

**MEMO# 17204**

March 18, 2004

## **INSTITUTE LETTER REGARDING MARKET DISRUPTIONS CREATED BY PROPOSED REVISIONS TO CIRCULAR 230**

[17204] March 18, 2004 TO: FIXED-INCOME ADVISORY COMMITTEE No. 5-04 MONEY MARKET FUNDS ADVISORY COMMITTEE No. 6-04 TAX MEMBERS No. 16-04 RE: INSTITUTE LETTER REGARDING MARKET DISRUPTIONS CREATED BY PROPOSED REVISIONS TO CIRCULAR 230 The Treasury Department ("Treasury") recently proposed revisions to the regulations governing practice before the Internal Revenue Service ("IRS") that are contained in a document known as "Circular 230." Among other things, the proposed revisions would modify the rules for tax shelter opinions by eliminating municipal bonds from the list of investments or arrangements that are excluded from the definition of tax shelter. These changes are proposed to be effective on the date final regulations are published in the Federal Register. The attached March 16 Institute letter urges that any change to the treatment of tax opinions on municipal bonds under Circular 230 apply only to opinions rendered on bond offerings and remarketings that close some reasonable period of time after the Circular 230 rules are finalized. This delay is necessary to prevent disruptions in the municipal bond market for bonds currently being reviewed by potential buyers that may not close until after any revised regulations are finalized. This letter follows up on a March 4 Institute letter (also attached) that urges Treasury to modify its proposed rules to provide that an unqualified tax opinion -- concluding that interest on a municipal bond is exempt to the recipient under Section 103 of the Internal Revenue Code - is not a tax shelter opinion for Circular 230 purposes. The letter also recommends that opinions with respect to those synthetic municipal investments meeting the requirements of Revenue Procedure 2003-84 (including grandfathered arrangements) be exempt from the definition of tax shelter opinion.<sup>1</sup> As the letter states, a complete elimination of the municipal bond exception for Circular 230 purposes will not effectively address the Government's concerns and will harm funds purchasing municipal bonds, the funds' shareholders and the municipal bond market more generally. <sup>1</sup> See Institute Memorandum (No. 16745) to Tax Members No. 60-03, Money Market Funds Advisory Committee No. 18-03 and Fixed Income Advisory Committee No. 16-03, dated November 6, 2003, for a discussion of Revenue Procedure 2003-84. <sup>2</sup> Lisa Robinson Assistant Counsel Attachment (in .pdf format)