

MEMO# 3904

July 1, 1992

MEMORANDUM ON MERGERS OF C CORPORATIONS INTO RICS

July 1, 1992 TO: TAX COMMITTEE NO. 25-92 RE: MEMORANDUM ON MERGERS OF C CORPORATIONS INTO RICS _____ As you may know, the Internal Revenue Service (Service) announced at a meeting of the American Bar Association's Regulated Investment Company Committee of the Tax Section that it was considering issuing a ruling, with possible retroactive effect, that would require a regulated investment company (RIC) which merged with a C corporation to distribute any C corporation earnings and profits acquired in the merger no later than the end of the tax year in which the merger occurred. The Service has also announced in its Business Plan for 1992 that such a ruling is a goal of the Service by the end of the year. (See Institute Memorandum to Tax Committee No. 22-92 and Accounting/Treasurers Committee No. 26-92, dated June 9, 1992.) Failure to distribute all C corporation earnings and profits would cause the RIC to fail the requirement of Internal Revenue Code section 852(a)(2). That section requires that a RIC either have been qualified as a RIC for all taxable years ending on or after November 8, 1983 (the grandfather rule) or, as of the close of its tax year, have no C corporation earnings and profits. The Service is considering adopting an interpretation of the grandfather rule which would require not only the RIC but all companies merging into the RIC to have been RICs for all tax years ending on or after November 8, 1983 in order for the grandfather rule to apply. The enclosed memorandum, which has been sent to the Internal Revenue Service and the Treasury Department, argues that there is no support for the Service's position in the legislative history which added Code section 852(a)(2). Alternatively, the memorandum states that any restrictions which are placed on mergers of C corporations into RICs should be prospective only. We will keep you informed of further developments. David J. Mangefrida Jr. Assistant Counsel - Tax Attachment