INVESTMENT COMPANY INSTITUTE

MEMO# 2017

July 11, 1990

IRS REVENUE RULING ON CODE SECTION 4982(E)(4) ELECTION

- 1 - July 11, 1990 TO: ACCOUNTING/TREASURERS MEMBERS NO. 15-90 TAX MEMBERS NO. 23-90 CLOSED-END FUND MEMBERS NO. 27-90 RE: IRS REVENUE RULING ON CODE SECTION 4982(e)(4) ELECTION ____ Attached IRS Revenue Ruling 90-57 clarifies the calculation of the "required distribution" for purposes of the excise tax under Internal Revenue Code section 4982 when a regulated investment company ("RIC") makes an election under Code section 4982(e)(4) to compute its capital gains for the period ending with its November or December fiscal year-end, rather than for the period ending October 31, where the election is made in a year after the first year to which the excise tax applies. The ruling also defines the first tax year to which the Code section 4982(e)(4) election applies for purposes of the post-October capital loss rules of Code section 852(b)(3)(C). Code section 4982 imposes on RIC's an annual 4% excise tax on the amount by which the "required distribution" for a calendar year exceeds the "distributed amount". The required distribution is 98% of the RIC's ordinary income for the calendar year and 98% of the RIC's capital gain net income for the one-year period ending October 31 of the calendar year. Code section 4982(e)(4) allows a RIC with a November 30 or December 31 tax year end to elect to use that date in determining its capital gain net income instead of the one-year period ending October 31. Where an election under Code section 4982(e)(4) is made, capital gain net income for the first year with respect to which the election is effective (the "election year") will include capital gains and losses through November 30 or December 31. However, for the calendar year prior to the election year, only capital gains and losses arising on or before October 31 of that year are taken into account for purposes of Code section 4982. The ruling holds that the required distribution with respect to capital gains for the election year will include all gains and losses realized after October 31 of the year prior to the election year through either November 30 or December 31 of the election year, a thirteen or fourteen-month period. - 2 - Code section 852(b)(3)(C) provides that certain post- October capital losses are not taken into account in determining the amount a RIC may designate as a capital gain dividend for that tax year. (See Institute Memorandum to Tax Members No. 7- 90, Closed-End Fund Members No. 7-90 and Accounting/Treasurers Members No. 6-90, dated February 1, 1990.) Post-October capital losses are taken into account, however, if an election under Code section 4982(e)(4) is in effect. Revenue Ruling 90-57 provides that, for purposes of deciding under Code section 852(b)(3)(c) whether post-October capital losses are taken into account in determining the amount a RIC may designate as a capital gain dividend for the tax year, the first tax year to which an election under section 4982(e)(4) applies is the first tax year ending in November (or December) of the year with respect to which the election is made. We will keep you informed of developments. David J. Mangefrida, Jr. Assistant General Counsel Attachment