

MEMO# 10682

January 29, 1999

INSTITUTE REQUEST FOR GUIDANCE ON ADVISER TAX TREATMENT OF MUTUAL FUND START UP EXPENSES

1 In addition, the Institute last month sent to IRS a letter requesting that the 1999 business plan include various projects generally within the jurisdiction of the IRS Chief Counsel's Financial Institutions & Products ("FI&P") group. Among other things, we asked for guidance setting forth the "safe harbor" circumstances under which the IRS will not raise preferential dividend issues relating to expense limitations involving multiple-class funds. See Institute Memorandum to Tax Committee No. 41-98, dated December 24, 1998. 2 See, e.g., Institute Memoranda to Tax Committee No. 39-98 and the Task Force on Adviser/Distributor Tax Issues, dated December 21, 1998; and to Tax Members No. 17-98 and the Task Force on Adviser/Distributor Tax Issues, dated June 25, 1998. [10682] January 29, 1999 TO: TAX COMMITTEE No. 2-99 TASK FORCE ON ADVISER/DISTRIBUTOR TAX ISSUES RE: INSTITUTE REQUEST FOR GUIDANCE ON ADVISER TAX TREATMENT OF MUTUAL FUND START UP EXPENSES

In the attached letter, sent separately to three senior officials at the Treasury Department and the Internal Revenue Service ("IRS"), the Institute has requested that the 1999 IRS/Treasury Priority Guidance Plan (also known as the "business plan") include guidance on the treatment of costs incurred by mutual fund advisers to start up new funds. Specifically, we have requested published guidance, perhaps in the form of a revenue procedure, that would identify any "start-up" expenses that may not be deducted immediately and the period over which the capitalized costs may be amortized.¹ The letter notes that, without this guidance, IRS and the industry will devote substantial resources in the years ahead in case-by-case attempts to resolve controversies involving start-up expenses. The IRS Chief Counsel, among others, is aware that the Institute is planning to file an amicus curiae brief with the First Circuit Court of Appeals supporting the taxpayer's appeal of the Tax Court's recent decision involving this issue.² Keith D. Lawson Senior Counsel Attachment