

COMMENT LETTER

October 1, 2020

ICI Comment Letter to IRS on Proposed Regulations under Section 1061 (pdf)

By Electronic Delivery October 1, 2020 Krishna Vallabhaneni Michael Desmond Tax Legislative Counsel Chief Counsel U.S. Department of the Treasury Internal Revenue Service 1500 Pennsylvania Avenue, NW 1111 Constitution Avenue, NW Washington, DC 20220 Washington, DC 20224 RE: REG 107213-18 – Proposed Regulations on Carried Interest Dear Mr. Vallabhaneni and Mr. Desmond: The Investment Company Institute¹ asks the Treasury Department and the Internal Revenue Service (IRS) to maintain in final regulations the permissive nature of the reporting rules for regulated investment companies (RICs) included in the recently proposed regulations on carried interest. The proposed regulations permit (but do not require) RICs and real estate investment companies (REITs) to report certain amounts of capital gain to their shareholders for purposes of section 1061. We believe RICs rarely, if ever, will have shareholders for whom this provision is relevant; requiring this additional reporting thus would be unnecessarily burdensome for our members. The proposed regulations would treat certain capital gain distributions from RICs and REITs as satisfying the holding period in section 1061(a) for taxpayers holding an applicable partnership interest (API) in the partnership receiving the distribution. To facilitate this treatment, the proposed regulations would permit RICs and REITs to (1) disclose to shareholders the amount of capital gain distributions attributable to the RICs' or REITs' net capital gain excluding any amount not taken into account for purposes of section 1061; and (2) report to shareholders amounts of capital gain that have been held for more than three years. The Institute's members believe it would be extremely rare for a taxpayer to hold an API in a partnership that holds RIC shares, as partnerships that provide carried interests typically do. 1 The Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US\$26.9 trillion in the United States, serving more than 100 million US shareholders, and US\$7.8 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC. ICI Letter re Proposed Carried Interest Regulations October 1, 2020 Page 2 of 3 not invest in RICs. The amounts that may be reported under Prop. Reg. § 1.1061-6(c) thus would be of no use to RIC shareholders. Further, making changes to tax reporting systems are costly and time consuming. RICs currently report capital gain distributions as short- or long-term based upon the one-year delineation set forth in section 1222. The rule in the proposed regulation would add a third type of capital gain that RICs would need to

track and report, requiring significant programming changes. Given the unlikelihood that a RIC shareholder would be subject to the rules under section 1061, we believe that RICs should not be required to report the capital gain distribution amounts set forth in the proposed regulations. Rather, RICs should be permitted to report such amounts if they have a shareholder for whom such amounts are relevant. We thus ask the Treasury Department and the IRS to retain the permissive nature of the RIC reporting rules when they finalize the regulations. In addition, we ask the Treasury Department and the IRS to clarify that a RIC opting to report such amounts may do so on a written statement furnished to the applicable shareholder without tying the reporting of such amounts to the reporting of capital gain dividends.² The proposed regulations specify that RICs would provide this information “in writing to its shareholders with the statement described in section 852(b)(3)(C)(i) ... in which the capital gain dividend is reported ...” The preamble further suggests that the statement will be furnished in connection with the Form 1099-DIVs. Given members’ belief that it would be extremely rare for a partnership that is interested in this type of information to hold RIC shares, most funds likely will not calculate and report this information at the time that the capital gain dividends are reported on 1099-DIVs or other written statements. If a shareholder subsequently informs a fund that it needs this information, and the fund can calculate the amounts, then the fund should be permitted to report the information at that point on a written statement furnished to the shareholder. 2 Other types of pass-through items simply require a RIC to provide a written statement to shareholders without specifying when such statement must be provided. See, e.g., section 852(b)(5)(A)(i) (exempt-interest dividends); Treas. Reg. § 1.199A-3(d)(2) (section 199A dividends). ICI Letter re Proposed Carried Interest Regulations October 1, 2020 Page 3 of 3 We appreciate your consideration of our request. Please do not hesitate to contact me (kgibian@ici.org or 202-371-5432) if you have any questions. Sincerely, Karen Lau Gibian Associate General Counsel, Tax Law cc: Holly Porter Kara K. Altman Sonia K. Kothari Helen Hubbard Steven Harrison