

MEMO# 3872

June 19, 1992

PROPOSED MASSACHUSETTS REGULATIONS ON TAXATION OF FOREIGN CORPORATIONS

June 19, 1992 TO: TAX COMMITTEE NO. 24-92 ACCOUNTING/TREASURERS COMMITTEE NO. 29-92 MASSACHUSETTS MEMBERS RE: PROPOSED MASSACHUSETTS REGULATIONS ON TAXATION OF FOREIGN CORPORATIONS

The Massachusetts Department of Revenue has issued proposed regulations which set forth the circumstances under which Massachusetts has jurisdiction to tax a foreign corporation. The state's tax jurisdiction under the excise on foreign corporations (the state's equivalent of a corporate income tax) will be construed as extending to the limits permitted by the Constitution and laws of the United States, unless a specific statutory exclusion applies. Engaging in certain activities enumerated in 830 CMR 69.39.1(4) will subject the foreign corporation to Massachusetts tax jurisdiction unless certain exceptions apply. Among the activities which would give Massachusetts tax jurisdiction (and which could be applicable to regulated investment companies ("RICs")) are qualifying to do business in Massachusetts or actually doing business there, including the buying, selling or procuring of services and the exercise or enforcement of contract rights. Thus, for example, the Commonwealth might assert that a non-Massachusetts RIC with Massachusetts service providers (such as the investment advisor, transfer agent, custodian, etc.) was subject to the excise because of the procuring of services in Massachusetts and the enforcement, if necessary, of the contracts between the RIC and any service providers. The proposed regulations set forth several examples which illustrate various nexus determinations. The entity in Example 9, on page 19 of the proposed regulations, appears intended to be a RIC, although the facts do not precisely describe the actual operation of a RIC. It is currently unclear how this example can be reconciled with the recent Massachusetts Letter Ruling 91-2 (See Institute Memorandum to Tax Committee No. 6-92, dated February 10, 1992), which held that a foreign RIC was not subject - 2 - to tax because the procuring of services through the hiring of the investment advisor, transfer agent, etc. was insufficient to give the state jurisdiction over the foreign RIC. We will keep you informed of developments. David J. Mangefrida Jr. Assistant Counsel - Tax Attachment

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