

MEMO# 5344

November 19, 1993

IRS ISSUES GUIDANCE ON 12B-1 DISTRIBUTOR TAX ISSUE

November 23, 1993 TO: BOARD OF GOVERNORS NO. 108-93 RE: IRS ISSUES GUIDANCE ON 12b-1 DISTRIBUTOR TAX ISSUE _____

As you may know, the Internal Revenue Service has been considering the issue of whether a mutual fund distributor may deduct 12b-1 commission payments to brokers. (See Institute memorandum to Board of Governors No. 38- 91, dated June 4, 1991.) In the attached IRS technical advice memorandum ("TAM"), the Service has concluded that such commission payments to brokers are currently deductible. This conclusion is based upon the regulations under Code section 263, which permit the deduction of commission payments by a securities dealers. The TAM further states that a fund distributor does not recognize compensation income that may be paid under a 12b-1 plan in conjunction with the sale of fund shares at the time of the sale. The contingencies relating to the receipt of that income are described as sufficient to conclude that income recognition is not required at the time of sale. We will keep you informed of developments. Catherine L. Heron Vice President - Tax and Pension Attachment

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