INVESTMENT COMPANY INSTITUTE

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By Electronic Delivery

May 31, 2016

Hon. Mark J. Mazur
Assistant Secretary for Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Hon. William J. Wilkins
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

RE: Guidance Priority List Recommendations

Dear Mr. Mazur and Mr. Wilkins:

The Investment Company Institute[1] recommends the following issues affecting regulated investment companies ("RICs") and their shareholders for inclusion on the 2016-2017 Guidance Priority List.[2]

As requested in Notice 2016-26, these recommendations have been listed in order of priority. Those issues that the Institute believes require prompt guidance are listed immediately below. The Institute notes, however, that a large number of issues are important to the industry; additional items that have been included in prior requests for guidance from the Internal Revenue Service ("IRS") and the Treasury Department are included below as Attachment A.

[1] The Investment Company Institute (ICI) is a leading global association of regulated funds, 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 U.S. fund members manage total assets of $17.6 trillion and serve more than 90 million U.S. shareholders.

[2] A separate submission describes our Guidance Priority List recommendations for retirement security issues.

I. Foreign Tax Recoveries from European Union Member States under *Santander*

The Institute appreciates greatly the issuance of Notice 2016-10, which adopts an administrable solution to the U.S. fund industry's receipt of withholding tax refunds following the European Court of Justice ("ECJ") decisions in *Santander*[3] and *DFA Emerging Markets*.[4] The solution adopted in Notice 2016-10 reimburses the U.S. government in an administrable manner for foreign tax credits claimed by shareholders in funds taxed as RICs that subsequently recover the taxes for which the credits were claimed.[5]

U.S. funds began to receive large refunds from European countries in 2015 (specifically from Sweden, Finland, and Poland); more countries are expected to follow. Notice 2016-10's issuance at the beginning of the 2015 tax reporting season allowed the U.S. government to be made whole for the recoveries without an undue burden being placed on RIC shareholders.

The Institute urges that the IRS issue second-stage guidance that modifies Notice 2016-10 in order to enhance its value to RICs, their shareholders, and the IRS. The modifications requested in our recent letter[6] address both industry concerns and issues that we understand were left "open" so that the guidance could be published in time for 2015 tax reporting purposes. Specifically, we request that:

(1) RICs be permitted to "carry forward" the amount of any refunded taxes that cannot be offset in the year refunded;
(2) netting be permitted for RICs that are held predominantly by insurance companies;
(3) guidance clarify that RICs may estimate, before December 31, the post-refund interest due;
(4) guidance clarify the manner in which qualified dividend income is calculated; and
(5) guidance "standardize," to the extent possible, the terms of any required closing agreements.

II. Money Market Fund Reform

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[3] The *Santander* decision involves joined cases C-338/11 to C-347/11. The decision was rendered in French and translated into the other languages of the European Union ("EU"). The decision can be found online in English and in French.

[4] The DFA Emerging Markets decision is cited in full as C-190/12 *Emerging Markets Series of DFA Investment Trust Company* (10 April 2014).

[5] *See* Institute letter to Erik Corwin, dated April 30, 2013.

[6] *See* Institute letter to Robert Stack, Marjorie Rollinson, and Helen Hubbard, dated April 1, 2016.

The Institute commends the Treasury Department and the IRS for Notice 2016-32 and Rev. Proc. 2016-3, which address significant issues affecting money market funds arising from the Securities and Exchange Commission's ("SEC's") new money market fund rules.

Although the guidance issued in May resolve two important issues, we reiterate the importance of finalizing the proposed regulations implementing the NAV Method. We recognize that taxpayers may rely upon the proposed regulations until final regulations are issued; investors, however, generally prefer the clarity provided by final regulations when making investment and business decisions. We thus ask the IRS and the Treasury Department to finalize those regulations as soon as possible and well before the October 14, 2016 compliance date for the new money market fund rules.

The Institute also urges the IRS and the Treasury Department to make four changes to the "NAV method" provided in the proposed regulations.[7] First, shareholders should be permitted to use the NAV method on an account-by-account basis. Second, the NAV method should be available for shareholders in stable NAV money market funds that charge a liquidity fee. Third, the IRS and the Treasury Department should confirm that RICs are permitted to use the one-year period from November 1 to October 31 as its "computation period" for purposes of the excise tax. Fourth, the IRS and Treasury Department should clarify that "fair market value" for purposes of the NAV method means "the next published NAV per share."

Finally, we offer a few other recommendations to help implement money market reform. First, the wash sale exemption in Revenue Procedure 2014-45 should be extended to stable NAV funds that impose a liquidity fee. Second, guidance should be provided regarding how funds should treat any liquidity fees received. Finally, the IRS and Treasury Department should clarify whether the distribution of excess liquidity fees results in a return of capital or if the fund is deemed to have sufficient earnings and profits to support such distribution.

III. FATCA

The Institute supports strongly FATCA's tax compliance objectives and encourages the continued refinement of administrable rules that implement, consistent with Congressional intent, the Chapter 4 reporting and withholding regime.

The Institute appreciates greatly the opportunity we had to join the IRS and Treasury Department in the November 2015 roundtable on FATCA implementation challenges. The prioritization of FATCA issues for both industry and the government that took place in connection with that meeting continues to guide implementation

[7] *See* Institute letters to Mark Mazur and William Wilkins, dated October 23, 2014 and to Michael Novey and Steven Harrison, dated March 11, 2015.

efforts. The Institute submitted recommendations for FATCA action items following that roundtable[8] and anticipates doing so again in connection with the next FATCA roundtable meeting (currently being scheduled for the summer of 2016). Additional guidance requests made in 2014[9] address issues regarding how withholding agents should finalize their FATCA registration, due diligence, withholding, and reporting processes. As FATCA's phased implementation is well underway, the Institute recommends giving FATCA issues continued high priority.

IV. Items Related to RIC Modernization Act of 2010

The RIC Modernization Act of 2010 (the "RIC Modernization Act") addressed several technical issues impacting the industry. Regulatory guidance is needed, however, to implement properly the provisions of the RIC Modernization Act.[10]

First, we request guidance clarifying that the bifurcation guidance of Notice 97-64[11] (as modified by Notice 2004-39[12]) continues to apply, to the extent necessary, after the RIC Modernization Act's changes to the elective deferral rules for post-October losses. Specifically, a RIC still needs to "bifurcate" its taxable year into two components to prevent character reclassifications when a RIC: (i) has a pre-November net capital gain; (ii) has a post-October loss in a long-term category (*i.e.*, 15% or 28%) that could change the category of the pre-November net capital gain on a taxable year basis; and (iii) does not have a post-October net capital loss, net long-term loss or net short-term loss that, if deferred, would avoid the reclassification.

Second, we request guidance allowing a RIC to meet the RIC Modernization Act's requirement to provide its shareholders with a "written statement" regarding the character of its distributions by posting the information on its website and advising its shareholders, in writing, to consult the website for this information.[13]

Third, we urge a new Schedule D for Form 1120-RIC, which would enable RICs to more accurately detail their capital gains and losses, rather than requiring a RIC to use the current generic form that applies to all corporations.[14] As such, the proposed form

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[8] *See* Institute recommendations to Mark Gillen, dated February 26, 2016.

[9] *See* the Institute's and the ACLI's joint letter to John Sweeney, dated January 6, 2014, and the Institute's letter to John Sweeney, dated June 9, 2014.

[10] *See* Institute letter to Emily McMahon and William Wilkins, dated June 30, 2011.

[11] 1997-2 C.B. 323.

[12] 2004-1 C.B. 982.

[13] Section 301 of the Act.

[14] *See* letter to John Koskinen and William Wilkins dated March 13, 2014.

would include information that is necessary to calculate a RIC's tax liability and would eliminate unnecessary information.

Specifically, the proposed Schedule D would eliminate the requirement for RICs to complete the Form 8949. It also would incorporate losses recognized before the effective date of the RIC Modernization Act, which may be carried forward for only 8 years, and losses recognized after the effective date of the RIC Modernization Act, which are not subject to expiration. The Institute also recommends that the IRS revise certain lines on the Form 1120-RIC to conform to changes implemented by the RIC Modernization Act.

VI. Deemed Dividends under Section 305(c)

We request that the IRS and the Treasury Department address several issues of concern to the mutual fund industry that were left open in the proposed regulations under section 305(c) issued earlier this year.[15] First, the Institute requests confirmation that deemed dividends under section 305(c) constitute qualified dividend income (assuming holding period requirements are met). Second, we request confirmation that failure to account for deemed dividends is a method of accounting (assuming the taxpayer has established a method) and that the general principles governing voluntary method changes apply. The Institute is continuing to discuss the proposed regulations with its members and plans to submit additional comments on the proposed regulations in the near future. We urge the IRS and the Treasury Department to consider all comments received and to finalize the regulations in a timely manner.

VII. Cost Basis Reporting

The Institute continues to urge the IRS and Treasury Department to issue promptly guidance clarifying a number of issues with respect to cost basis reporting.[16] Specifically, we ask the IRS and Treasury Department to adopt in final regulations the rules provided in Notice 2011-56[17] regarding changes from a broker's default method of average cost, with the few modifications detailed in our previous letter.

We also urge the IRS and Treasury Department to reconsider the requirement that a shareholder who elects to use the average cost method, revokes such election, or changes from the average cost method (whether the broker default or a shareholder election) must do so in writing. Requiring such elections, revocations, and changes in

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[15] *See* letter to Erik Corwin dated December 15, 2014 from the Institute, the Managed Funds Association, and the Securities Industry and Financial Markets Association.

[16] *See* Institute letter to Emily McMahon and William Wilkins, dated July 28, 2011.

[17] 2011-29 I.R.B. 54.

writing is unnecessarily burdensome and potentially costly for shareholders.[18] The Institute instead proposes that the regulations permit brokers, including RICs, to provide a written confirmation to shareholders of a cost basis method election, revocation, or change, in lieu of a written notification by the shareholder.

The Institute also requests that several other issues regarding cost basis reporting be clarified. First, the IRS and Treasury Department should clarify that brokers may use any basis method as their default method for mutual fund shares, including first-in, first-out (FIFO), average cost, or any other formulaic method, as clearly intended by Congress. Second, we request that gifted shares have a carryover holding period, even if the shares were gifted at a loss (*i.e.*, the cost basis of the gifted shares exceeds the fair market value on the date of gift) and the donee subsequently sells the shares at a loss. Third, we ask the IRS and Treasury Department to clarify that, for cost basis reporting purposes, shares acquired by an estate after the decedent's death have a basis equal to the fair market value on the date of acquisition, unless the broker receives other information from an estate representative. Finally, the IRS should (i) clarify whether RIC liquidating distributions are subject to cost basis reporting and; (ii) if so, amend Forms 1099-B and 1099-DIV, and the accompanying instructions, to specify that liquidating distributions by RICs should be reported on Form 1099-B, so that brokers can properly report cost basis information for such distributions.

VIII. Foreign Bank and Financial Account Reporting

The Institute urges that the recently-proposed revisions[19] to the Report of Foreign Bank and Financial Accounts (FBAR)[20] filing requirements be modified to resolve ongoing difficulties for the fund industry. In light of the many issues raised with respect to FBAR, we encourage the government to conduct a comprehensive review of the FBAR reporting requirements to eliminate unnecessary filings that do not have the "high degree of usefulness in criminal, tax, regulatory, and counterterrorism matters" required by the Bank Secrecy Act.[21]

The concerns expressed in the Institute's recent letter[22] relate to the likelihood that FinCEN will be overwhelmed by essentially worthless FBAR filings unless three different areas are addressed. Specifically, amendments are needed to prevent

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[18] *See* Institute letter to William Wilkins, dated February 8, 2010. This letter commented on the proposed in-writing requirement for an affirmative average cost election. The proposed regulations did not require a revocation of such an election or a change from average cost to be in writing, so the Institute's letter does not address these rules, which were added to the final regulations.

[19] 81 Fed. Reg. 12614 (March 10, 2016).

[20] FinCEN Report 114.

[21] 31 U.S.C. 5311.

[22] *See* Institute letter to Jennifery Shasky Calvery, dated May 9, 2016.

counterproductive FBAR filings by (1) persons employed by fund managers, (2) individuals with signature authority over 25 or more foreign accounts, and (3) both a fund and its U.S. global custodian with respect to the same account. Our requested guidance is consistent with FBAR's purposes of thwarting abusive tax schemes and combatting terrorism; adopting our suggestions will lead to improved compliance.

IX. Ownership Tracking Requirements

The Institute asks that a project be opened to amend the regulations under sections 382 and 383 with respect to ownership tracking requirements that apply to participant-directed retirement accounts holding RIC shares and to variable insurance products. Specifically, the regulations should permit a RIC to look through participant-directed retirement accounts and variable insurance product account owners and treat each participant/investor who holds less than five percent of the RIC's shares as part of the RIC's direct public group. The concerns addressed by sections 382 and 383 are not implicated when a RIC's new shareholders are retirement accounts or variable insurance product accounts that cannot benefit from such tax attributes.

This change effectively would prevent a large collection of small investors making independent investment decisions from being treated as a single entity for ownership change purposes. Absent this change, a retirement plan administrator's decision as to which RICs to offer in a plan could significantly affect whether other shareholders in the RIC can benefit from the RIC's capital losses even though the retirement plan administrator is neither a beneficial owner of RIC shares nor responsible for allocating investment assets among RICs. Likewise, absent this change, an ownership change could occur if another company buys the insurance company holding the variable insurance product shares. Again, these scenarios should not raise tax policy concerns.

X. Electronic Filing

The Institute recommends that a project be opened to implement electronic filing of Forms 1120-RIC. Specifically, we suggest that the Modernized e-File (MeF) system be updated to process Forms 1120-RIC. Electronic filing reduces tax compliance burdens on taxpayers, especially with respect to bulky corporate returns such at the 1120-RIC.

XI. Section 529 Qualified Tuition Programs

The Institute also urges the IRS and Treasury to address issues regarding section 529 qualified tuition programs ("section 529 plans"), particularly in light of the changes made by the Protecting Americans from Tax Hikes Act of 2015 (the "PATH Act"). A project to address these issues, which was included on prior Guidance Priority Lists, was deleted from the 2009-2010 list without guidance being issued. Guidance regarding section 529 plans remains necessary to implement fully the Advance Notice of Proposed Rulemaking ("Advance Notice") regarding section 529 plans that the IRS released in 2008.

We are pleased that the Advance Notice reflects several comments previously submitted jointly by the Institute and the Securities Industry and Financial Markets Association ("SIFMA").[23] It remains important, for those saving for education through section 529 plans, that the tax treatment of investments in such plans is clear. We urge the IRS to continue its work on this guidance project to address outstanding issues[24] and we anticipate contacting the IRS in the near future to discuss new issues raised by the PATH Act.

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If we can provide you with any additional information regarding these issues, please contact Keith Lawson (202-326-5832 or lawson@ici.org) or me (202-326-5826 or ryan.lovin@ici.org).

Sincerely,

Ryan M. Lovin

Assistant General Counsel – Tax Law

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[23] *See* Institute and SIFMA letter to Michael Desmond, dated June 12, 2007.

[24] *See* Institute letter to Richard Hurst, Mary Berman and Monice Rosenbaum, dated May 12, 2008, for comments regarding the Advance Notice.

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Attachment A: Additional Recommendations for the 2016-2017 Guidance Priority List

I. Issues on the 2015-2016 Guidance Priority List

The Institute requests that the IRS and Treasury Department issue guidance on the following items currently on the 2015-2016 Guidance Priority List.

A. Check-the-Box Election

The Institute asks the IRS and Treasury Department to issue guidance to coordinate the entity classification election under the check-the-box regulations[25] with the RIC election under section 851(b)(1). Specifically, we request that an eligible entity electing to be treated as a RIC will be deemed to have elected to be classified as an association taxable as a corporation, effective as of the first day the entity is treated as a RIC.[26] The regulations already provide such a deemed check-the-box election for entities that elect to be treated as Real Estate Investment Trusts ("REITs"), for certain entities claiming tax-exempt status, and for entities electing to be taxable as S corporations. Amending the regulations to similarly coordinate the RIC election with the check-the-box rules will reduce administrative burdens for affected entities and the IRS and provide certainty as to an entity's status.

B. Prepaid Forward Contracts

We urge guidance on prepaid forward contracts.[27] Specifically, the Institute strongly supports prompt and comprehensive guidance regarding the tax treatment of exchange-traded notes ("ETNs"). Although ETNs can provide important investment opportunities, they also take advantage of gaps in the tax law to provide investors with tax deferral (of up to 30 years) and character conversion that is inappropriate. This treatment is far more favorable than the treatment obtained by investors in comparable financial instruments and provides a tax incentive to take on issuer credit risk, rather than invest in products that do not entail this risk. In the absence of legislation, regulations should be issued under Treasury's existing authority under section 1260 and should provide a mark-to-market election. If a comprehensive regulatory approach is not

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[25] Treas. Regs. § 301.7701-3.

[26] *See* Institute letter to Emily McMahon and William Wilkins, dated June 1, 2011.

[27] *See* Institute letter to Eric Solomon and Donald Korb, dated May 13, 2008. *See also*, Testimony of William M. Paul on behalf of the Institute, presented on March 5, 2008, before the House of Representatives Ways and Means Subcommittee on Select Revenue Measures.

developed under section 1260, guidance should be issued under section 446 to address any ETNs that remain outside the scope of the section 1260 constructive ownership solution.

C. PFICs

We ask the IRS and Treasury to issue additional guidance regarding passive foreign investment companies ("PFICs"). The preamble to the final PFIC mark-to-market regulations[28] notes in three places that comments received relating to the impact of the PFIC rules on RICs were beyond the scope of that regulations project.[29] We request that a regulations project be opened to address these and other PFIC-related issues faced by the industry.

Specifically, the Institute requests guidance providing (i) that gains from dispositions of former PFIC stock are capital while losses are ordinary to the extent of prior unreversed inclusions; (ii) RICs with automatic consent to terminate a section 1296 election during a non-PFIC year; (iii) that RICs may recognize any change in PFIC status of a foreign corporation for the RIC's taxable year within which the taxable year of the foreign corporation ends; (iv) that the consequences to RICs of applying former Prop. Treas. Reg. § 1.1291-8 will be respected, where relevant, for purposes of section 1296; and (v) that RICs may determine qualified electing fund ("QEF") inclusions using audited financial statements that were prepared using U.S. Generally Accepted Accounting Principles ("GAAP") or International Financial Reporting standards, and that all QEF inclusions subject to this election will be treated as ordinary, but retain the capital character of disposition gains and losses.

D. Distressed Debt

The Institute requests guidance addressing the accrual of interest on distressed debt. Investors have long faced uncertainty regarding how the existing original issue discount and market discount rules should apply to severely distressed, and speculative, debt. In other cases, application of these rules creates what many believe to be inappropriate results.[30] These issues have been exacerbated by the events of the financial crisis.[31]

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[28] T.D. 9123, published on April 29, 2004.

[29] *See* Institute letter, dated November 22, 2002, and Institute letter to Dale Collinson, dated April 24, 2003.

[30] *See, e.g.*, Letter of May 15, 1991, from Jere D. McGaffey to Fred T. Goldberg, Jr. (transmitting comments prepared by members of the ABA's Section of Taxation on the application of market discount rules to speculative bonds).

[31] *See, e.g.*, Institute letter to Eric Solomon and Donald Korb, dated July 28, 2008.

E. Notional Principal Contracts

The Institute remains very interested in guidance providing simplicity and certainty regarding the taxation of notional principal contracts. The Institute made a number of recommendations in our letters on the regulations proposed in 2004 and 2011.[32] We recommend that marks under the elective mark-to-market method, as well as value payments under the noncontingent swap method, be treated as resulting in capital gain or loss. We also suggest that credit default swaps and certain short-term swaps be excluded from the modified noncontingent swap method and the mark-to-market election. Further, we request additional guidance regarding the definition of "payment" and on several technical issues. Finally, we suggest that the guidance should be made entirely prospective upon promulgation of final regulations.

F. Guidance on Income and Asset Diversification

The Institute recommends that the IRS and Treasury Department provide guidance regarding the application of the "cure" provisions in Code Sections 851(d)(2) and (i), added by the Regulated Investment Company Modernization Act,[33] including the schedules referred to in Sections 851(d)(2)(A)(i) and (i)(1)(A) and the meaning of "due to reasonable cause and not due to willful neglect" in Sections 851(d)(2)(A)(ii) and (i)(1)(B). Specifically, the Institute requests that the IRS provide guidance allowing RICs to rely on the REIT regulations[34] for purposes of the RIC income test. The Institute also requests that the IRS provide guidance regarding the asset diversification cure provisions for RICs.

II. Other Issues Directly Affecting RICs and Their Shareholders

A. Commodity Funds

The Institute urges the IRS and Treasury Department to issue published guidance addressing investment in commodities by RICs through controlled foreign corporations ("CFCs") and commodity-linked notes ("CLNs"). As we have discussed, substantial competitive pressures have arisen since the IRS suspended the private letter rulings ("PLRs") process in this area in 2011.[35] These pressures result from the disruption of settled expectations, the unlevel playing field in the industry, and concerns regarding the

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[32] *See* Institute letter to Greg Jenner and Donald Korb, dated July 21, 2004, and Institute letter to Emily McMahon and William Wilkins, dated December 15, 2011.

[33] Pub. L. No. 111-325, 124 Stat. 3537. The Institute previously has asked for additional guidance implementing the RIC Modernization Act.

[34] Specifically, Treas. Reg. § 1.856-7, which provides guidance regarding a REIT's failure to meet its gross income requirements.

[35] *See* Institute letters to Stephen Larson dated August 18, 2011, and September 1, 2011.

IRS's comfort with the legal analysis underpinning the numerous PLRs already issued. These competitive pressures are exacerbated the longer this issue is left unaddressed.

B. The Application of General Corporate Tax Rules to RICs

The Institute requests that the IRS and Treasury Department address issues arising from the application of the general corporate tax rules to RICs. These rules can be unnecessarily difficult to apply and can result in unintended consequences.

1. Business Continuity Requirement for Tax-Free Mergers

First, the Institute requests guidance clarifying the application of the "business continuity" requirement to RICs under section 368 and Treas. Reg. § 1.368-1(d)(2).[36] This clarification is necessary because it is difficult to discern the intended scope of the business continuity test as applied to RIC reorganizations. As a result, many RICs engaging in merger transactions are compelled to rely on the "asset continuity" test;[37] this test, to the detriment of the RIC's shareholders, can place artificial limits on the ability of a portfolio manager to dispose of portfolio securities acquired from a target RIC and imposes significant compliance burdens on funds. The Institute requested guidance on this issue in 2004, at which point the IRS informed us that they wished to gather more information on RIC mergers through the private letter ruling process. The Institute hopes that the IRS and Treasury now have sufficient information to open a project on this issue and requests that they do so.

2. RIC Investments in Partnerships with Different Taxable Year-Ends

Second, we request guidance regarding RIC investments in a partnership in which the RICs and the partnership have different tax years; this guidance should allow RICs to take partnership items into income at the end of each month, rather than at year-end. In general, partners must take partnership items into account at the end of the partnership's tax year.[38] If a RIC invests in a partnership with a different tax year, however, this can cause mismatches between the RIC's distributions and the amount of earnings and profits associated with the partnership's income.

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[36] *See* Institute letter to William D. Alexander and Lon B. Smith, dated January 15, 2003. *See also* Institute letter to William D. Alexander, dated April 30, 2004.

[37] *See* Treas. Reg. § 1.368-1(d)(3).

[38] *See* Rev. Rul. 94-40, 1994-1C.B. 274 (for purposes of the required distribution under section 4982, a RIC must take into account its share of partnership items of income, gain, loss, and deduction as they are taken into account by the partnership, regardless of the taxable years of the RIC and the partnership in which the RIC is a partner).

3. Taxable Mortgage Pools

Third, we request regulatory guidance to clarify issues relating to excess inclusion income of a REIT that is a taxable mortgage pool ("TMP") or that has a qualified REIT subsidiary that is a TMP. Although Notice 2006-97[39] addressed a few issues, and responded to some of the Institute's concerns regarding the lack of guidance in this area,[40] many critically important issues remain unresolved. At a minimum, and as requested by the Institute in 2006, guidance should be issued stating that Notice 2006-97 will not be applied until some reasonable period after a practical reporting regime is implemented and the many uncertainties arising from the Notice are resolved.[41]

[39] 2006-2 C.B. 904.

[40] *See* Institute letter to Eric Solomon and Donald Korb dated May 12, 2006.

[41] *See* Institute letter to Lon Smith, dated December 29, 2006.