

## Investment Management Industry News Summary - August 2000

AUGUST 1, 2010

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### IRS CIRCULAR 230 DISCLOSURE:

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### ***Investment Company Institute ("ICI") Comments on Qualified 5-Year Gain Rules***

August 14, 2000 3:26 PM

The ICI recently submitted a comment letter to the Internal Revenue Service ("IRS") in which the ICI urged the IRS to address certain implementation issues regarding the 5-year gain rules, which become effective after December 31, 2000. In particular, the ICI letter highlighted the following:

***Mark-to-market issues.*** The ICI recommended that:

- Taxpayers be permitted to elect to mark-to-market their shares held on January 1, 2001 by attaching an election to their 2001 tax returns.
- Third parties, such as mutual funds, not be required to be notified of any individual taxpayer mark-to-market election, and not have any record-keeping obligations for mark-to-market elections.
- The IRS announce that the deemed sale and repurchase of securities relating to a mark-to-market election be disregarded for the purposes of the wash sale rules.

- The IRS clarify that mutual funds are permitted to mark their own securities to market pursuant to the 5-year gain rules. The ICI suggested that mutual funds make any mark-to-market election on the Form 1120-RIC filed for the period including January 1, 2001.
- That mutual fund shares fall under the definition of "readily tradable stock," so that the share valuation of any mark-to-market election would be based on the January 2, 2001 closing price.

*Distributions of qualified 5-year gains to mutual fund shareholders.* The ICI recommended that:

- IRS Form 1099-DIV for 2001 be finalized and released as soon as possible and should include a separate box for qualified 5-year gains. In addition, the accompanying instructions should state affirmatively that mutual funds are to report in the qualified 5-year gain box the full amount of gains realized at the entity level after December 31, 2000 on assets held by the fund that are distributed to shareholders receiving IRS Form 1099-DIV. Shareholders would be responsible for determining whether they are in the 15% tax bracket and therefore eligible to treat the identified portion of the capital gain dividend as qualified 5-year gain.
- The IRS clarify that no additional requirements would be imposed on the ability of mutual fund shareholders to receive the benefit of the qualified 5-year gain rules (e.g., based on the shareholder's individual holding period of the mutual fund shares).

*ICI Letter to Lon B. Smith, Assistant Chief Counsel, Financial Institutions and Products, Internal Revenue Service (July 24, 2000).*

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***NASD Publishes Additional Guidance About Non-Cash Compensation Rules***

August 14, 2000 3:21 PM

NASD Regulation, Inc. ("NASDR") recently published additional guidance regarding NASD Conduct Rule 2830, which generally prohibits the payment of any form of compensation from third-party offerors to associated persons of an NASD member. The training or education exception to this rule permits payments or reimbursements in connection with meetings held to train or educate associated persons subject to the following conditions:

- Members must comply with the recordkeeping requirement provided in the non-cash compensation rule;
- The associated person must obtain prior approval to attend the meeting by the employing member, and attendance may not be preconditioned on the achievement of a sales target or any other non-cash compensation arrangement incentives;
- The location of the meeting must be appropriate to the purpose of the meeting, which generally means an office of the member or offeror, or a facility located in the vicinity of that office;
- The payment or reimbursement by an offeror may not be applied to the expenses of a guest; and
- The offeror's payment of reimbursement may not be preconditioned on the achievement of a sales target or other non-cash compensation arrangement.

NASDR clarified the appropriateness of payments or reimbursements by offerors for training or education meetings that extend beyond the time necessary for the actual meeting and for other activities such as tours, golf outings, and other forms of entertainment. According to NASDR, while training meetings should occupy substantially all of the work day, payment or reimbursement for any associated meals, lodging, and transportation would be permissible, but reimbursement or payment for golf outings, tours, or other forms of entertainment while at the location for the purpose of training would not be permissible.

NASDR recommends that offerors use their own internal employee expense reimbursement policies as a guide when planning for training or education meetings. Offerors may consider allowing an additional night's stay when the additional night reduces the meeting's net lodging and transportation expenses.

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#### ***SEC Investment Adviser Task Force to Become Permanent Branch***

August 14, 2000 3:18 PM

The SEC informally announced that its Investment Adviser Task Force will become a permanent division, called the Office of Investment Adviser Regulation. The task force has been instrumental in industry sweeps of best execution and soft dollar practices. It is expected that as the task force becomes a permanent division, it will increase its staff (currently six). It is unclear, however, whether the SEC's focus on investment adviser

regulation will shift from monitoring disclosure to more active industry regulation. *Fund Action*, July 31, 2000.

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#### ***SEC to Shut Down EDGAR Filing System for One Day to Implement Upgrades***

August 14, 2000 3:12 PM

The SEC recently announced that it will shut down its EDGAR system for one day on Friday, November 24, 2000 (the day following Thanksgiving). The SEC will not receive or disseminate electronic filings that day. The EDGAR system will reopen for business as usual at 8:00 a.m. on Monday, November 27, 2000.

The shut-down will allow the SEC sufficient time to make a major upgrade to the internal portion of

the EDGAR system, completing EDGAR's transition to the Internet. Since the day after Thanksgiving historically has had the fewest filings of any day in the year, the SEC anticipates that this one-day shutdown will have a minimum impact on the filing community and disseminators. Other than the temporary shutdown, the internal upgrade will not affect filers and disseminators.

Persons that have EDGAR filings due on November 24, 2000 should note the following:

- The EDGAR system will neither accept nor disseminate filings on November 24, 2000.
- Filings submitted and accepted after 5:30 p.m. on Wednesday, November 22, 2000, will receive a filing date of Friday, November 24, 2000 (unless they are one of the special submission types that receive the same day's filing date).
- The SEC will deem filings with due dates of November 24, 2000, to be timely filed if filers submit them and EDGAR accepts them on or before 5:30 p.m. EST on Monday, November 27, 2000.
- The SEC is encouraging filers with filings that would be due on Friday, November 24, 2000, to submit these filings on Wednesday, November 22, 2000. The SEC also is encouraging filers who might otherwise make time sensitive filings on Friday, November 24, 2000, to submit those filings on Wednesday, November 22, 2000, if possible.
- The SEC staff, however, in appropriate circumstances and upon written request, will change filing dates to November 24, 2000 for filings made on or before 5:30 p.m. EST on Monday, November 27, 2000.
- The SEC filing desk will remain open on Friday, November 24, 2000, to accept filings that are permitted to be made in paper. This includes filings made under EDGAR hardship exemptions. The filing desk will NOT accept filings on paper that are required to be submitted electronically.
- The SEC will keep its EDGAR filing website open on Friday, November 24, 2000, for limited use. EDGAR filers will not be able to use the site to make filings or to change company information that day, but may use it for other purposes, such as to construct filings and to check the status of previously submitted filings. In addition, the EDGAR filings database will be available, but will not be updated that day.

Investment company filers that need to make a time-sensitive filing on Friday, November 24, 2000, should call (202) 942-0978. *SEC Press Release August 15, 2000.*

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