

MEMO# 1816

April 2, 1990

INSTITUTE COMMENTS ON SECTION 852(B)(3)(C) POST-OCTOBER LOSS REGULATIONS

April 2, 1990 TO: TAX COMMITTEE NO. 8-90 CLOSED-END FUND COMMITTEE NO. 9-90
ACCOUNTING/TREASURERS COMMITTEE NO. 11-90 RE: INSTITUTE COMMENTS ON SECTION
852(b)(3)(C) POST-OCTOBER LOSS REGULATIONS

As we previously informed you, the Internal Revenue Service recently issued temporary and proposed regulations providing guidance under Code section 852(b)(3)(C) on the effect of a post-October capital loss and a post-October currency loss on a regulated investment company's ("RIC's") taxable income, its earnings and profits, and the amount that it may designate as a capital gain dividend for the taxable year in which the loss is incurred and the succeeding taxable 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). The regulations are needed, and were requested by the Institute, to permit the proper interaction between the distribution requirements of the section 4982 excise tax and Subchapter M. (See Institute Memorandum to Tax Committee No. 16-89, Closed-End Fund Committee No. 43-89 and Accounting/Treasurers Committee No. 42-89, dated October 6, 1989). The attached Institute comment letter to IRS addresses three issues. First, the Institute seeks clarification that a decline in value in a section 1256 contract between October 31, when the contract is marked to market for excise tax purposes, and the end of a RIC's fiscal year, when the section 1256 contract is marked to market for income tax purposes, is a post-October loss. Second, the Institute seeks clarification that a deferred post-October loss is treated as arising on the first day of the RIC's next fiscal year in computing the capital loss carryforward period. Third, the Institute seeks additional transition-related relief arising from the delay in issuing these regulations. The letter also notes that supplemental comments may be filed because the Institute's members have not yet actually gone through the process of applying these regulations to their prior distributions and that, when they do so, as yet unidentified issues may be encountered. Consequently, please let us know as soon as possible of any problems that arise when you apply these regulations so that we can receive as much guidance as possible from IRS before the deadline for making retroactive elections (December 31, 1990). We will keep you informed of developments.

Keith D. Lawson Assistant General Counsel Attachments KDL:bmb

should not be considered a substitute for, legal advice.