MEMO# 15761

March 19, 2003

INSTITUTE COMMENTS ON PROPOSED CAPITALIZATION REGULATIONS

[15761] March 19, 2003 TO: ACCOUNTING/TREASURERS MEMBERS No. 16-03 ADVISER DISTRIBUTOR TAX ISSUES TASK FORCE No. 6-03 TAX MEMBERS No. 18-03 RE: INSTITUTE COMMENTS ON PROPOSED CAPITALIZATION REGULATIONS Attached are the Institute's comments on the proposed regulations1 governing the capitalization of intangible assets that were filed with the IRS today. The proposed regulations address several issues raised by the Institute in earlier comments to the Service. The attached comments largely seek clarification or confirmation of the favorable treatment outlined in the proposed regulations. In particular, the comments address the following points: 1. The Institute supports the provision in the proposed regulations specifying that stock issuance expenses of open-end investment companies are deductible, and asks for confirmation that redemption expenses are likewise deductible. 2. The Institute supports the inclusion of an example in the proposed regulations stating that a contribution to a money market fund that an adviser must make in order to prevent the fund from having a NAV of less than $1.00 per share is deductible. 3. The Institute supports the provision in the proposed regulations that all employee compensation and overhead costs are deductible. The comments suggest that the same treatment should be extended to amounts paid to independent contractors who are not hired to facilitate acquisition, creation, or enhancement of an intangible asset, and do not work predominantly on facilitating such transactions. 4. The Institute requests additional guidance on identifying expenditures that must be capitalized because they were incurred to "enhance" an intangible asset. The comments suggest that such expenditures should be deductible if they are "regular and recurring," or if they result in only an "incidental" enhancement of an intangible asset. 1 See, Institute Memorandum to Accounting/Treasurers Member No. 53-02 and Tax Members No. 53-02, dated December 19, 2002. 2 5. Finally, the Institute requests additional guidance on the distinction between amounts paid to induce a party to enter into a contract (which must be capitalized) and amounts paid in expectation of an ongoing business relationship (which may be deducted). Under the proposed regulations, the new capitalization rules would apply to costs incurred on or after the date that the final regulations are published in the Federal Register. We understand that Treasury intends to issue final regulations by the end of the year. David Orlin Assistant Counsel Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (http://members.ici.org) and search for memo 15761, or call the ICI Library at (202) 326-8304 and request the attachment for memo 15761. Attachment (in .pdf format)