

MEMO# 14682

May 1, 2002

INSTITUTE'S REQUEST FOR IRS BUSINESS PLAN GUIDANCE

[14682] May 1, 2002 TO: TAX COMMITTEE No. 15-02 RE: INSTITUTE'S REQUEST FOR IRS BUSINESS PLAN GUIDANCE The Institute has submitted the attached letter to the IRS and Treasury requesting that the 2002 priority guidance plan include several items of interest to regulated investment companies ("RICs") and their shareholders. The items are: (1) guidance regarding the definition of a government security for RIC diversification purposes; (2) guidance clarifying the application of the "business continuity" requirement to RICs under Code section 368 and Treas. Reg. 1.368-1(d)(2); (3) guidance regarding the interaction between the income tax rules of Subchapter M of the Code and the excise tax minimum distribution requirements of section 4982,¹ including: (a) promulgation of "bifurcation adjustment" regulations; (b) guidance that would clarify that short-term losses subject to section 852(b)(4)(A) are "recharacterized" as 20 percent rate losses; (c) guidance that would address the interaction between the constructive sale rules of section 1259 and the excise tax rules;² and (d) guidance that would resolve long-standing technical issues arising from the interaction between the income tax and excise tax regimes;³ 1 These "interaction" issues were addressed in the Institute's May 1998 submission to IRS. See Institute Memorandum to Tax Committee No. 19-98, dated May 29, 1998. 2 The requested guidance would (a) clarify that the constructive sale rules (including the closed transaction exception) apply on the basis of a RIC's taxable year only and (b) provide, to any RIC seeking certainty as to the includability of constructive sale income for excise tax purposes, an election not to apply the closed transaction exception. 2 (4) guidance updating the regulations under section 853 pursuant to which RICs flow through foreign tax credits to their shareholders;⁴ and (5) guidance to address the inadvertent and significant difficulties created by Revenue Procedure 2002-16 for tax-exempt money market and municipal bond funds that invest in synthetic tax-exempt variable rate instruments. Catherine Barré Assistant Counsel Attachment (in .pdf format) 3 These issues include: (a) pre-January ordinary losses; (b) post-December ordinary losses; (c) the automatic deferral of post-October losses for dividend designation purposes; (d) post-October net short-term capital losses; (e) ordinary income and loss on dispositions of capital assets; and (f) application of the post-October loss rules to RICs exempt from Code section 4982. We have also requested that related technical issues involving passive foreign investment companies ("PFICs") be addressed in any guidance project. 4 Among other things, the regulations should clarify that RICs no longer need to provide shareholders with foreign tax credit information calculated on a country-by-country basis, as the statutory requirement for such reporting was repealed in 1976.

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