

MEMO# 15948

April 25, 2003

INSTITUTE RESPONSE TO IRS REQUEST FOR PFIC ISSUE PRIORITIZATION

[15948] April 25, 2003 TO: TAX COMMITTEE No. 26-03 RE: INSTITUTE RESPONSE TO IRS REQUEST FOR PFIC ISSUE PRIORITIZATION The Institute has submitted the attached letter in response to a request from the Internal Revenue Service (the "Service") to prioritize items discussed in the Institute's 2002 comment letter¹ on passive foreign investment company ("PFIC") issues. The Service also requested that the Institute indicate which of the industry's issues could be simply addressed within the Service's current project involving the proposed regulations containing procedures for certain US persons holding marketable stock in a PFIC to elect mark-to market treatment for that stock under Section 1296 of the Code (the "Proposed Regulations").² The letter indicates that the industry's first priority in the PFIC area is the elimination of the PFIC asset test of Code section 1297(a)(2). The letter also discusses the need for: • guidance regarding situations where a foreign corporation in a RIC's portfolio moves into and/or out of PFIC status; • guidance coordinating the PFIC mark-to-market rules with the excise and income tax distribution requirements to which RICs are subject; • guidance permitting a RIC to determine its taxable income with reasonable certainty where the RIC and a foreign corporation in which it invests have different taxable year-ends; • guidance regarding coordination issues for the first year of a section 1296 election by a RIC that marked PFIC stock to market under the pre-statutory regime; and 1 See Institute Memorandum to Accounting/Treasurers Members No. 52-02, Closed-End Investment Company Members No. 67-02, Tax Members No. 52-02, and Unit Investment Trust Members No. 39-02, dated December 17, 2002. 2 See Institute Memorandum to Accounting/Treasurers Members No. 27-02, Closed-End Investment Company Members No. 34-02, Tax Members No. 37-02, and Unit Investment Trust Members No. 20-02, dated August 13, 2002. 2 • guidance related to long-standing issues under the rules for qualified electing funds ("QEFs") that effectively have prohibited RICs from utilizing the QEF regime. Catherine Barré Assistant Counsel Attachment (in .pdf format)