

MEMO# 17173

March 5, 2004

INSTITUTE COMMENT LETTER REGARDING PROPOSED CHANGES TO CIRCULAR 230

[17173] March 5, 2004 TO: FIXED-INCOME ADVISORY COMMITTEE No. 4-04 MONEY MARKET FUNDS ADVISORY COMMITTEE No. 5-04 TAX COMMITTEE No. 8-04 RE: INSTITUTE COMMENT LETTER REGARDING PROPOSED CHANGES TO CIRCULAR 230 The attached Institute comment letter addresses proposed revisions by the Treasury Department to Circular 230, which, among other things, sets forth standards for tax shelter opinions. The proposed revisions would, among other things, (1) expand the definition of a tax shelter to include “any... arrangement, a significant purpose of which is the avoidance or evasion of any tax imposed by the Internal Revenue Code”; (2) eliminate municipal bonds from the list of investments or arrangements that are excluded from the definition of tax shelter; (3) require marketed tax shelter opinions to identify, consider and evaluate all relevant facts and material federal tax issues; and (4) require marketed tax shelter opinions to include certain disclosures with respect to any material federal tax issue, including a statement that “the opinion may not be sufficient for the purpose of avoiding tax penalties” and a statement that taxpayers should seek advice from their own tax counsel with respect to material federal tax issues addressed in the opinion. The Institute’s comment letter explains why investment company purchasers of municipal bonds require unqualified bond counsel opinions for the municipal securities that they purchase and describes the adverse impact that the proposed revisions would have on bond purchasers. The draft comment letter argues that the proposed changes to Circular 230 would unduly burden the municipal bond market, would not achieve Treasury’s objective of eliminating abusive tax shelters, and could in fact result in a proliferation of such abusive transactions. Consequently, the comment letter urges Treasury to modify its proposed rules to provide that an unqualified tax opinion -- concluding that interest on a municipal bond is exempt to the recipient under Section 103 -- is not a tax shelter opinion for Circular 230 purposes. The letter also recommends that opinions with respect to those synthetic municipal investments meeting the requirements of Revenue Procedure 2003-84 (including grandfathered arrangements) be exempt from the definition of tax shelter opinion. 2 Lisa Robinson Assistant Counsel Attachment (in .pdf format)