

**MEMO# 18956**

June 21, 2005

# **INSTITUTE LETTER REQUESTS CLARIFICATION REGARDING THE APPLICATION OF CIRCULAR 230 TO THE MUTUAL FUND INDUSTRY**

©2005 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [18956] June 21, 2005 TO: ADVISER DISTRIBUTOR TAX ISSUES TASK FORCE No. 5-05 FIXED-INCOME ADVISORY COMMITTEE No. 15-05 MONEY MARKET FUNDS ADVISORY COMMITTEE No. 13-05 TAX MEMBERS No. 19-05 RE: INSTITUTE LETTER REQUESTS CLARIFICATION REGARDING THE APPLICATION OF CIRCULAR 230 TO THE MUTUAL FUND INDUSTRY The Institute has submitted a letter to the Treasury Department and the Internal Revenue Service (attached) requesting clarification regarding the potential application of the “covered opinion” rules of section 10.35 of Circular 230 to the mutual fund industry. The final regulations under Circular 230 become effective June 21, 2005 and will apply detailed disclosure obligations to “covered opinions” and other written advice. The term “covered opinion” includes written advice that concerns one or more Federal tax issues arising from, among other things, any investment plan or arrangement, a significant purpose of which is the avoidance or evasion of tax if the written advice is a reliance opinion or a marketed opinion.<sup>1</sup> The Institute letter requests modifications to section 10.35 to ensure that the following types of communications are excluded: (1) communications by mutual funds and their affiliates with prospective and current shareholders; (2) internal communications by in-house “practitioners” (as defined in Circular 230) of a mutual fund adviser and its affiliates regarding the tax treatment of the mutual funds that the firm manages; and (3) trade association communications to members. The Institute letter also proposes certain revisions to Circular 230’s definition of “covered opinion” that would tailor the term and prevent the inclusion of many kinds of communications that were never intended to be within the scope of the rules governing such opinions. Specifically: 1 These terms are explained more extensively in the Final Regulations. See Institute Memoranda (18356) to Tax Members No. 50-04, dated December 20, 2004 and (18351) to Fixed-Income Advisory Committee No. 14-04, Money Market Funds Advisory Committee No. 15-04 and Tax Committee No. 39-04, dated December 20, 2004. 2 • The term “significant purpose of tax avoidance” should exclude transactions the intended tax benefits of which are consistent with the relevant Code provisions and legislative purpose. • The definition of “marketed opinion” should be limited to written tax advice that addresses one or more “significant tax issues,” i.e., an issue as to which the Service would have a reasonable basis for successful challenge. • The definition of “covered opinion” should be limited to written tax advice provided by a practitioner to his or her client. Lisa

Robinson Associate Counsel Attachment (in .pdf format) Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 18956, or call the ICI Library at (202) 326-8304 and request the attachment for memo 18956. 18956, or call the ICI Library at (202) 326-8304 and request the attachment for memo 18956.

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