

**MEMO# 10002**

June 9, 1998

## **JUNE 30 MEETING ON 12B-1 TAX ISSUES**

1 A copy of the draft submission will be distributed later this week. 2 See Institute Memorandum to Board of Governors No. 38-91, Tax Committee No. 14-91 and 12b-1 Ad Hoc Committee, dated June 4, 1991. 3 See Institute Memorandum to Accounting/Treasurers Members No. 35-93 and Tax Members No. 38-93, dated November 15, 1993. [10002] VIA FAX June 9, 1998 TO: TAX COMMITTEE No. 20-98 ADVISER/DISTRIBUTOR TASK FORCE RE: JUNE 30 MEETING ON DISTRIBUTOR 12b-1 TAX ISSUES

\_\_\_\_\_ A joint meeting of the Institute's Tax Committee and the Adviser/Distributor Task Force has been scheduled for Tuesday, June 30 at 10:00 a.m. to discuss a draft Institute submission to the IRS National Office regarding the tax consequences to a distributor of the sale of mutual fund "B" shares.<sup>1</sup> The meeting will be held in the David Silver Conference Room, on the 12th Floor of the Institute's office at 1401 H Street, N.W. Lunch will be served following the meeting. Please complete the attached meeting response form if you or one of your colleagues plan to attend the meeting on June 30. As you may know, the Institute in 1991 submitted to IRS a memorandum in connection with a proposed coordinated issue paper on this issue.<sup>2</sup> In 1993, the IRS withdrew the proposed coordinated issue paper and issued Technical Advice Memorandum 9345003, in which IRS concluded that a mutual fund distributor (1) may deduct (as a dealer) commission payments to brokers under Treas. Reg. sec. 1.263(a)-2(e) and (2) does not include in income at the time of sale an estimate of the 12b-1 fees that may be earned in future years with respect to "B" shares sold.<sup>3</sup> Thereafter, IRS approved a distributor's request to change its method of accounting (to deduct rather than capitalize these commission payments) and issued a private letter ruling permitting the deduction of commission payments by a distributor who represented that it was a dealer for purposes of the section 263 regulation. Notwithstanding the determinations reached by the IRS National Office, IRS field agents have continued to raise issues relating to the treatment of "B" share arrangements during audits of fund advisers and distributors. The submission being prepared by the Institute urges the National Office to reconfirm its prior position and to reject the IRS field agents' efforts to reopen these issues. Keith D. Lawson Senior Counsel Attachment ATTENDANCE RESPONSE FORM INVESTMENT COMPANY INSTITUTE DISTRIBUTOR 12b-1 TAX ISSUES MEETING Tuesday, June 30, 1998 Please fax this portion by Friday, June 26, 1998, to Alice Bennett Investment Company Institute, 202-326-5841. YES NO \_\_\_\_\_ DISTRIBUTOR 12b-1 TAX ISSUES MEETING TUESDAY, JUNE 30 at 10:00 a.m. \_\_\_\_\_ LUNCH \_\_\_\_\_ ATTENDEES' NAME \_\_\_\_\_ COMPANY NAME \_\_\_\_\_ Please check here if you need special services due to a disability.

abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.