

MEMO# 11641

February 15, 2000

FINAL MARK-TO-MARKET REGULATIONS FOR PASSIVE FOREIGN INVESTMENT COMPANY STOCK

1 Pursuant to this election, a US shareholder generally includes in income each year an amount equal to the excess, if any, of the fair market value of the shareholder's PFIC stock as of the close of the taxable year over the shareholder's adjusted basis in such stock. Deductions for losses are allowable only to the extent of any net mark-to-market gains with respect to the stock included in income by the shareholder for prior taxable years. 2 See Institute Memorandum to Tax Members No. 13-99, Unit Investment Trust Committee No. 5-99, and Closed-End Investment Company Committee No. 10-99, dated March 3, 1999. 3 See Institute Memorandum to Tax Committee No. 10-99, Unit Investment Trust Committee No. 12-99, and Closed-End Investment Company Committee No. 17-99, dated May 18, 1999. [11641] February 15, 2000 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 5-00 TAX COMMITTEE No. 7-00 UNIT INVESTMENT TRUST COMMITTEE No. 5-00 RE: FINAL MARK-TO-MARKET REGULATIONS FOR PASSIVE FOREIGN INVESTMENT COMPANY STOCK

The Treasury Department has issued final regulations (Treas. Reg. 1.1296(e)-1) regarding when passive foreign investment company ("PFIC") stock held by a shareholder is "marketable" and, thus, eligible for the mark-to-market election of section 1296 of the Internal Revenue Code.¹ Under the statute, all PFIC stock held directly or indirectly by open-end regulated investment companies ("RICs") is eligible for the mark-to-market election. Similar statutory treatment is provided for PFIC stock held by closed-end RICs that publish net asset values at least annually, except as provided in regulations. In connection with the issuance of the regulations in proposed form,² the Internal Revenue Service requested comments on situations, if any, in which PFIC stock held by closed-end RICs should not be treated as marketable. The Institute submitted comments to the Service recommending that the final regulations always treat PFIC stock held by closed-end RICs as marketable.³ Pursuant to the preamble, the attached final regulations adopt the Institute's recommendation and treat PFIC stock held by closed-end RICs as marketable for purposes of section 1296. The preamble explains that, at this time, the Internal Revenue Service and Treasury Department know of no reason not to treat PFIC stock held by closed-end RICs as marketable. The text of the final regulations, however, "reserves" on this issue in the event that a reason to treat PFIC stock held by closed-end RICs differently is later determined. The final regulations generally apply to taxable years of shareholders ending on or after January 25, 2000. Shareholders also generally may elect to apply the final regulations to any taxable year beginning after December 31, 1997. Deanna J. Flores Assistant Counsel
Attachment

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