

MEMO# 3833

June 9, 1992

IRS RELEASES BUSINESS PLAN; TO ISSUE GUIDANCE ON MERGERS OF CORPORATIONS INTO REGULATED INVESTMENT COMPANIES

June 9, 1992 TO: TAX COMMITTEE NO. 22-92 ACCOUNTING/TREASURERS COMMITTEE NO. 26-92 RE: IRS RELEASES BUSINESS PLAN; TO ISSUE GUIDANCE ON MERGERS OF CORPORATIONS INTO REGULATED INVESTMENT COMPANIES

The Internal Revenue Service ("IRS") recently released its "business plan" for 1992, which identifies approximately 200 regulations projects, rulings and other administrative pronouncements that the IRS intends to issue by the end of 1992. Several of these projects would directly affect regulated investment companies ("RICs") and their shareholders. One identified project relates to the issuance of guidance under section 852(a)(2) of the Internal Revenue Code regarding the consequences of merging a corporation not organized as a RIC, such as a personal holding company, into a RIC. Specifically, we understand that the IRS is considering an interpretation of section 852(a)(2), as amended with respect to taxable years beginning after December 31, 1982, that could effectively require that a non-RIC distribute to its shareholders all of its accumulated earnings and profits prior to merging into a RIC. Any merger of a non-RIC into a RIC that occurred after December 31, 1982 could be affected by any such IRS interpretation. One possible approach that the IRS may be considering to this "retroactivity" issue would require that the amount of the non-RIC's accumulated earnings and profits at the time of the merger be distributed, within some period ending after the date of the IRS announcement, to the RIC's current shareholders. The Institute has already requested each fund complex that has engaged in a non-RIC--RIC merger since 1982 to contact the undersigned, so that we can determine the extent to which any IRS announcement regarding mergers of non-RICs into RICs might affect the industry. (See Institute Memorandum to Members - One Per Complex No. 17-92, dated May 27, 1992.) - 1 - Among the other business plan projects of interest to RICs are the following: o final regulations under section 382 relating to application of the stock ownership "segregation" rules to the issuance and redemption of mutual fund shares in the ordinary course of business; o a revenue ruling treating the reimbursement of certain RIC expenses as "good" income for section 851(b)(2) purposes; o a revenue ruling regarding who is the issuer of certain U.S. government agency securities for purposes of the section 851(b)(4) diversification test; o modified final regulations on restrictions on investments of municipal bond proceeds in commingled funds; o final regulations under section 468A on the pooling of investments of nuclear decommissioning funds; o final regulations on backup withholding; o proposed regulations and a revenue procedure to establish a taxpayer

identification number ("TIN") matching program for when an account is opened, to permit resolution of name/TIN mismatches prior to the issuance of B Notices; and o a revenue procedure on proof of payment of an expense by an individual whose financial institution does not return checks. The public is urged to comment on the priorities and topics identified in the business plan. Please contact the undersigned at (202) 955-3585 by July 1, 1992 with any comments, including comments on the proposal regarding non-RIC--RIC mergers, that the Institute should submit on the IRS' business plan. We will keep you informed of developments. Keith D. Lawson Associate Counsel - Tax Attachment KDL:bmb

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.