

MEMO# 3729

April 23, 1992

INSTITUTE REQUESTS THAT PROPOSED PFIC REGULATIONS BE ISSUED IN TEMPORARY FORM

- 1 - April 23, 1992 TO: TAX MEMBERS NO. 27-92 ACCOUNTING/TREASURERS MEMBERS NO. 21-92 CLOSED-END FUND MEMBERS NO. 21-92 INTERNATIONAL MEMBERS NO. 9-92 RE: INSTITUTE REQUESTS THAT PROPOSED PFIC REGULATIONS BE ISSUED IN TEMPORARY FORM

As you know, the Treasury Department recently issued proposed regulations which would allow regulated investment companies ("RICs") to eliminate the otherwise applicable RIC- tax on gain or income attributable to investments in passive foreign investment companies ("PFICs") by permitting RICs periodically to mark PFICs to market. (See Institute Memorandum to Tax Members No. 23-92, Accounting/Treasurers Members No. 20-92, Closed-End Fund Members No. 19-92, and International Members No. 7-92, dated April 3, 1992.) One important provision of the regulations is a transition rule which would allow RICs to mark to market gain on PFICs currently held by them, distribute that gain to shareholders and pay a nondeductible interest charge on the gain which eliminates any tax deferral benefit. The RIC would thereafter mark to market each PFIC share as provided by the regulations. However, this mark-to-market system and the transition rule would be available only with respect to taxable years of RICs ending after the date that the proposed regulations are made final. In the attached letter, the Institute asks that the regulations be made retroactive to the effective date of the Tax Reform Act of 1986, which created the inadvertent RIC-level tax. In the alternative, the letter requests that Treasury make the regulations temporary and allow RICs immediate use of the transition rule. The letter also briefly mentions a clarification that would be helpful with respect to the interaction between the PFIC mark- to-market rules and the excise tax provisions of Code section 4982. This issue will be dealt with in greater detail in a - 2 - second letter that the Institute is currently preparing on the proposed regulations. We will keep you informed of further developments. David J. Mangefrida Jr. Assistant Counsel - Tax Attachment