RICs") that are open-end funds are considered brokers under section 6045 because they regularly redeem their own shares. Therefore, open-end funds are treated as brokers for purposes of section 871(m). As such, an open-end fund that is the short party to a potential section 871(m) transaction could be subject to the determination, reporting, and information-retaining requirements in the regulations, even if its counterparty also is a broker or dealer.

RICs should not be considered "brokers" for purposes of the section 871(m) regulations. Therefore, the Institute is asking the Treasury Department and the IRS to clarify that the term broker, as used for section 871(m), does not include RICs.

Please provide any comments on the attached letter to me (202/371-5432 or kgibian@ici.org) no later than the opening of business on Tuesday, December 22, 2015.

Karen Lau Gibian
Associate General Counsel

[Attachment](#)

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