

MEMO# 9438

November 19, 1997

SURVEY ON DISTRIBUTION ARRANGEMENTS

1 See Institute Memorandum to Tax Committee No. 40-97, dated November 10, 1997.
[9438] VIA FAX ACTION REQUESTED November 19, 1997 TO: TAX COMMITTEE No. 41-97 RE:
SURVEY ON DISTRIBUTION ARRANGEMENTS

As you know, a joint meeting of the Tax Committee and the Task Force on Investment Adviser/Distributor Tax Issues will be held on Wednesday, December 3, 1997 to discuss issues being raised by IRS agents regarding the tax treatment by fund distributors of 12b-1 arrangements.¹ Specifically, some agents are questioning (1) whether a fund distributor should be required to take into income in the year fund shares are sold some amount that may be received in future years from a 12b-1 plan and (2) whether the distributor should be required to capitalize commission payments to brokers and amortize them over some period of time rather than deduct them in the year of payment. The IRS National Office resolved these issues in the taxpayer's favor in TAM 9345003. ACTION REQUESTED The attached survey has been prepared to guide the discussion on December 3 and to assist us in describing, in any Institute submission to IRS on these issues, the current nature of 12b-1 distribution arrangements. We anticipate that you will be able to complete the survey in a few minutes by providing short written responses (many in "check the box" format) to the questions asked. The survey also requests copies of (1) excerpts from prospectuses and/or SAs describing the 12b-1 distribution arrangements and (2) copies of sample 12b-1 plans and distribution agreements. Please complete the survey at your earliest convenience and return it to Elizabeth Lyons, the Tax Department's Administrative Assistant, no later than Monday, December 1, 1997. Written responses to the survey may be faxed to 202-326-5839. Copies of the requested materials may be sent to us at 1401 H Street, NW, Washington, DC 20005. Any questions regarding the survey or the issues being raised by IRS may be directed to the undersigned at 202-326-5832 or to Anne Barr at 202-326-5837. Keith D. Lawson Associate Counsel - Tax