

MEMO# 14679

April 26, 2002

DRAFT INSTITUTE COMMENTS ON TAXATION OF NOTIONAL PRINCIPAL CONTRACTS

[14679] April 26, 2002 TO: TAX COMMITTEE No. 14-02 RE: DRAFT INSTITUTE COMMENTS ON TAXATION OF NOTIONAL PRINCIPAL CONTRACTS In Notice 2001-44 the Internal Revenue Service and Treasury Department requested comments on the taxation of notional principal contracts (NPCs), including four potential methods for including contingent nonperiodic payments made under a NPC in income.¹ Attached for your review are draft comments prepared by the Institute in response to the notice. In the attached letter, the Institute recommends that the Service adopt safe harbor guidance and simplified rules with respect to certain contingent NPCs, including those with relatively short terms. The letter also identifies the Institute's particular concerns with three of the inclusion methods for contingent NPCs described in the notice, including any mandatory application of a mark-to-market regime. The letter indicates, however, that the Institute would support elective mark-to-market treatment for contingent NPCs generally. The letter does not propose a mandatory approach for longer-term contingent NPCs, other than to recommend that the Service not proceed with such mandatory guidance until it has settled on a more global framework for dealing with contingent payment contracts. ACTION REQUESTED: Please provide your comments on the attached letter to the undersigned (preferably by e-mail to dflores@ici.org) by Friday, May 3, 2002. We are seeking early responses so that our letter may be submitted before the items to be included on the 2002-2003 IRS/Treasury Guidance Priority List (also known as the "business plan") have been finalized. Deanna J. Flores Associate Counsel Attachment (in .pdf format) 1 See Institute Memorandum to Tax Committee No. 21-01, dated July 26, 2001.