

MEMO# 15727

March 7, 2003

DRAFT INSTITUTE COMMENTS ON PROPOSED CAPITALIZATION REGULATIONS

[15727] March 7, 2003 TO: TAX COMMITTEE No. 13-03 ADVISER DISTRIBUTOR TAX ISSUES TASK FORCE No. 4-03 RE: DRAFT INSTITUTE COMMENTS ON PROPOSED CAPITALIZATION REGULATIONS Attached are draft comments on the Administration's proposed regulations governing the capitalization of amounts expended to acquire, create or enhance intangible assets. There will be a conference call to discuss the draft comments on Tuesday, March, 11, 2003 at 2:00 pm EST. The draft comments focus on five issues. First, the comment letter supports a provision specifying that stock issuance costs of mutual funds are deductible, and request clarification that the same treatment is available for stock redemption costs of mutual funds. Second, the letter supports the regulations' example providing that a contribution by an adviser to a money market fund to avoid a net asset value of less than \$1.00 per share is deductible. Third, the comment letter supports the treatment of all employee compensation as deductible, and states that the same treatment should be extended to contract employees and independent contractors who are not hired to facilitate transactions and do not work predominantly on facilitating transactions. Fourth, the regulations suggest that significant additional guidance is needed to narrow the scope of what constitutes an amount expended to "enhance" an intangible asset. The letter proposes that the final regulations should provide that expenses which are "regular and recurring" and which only "incidentally" enhance intangible assets should not be required to be capitalized under this provision. Finally, the comment letter suggests that greater guidance should be included in the final regulations to distinguish between amounts paid to induce a party to enter into a contract (which must be capitalized) and amounts paid in expectation of a continued business relationship (which may be deducted). We welcome your input on the issues discussed in the draft letter, as well as on issues that are not discussed in this draft. If you would like to participate in the call on March 11, please complete the attached form and fax it to Ezella Wynn, or email the requested information to her at ewynn@ici.org. The dial-in number for the call will be 888-889-6352, and you will need to give the undersigned's name and the passcode "capitalization." 2 In addition, please feel free to contact the undersigned (dorlin@ici.org, 202/371-5436) or Keith Lawson (lawson@ici.org, 202/326-3832) with any other comments or suggestions by Thursday, March 13, 2003. David Orlin Assistant Counsel Attachment no. 1 (in .pdf format)

should not be considered a substitute for, legal advice.