INVESTMENT COMPANY INSTITUTE

MEMO# 4400

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FINAL REGULATIONS ON POOLING OF ASSETS OF NUCLEAR DECOMMISSIONING FUNDS

January 7, 1993 TO: TAX COMMITTEE NO. 2-93 INSTITUTIONAL FUNDS COMMITTEE NO. 1-93 RE: FINAL REGULATIONS ON POOLING OF ASSETS OF NUCLEAR DECOMMISSIONING FUNDS ____ In 1990, the Internal Revenue Service ("IRS") proposed regulations dealing with the permissible pooling arrangements for the investment of the assets of nuclear decommissioning funds ("NDFs"), which are the pools of money established by the owners of nuclear power plants to pay for dismantling the plants at the end of their useful lives. (See Institute Memorandum to Tax Committee No. 19-90, dated July 26, 1990.) These proposed regulations would have changed the then-current law to allow NDFs to invest in regulated investment companies ("RICs") which met certain conditions concerning assets and conduct. The Institute filed written comments and testified at an IRS hearing generally in support of the proposed regulations, with two suggested changes. First, the Institute proposed that RICs be exempt from following the self-dealing provisions of the Black Lung Benefits Trust provisions of the Internal Revenue Code (the "Code"), because these provisions merely duplicate the self- dealing provisions of the Investment Company Act of 1940. Second, the Institute suggested that the restriction be removed which limited NDFs to investments in RICs whose only shareholders were other NDFs. (See Institute Memoranda to Tax Committee No. 27-90 and SEC Rules Committee No. 47-90, dated September 4, 1990, and to Tax Committee No. 38-90 and Institutional Funds Committee No. 6-90, dated December 26, 1990.) In 1991, the IRS issued new proposed regulations which would have removed the limitation on the shareholders of RICs in which NDFs invested, but retained the portion of the proposed regulations relating to the self-dealing prohibitions of the Black Lung Benefit Trust provisions of the Code. (See Institute Memorandum to Tax Committee No. 28-91 and Institutional Funds Committee No. 5-91, dated August 23, 1991.) Subsequently, the Energy Policy Act of 1992 repealed the investment limitations which had prevented NDFs from investing in RICs and which had necessitated the issuance of the proposed regulations. (See Institute Memorandum to Tax Members No. 68-92, Operations Members No. 40-92, Transfer Agent Advisory Committee No. 63-92 and Institutional Funds Committee No. 24-92, dated October 26, 1992.) The IRS has issued the attached final regulations on qualified investments of NDFs, which take into account the changes made by the Energy Policy Act of 1992. As a result, NDFs may now invest in a RIC with no restrictions as to the RIC's other shareholders or permissible assets. In addition, the final regulations eliminate the requirement in the proposed regulations that the RIC comply with the self-dealing prohibitions of the Black Lung Benefit Trust provisions of the Code. We will keep you informed of further developments. David J. Mangefrida Jr.

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