

MEMO# 11839

April 26, 2000

COMMENT LETTER ON PROPOSED REGULATIONS UNDER SECTION 337(D) REGARDING CERTAIN ASSET TRANSFERS TO REGULATED INVESTMENT COMPANIES

1 The Investment Company Institute is the national association of the American investment company industry. Its membership includes 8,034 open-end investment companies ("mutual funds"), 496 closed-end investment companies and 8 sponsors of unit investment trusts. Its mutual fund members have assets of about \$7.024 trillion, accounting for approximately 95% of total industry assets, and over 78.7 million individual shareholders. 2 See ICI Memorandum to Tax Members No. 8-00, dated February 24, 2000. [11839] April 26, 2000 TO: ACCOUNTING/TREASURERS COMMITTEE No. 18-00 TAX MEMBERS No. 15-00 RE: COMMENT LETTER ON PROPOSED REGULATIONS UNDER SECTION 337(d) REGARDING CERTAIN ASSET TRANSFERS TO REGULATED INVESTMENT COMPANIES

On April 19, 2000, the Investment Company Institute¹ submitted the attached letter to the Internal Revenue Service commenting on Proposed Regulations² published in the Federal Register on February 7, 2000, under section 337(d) of the Internal Revenue Code. Those regulations provide for the proper tax treatment of C corporation assets that become assets of a regulated investment company ("RIC") or a real estate investment trust ("REIT") either by (1) the qualification of the C corporation as a RIC or REIT or (2) the transfer of assets of a C corporation to a RIC or REIT in a carryover basis transaction. Our comments focus on four major points: First, we are concerned that the Proposed Regulations may be ambiguous as to the scope of the exception for any RIC that fails Subchapter M for a period not exceeding one year. We recommend that the regulations be clarified to state that the limitation on that exception extends only to assets received in a carryover basis transaction with another C corporation in the year during which the RIC is a C corporation. Second, we recommend that any RIC that made an election pursuant to IRS Notice 88-19 to apply rules similar to the rules of Code section 1374 not be required to file a subsequent election with its first tax return filed after March 8, 2000. Third, we recommend that the character of any net recognized built-in gain that is recognized by a RIC electing to apply rules similar to Code section 1374 be retained in determining the character of the RIC's distributions to shareholders. Finally, we recommend that certain other issues that we discussed in our comment letter that were not addressed by the Proposed Regulations also be addressed before the regulations are finalized. We have requested the opportunity to testify at the hearing scheduled for May 10, 2000, at the IRS in Washington, DC. If you have any

questions, please do not hesitate to contact me at (202) 326- 5821. Naomi Gendler Camper
Assistant Counsel Attachment Note: Not all recipients receive the attachment. To obtain a
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