

MEMO# 2420

December 26, 1990

INSTITUTE TESTIMONY ON PROPOSED INTERNAL REVENUE SERVICE NUCLEAR DECOMMISSIONING REGULATIONS

December 26, 1990 TO: TAX COMMITTEE NO. 38-90 INSTITUTIONAL FUNDS COMMITTEE NO. 6-90 RE: INSTITUTE TESTIMONY ON PROPOSED INTERNAL REVENUE SERVICE NUCLEAR DECOMMISSIONING REGULATIONS

On December 20, 1990 the Institute testified before the Internal Revenue Service on the proposed regulations under Section 468A of the Internal Revenue Code ("Code") concerning joint investments of the assets of nuclear decommissioning funds ("NDFs"). The proposed regulations would allow the pooling of the assets of NDFs in regulated investment companies ("RICs") so long as NDFs were the only shareholders in the RIC and the RICs were subject to the self-dealing prohibitions of the Black Lung Benefit Trust provisions of the Code. (See Institute Memorandum to Tax Committee No. 19-90, July 26, 1990.) The Institute's testimony, a copy of which is attached, dealt mainly with the appropriateness of RICs as vehicles for the joint investment of the assets of NDFs. In addition, the testimony restated the two main points of the Institute's earlier comment letter. (See Institute Memorandum to Tax Committee No. 27-90 and SEC Rules Committee No. 47-90, dated September 4, 1990.) Specifically, the Institute stated that the provisions of the Investment Company Act of 1940 (the "1940 Act") and the other securities laws sufficiently regulate RICs such that the Black Lung Benefit Trust provisions are merely duplicative of existing investor protections. The Institute also pointed out that, as a practical matter, the minimum net worth provisions of the 1940 Act require the RIC sponsor to own at least \$100,000 worth of shares in any RIC it sponsors. The ownership limitation regarding shares of a RIC in which NDFs invest thus needs to be relaxed to allow up to \$250,000 in shares to be held by a RIC sponsor for at least the 60 month over which the startup expenses of the RIC are amortized under Code section 248. We will keep you informed of further developments. David J. Mangefrida, Jr. Assistant General Counsel Attachment