

**MEMO# 30403**

November 17, 2016

## **Form Letter to IRS Requesting Relief from Retroactive Revocation of Commodity-Linked Note PLRs**

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TO: Tax Committee RE: Form Letter to IRS Requesting Relief from Retroactive Revocation of Commodity-Linked Note PLRs

As you are aware, the Internal Revenue Service (“IRS”) has proposed to retroactively revoke private letter rulings (“PLRs”) issued to funds regarding commodity-linked notes. The revocation of existing PLRs is in accordance with the IRS’s new position that it will no longer issue PLRs that require a determination as to whether a financial instrument or position is a security as defined in the Investment Company Act of 1940.[\[1\]](#) Funds that have received and relied upon these PLRs may seek relief from retroactive revocation under section 7805(b).

Attached is a form letter that funds may use to request relief from retroactive revocation of the commodity-linked note PLRs. This letter has been reviewed by the IRS and reflects their comments. Please note the following:

- The IRS has asked for some evidence that the fund or funds actually acquired notes in reliance on the PLR. The taxpayer may include a copy of pages from the annual report or other securities filing listing the notes that were held; alternatively, the taxpayer can briefly describe the notes.
- A fund does not need to provide evidence of all of the notes it has held since the PLR was issued; providing a description only of those notes held in the most recent years (whether open or closed tax years) would be sufficient.
- If a PLR covers multiple funds within a fund complex, the letter should indicate which funds relied upon the PLR, with some evidence of the notes held; it also should indicate which funds did not rely upon the PLR, and for which the PLR will not be revoked prospectively.
- The form letter asks for a prospective revocation date of June 30, 2017. After discussions with the Tax Committee and outside advisors, it was agreed that this date should provide ample time for funds to determine their course of action and take the appropriate steps. The IRS is amenable to this date.
- The letter must be signed under penalties of perjury. If an outside advisor signs the letter, the penalties of perjury should be on a separate page and signed by an

authorized officer or other representative of the fund/funds.

- The IRS would like to have all of the letters submitted as soon as possible, but no later than the end of the calendar year. Submission of this letter should replace the need for an individual conference with the IRS.

We believe that this form letter provides a good resolution to the PLR issue for both our members and the IRS – it provides a standard revocation date for the entire industry and should not require funds to individually meet with the government.

If you have any questions about the form letter, please contact me at (202) 371-5432 or [kgibian@ici.org](mailto:kgibian@ici.org).

Karen Lau Gibian  
Associate General Counsel

### [Attachment](#)

#### **endnotes**

[1] See Institute Memorandum No. 30286, dated September 30, 2016. Available at: [https://www.ici.org/my\\_ici/memorandum/memo30286](https://www.ici.org/my_ici/memorandum/memo30286).

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