

MEMO# 8398

November 14, 1996

DRAFT SUBMISSION TO IRS ON MULTIPLE-CLASS FUNDS

1 See Institute Memorandum to Accounting/Treasurers Committee No. 30-96 and Tax Committee No. 27-96, dated July 25, 1996. ACTION REQUESTED November 14, 1996 VIA FAX TO: TAX COMMITTEE No. 35-96 RE: DRAFT SUBMISSION TO IRS ON MULTIPLE-CLASS FUNDS

Attached for your review is a draft of a memorandum on expense limitation arrangements (e.g., waivers and reimbursements) in a multiple-class fund context that was prepared by the Institute for submission to the IRS. The draft provides supplemental comments in support of the proposal the Institute submitted to the IRS in July of this year for a safe harbor on expense limitation arrangements.¹ As you may recall, the proposal specified the following three types of expense limitations that would not be treated as giving rise to preferential dividends: (1) limitations that reduce the expenses of a distribution arrangement and/or shareholder service arrangement for a particular class or classes; (2) limitations that reduce management fees or any other fund-wide expenses for all classes; and (3) limitations that reduce class-specific expenses for a particular class or classes. The Institute's proposal would significantly reduce the inconsistencies between the tax and securities law treatment of expense limitations and would relieve the industry from the unwarranted restrictions currently imposed by the IRS. Also attached for your review is a draft of an attachment to the memorandum that responds to questions raised by the IRS in Announcement 96-95 regarding the treatment under the preferential dividend rules of (1) waivers and reimbursements in multiple-class funds and (2) investment advisory fees that differ among the classes of a multiple-class fund because the fees are based on the investment performance of each class. The attachment states that such performance-based fees should be permissible under the preferential dividend rules. We would appreciate any comments you may have on the draft memorandum and attachment. Since the IRS deadline for comments is Friday, November 22, we will need to receive any comments that you may have by Tuesday, November 19. Please call the undersigned at (202) 326-5837 with any comments or questions. Thank you. Anne M. Barr Associate Counsel - Tax

Attachment