

MEMO# 17145

February 27, 2004

DRAFT COMMENT LETTER FOR YOUR REVIEW REGARDING PROPOSED CHANGES TO CIRCULAR 230

[17145] February 27, 2004 TO: FIXED-INCOME ADVISORY COMMITTEE No. 3-04 MONEY MARKET FUNDS ADVISORY COMMITTEE No. 4-04 TAX COMMITTEE No. 6-04 RE: DRAFT COMMENT LETTER FOR YOUR REVIEW REGARDING PROPOSED CHANGES TO CIRCULAR 230

The attached Institute draft 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 draft comment letter explains why investment company purchasers of municipal bonds (the "buy-side") require unqualified bond counsel opinions for the municipal securities that they purchase and describes the adverse impact that the proposed revisions will have on the buy-side. The draft comment letter argues that the proposed changes to Circular 230 will not achieve Treasury's objective of eliminating abusive tax shelters, and may 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 be exempt from the definition of tax shelter opinion. We request that you provide comments on the draft letter at your earliest convenience and no later than Wednesday, March 3, 2004 at 12:00 noon. Comments may be provided to 2 Keith Lawson at 202-326-5832 or lawson@ici.org, Lisa Robinson at 202-326-5835 or lrobinson@ici.org or Barry Simmons at 202-326-5923 or bsimmons@ici.org. In addition, we will hold a conference call to discuss the draft comment letter on Tuesday, March 2, 2004 at 2:00 pm EST. If you would like to participate in this conference call, please complete the attached response form and fax it to Ezella Wynn at 202-326-5841 or e-mail ewynn@ici.org by Monday, March 1, 2004. To participate in the call, please dial 800-621-7732 and enter passcode "11201." Lisa Robinson Assistant Counsel Attachments (in .pdf format)

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