

MEMO# 27046

February 22, 2013

SEC Addresses Application Of 3.8% Tax On Net Investment Income To After-Tax Performance Data

[27046]

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TO: ACCOUNTING/TREASURERS MEMBERS No. 7-13
ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 8-13
SEC RULES MEMBERS No. 26-13
SMALL FUNDS COMMITTEE No. 4-13
TAX MEMBERS No. 12-13 RE: SEC ADDRESSES APPLICATION OF 3.8% TAX ON NET INVESTMENT INCOME TO AFTER-TAX PERFORMANCE DATA

The Health Care and Education Reconciliation Act of 2010 imposed on certain taxpayers a 3.8% tax on net investment income effective January 1, 2013. The tax is equal to 3.8% of the lesser of the individual's net investment income for the year or the amount by which the individual's modified adjusted gross income exceeds a threshold amount of \$200,000. For joint return filers the threshold amount is \$250,000. Net investment income for this purpose includes income from interest, dividends, and net capital gain.

The SEC staff recently addressed application of the 3.8% tax on net investment income to after-tax performance data calculated pursuant to Item 26 of Form N-1A. [\[1\]](#) The guidance indicates that registrants should include the 3.8% tax in after-tax return calculations. The American Taxpayer Relief Act of 2012 increased the highest marginal income tax rate on ordinary income to 39.6% effective January 1, 2013. The highest marginal income tax rate on capital gains and qualified dividend income was increased to 20%. Accordingly, when calculating after-tax performance data, funds should apply a 43.4% rate to ordinary income and 23.8% rate to capital gains and qualified dividend income. The SEC guidance also indicates that funds should include the 3.8% rate when calculating the tax benefit resulting from capital losses upon sale of fund shares (i.e., use 23.8%).

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endnotes

[1] The guidance is available on the SEC website at <http://www.sec.gov/divisions/investment/issues-of-interest.shtml#after-tax>.

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