

**MEMO# 16928**

December 31, 2003

## **FINAL REGULATIONS ON DISCLOSURE OF CONFIDENTIAL TRANSACTIONS**

[16928] December 31, 2003 TO: ADVISER DISTRIBUTOR TAX ISSUES TASK FORCE No. 20-03 TAX MEMBERS No. 69-03 RE: FINAL REGULATIONS ON DISCLOSURE OF CONFIDENTIAL TRANSACTIONS We are pleased to inform you that final regulations<sup>1</sup> have been issued that clarify the scope of a taxpayer's obligation to disclose tax shelter transactions pursuant to the "confidential transaction" trigger of Treas. Reg. section 1.6011-4(b)(3). The new final regulations generally adopt suggestions made by the Institute, following the release in March 2003 of final tax shelter regulations,<sup>2</sup> to narrow the scope of the confidential transaction trigger by exempting non-abusive transactions.<sup>3</sup> While these new final regulations generally are effective December 29, 2003, they may be relied upon for transactions entered into on or after January 1, 2003. Under the new final regulations, a confidential transaction is one offered to a taxpayer under "conditions of confidentiality" and for which the taxpayer has paid an advisor a minimum fee (either \$250,000 or \$50,000, depending on the taxpayer). The regulations further provide that a transaction is offered under conditions of confidentiality if the advisor "places a limitation on disclosure by the taxpayer of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of that advisor's tax strategies." <sup>1</sup> Please go to [http://www.treas.gov/press/releases/reports/td9108\(confidentiality\).pdf](http://www.treas.gov/press/releases/reports/td9108(confidentiality).pdf) to see the final confidential transaction regulations. <sup>2</sup> The March 2003 regulations, likewise adopting Institute suggestions, provide several reporting exceptions for regulated investment companies ("RICs") -- including an exception from the confidential transaction trigger. See Institute Memorandum to Accounting/Treasurers Committee No. 55-02, Advisor Distributor Tax Issues Task Force No. 4-02, Tax Members No. 56-02 and Unit Investment Trust Members No. 41-02 (No. 15499), dated December 31, 2002 and Institute Memorandum to 529 Plan Advisory Committee No. 4-03 (No. 15568), dated January 23, 2003 for a discussion of the comments we submitted in response to the temporary and proposed regulations. See Institute Memorandum to 529 Plan Advisory Committee No. 14-03, Accounting/Treasurers Members No. 13-03, Advisor Distributor Tax Issues Task Force No. 5-03, Tax Members No. 15-03 and Unit Investment Trust Members No. 9-03 (No. 15707), dated March 7, 2003 for a discussion of the final regulations. <sup>3</sup> See Institute Memorandum to 529 Plan Advisory Committee No. 42-03, Accounting/Treasurers Committee No. 33-03, Advisor Distributor Tax Issues Task Force No. 13-03, Tax Members No. 41-03 and Unit Investment Trust Members No. 27-03 (No. 16386), dated August 1, 2003. Examples of these non-abusive transactions, cited in the Institute's submission, that might be within the March regulations include employment agreements, covenants not to compete, litigation settlements and agreements intended to protect legitimate proprietary business information that does not relate to the tax benefits of a transaction. Lisa Robinson Assistant Counsel

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