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Dear Matt:

This is in response to your request that I write to you a short letter regarding my recollections about the formation of the National Association of Investment Companies, the enactment of the Investment Company Act, or other events related to the industry in the period around 1940.

You also asked that I send you a photograph of myself from the 1940 period. Not long ago I came across the enclosed photograph which was taken about that time. As you can see from the photograph, due to a series of unexpected circumstances I was only twenty-one years old when I graduated from the University of Virginia Law School in 1936 and went to work at Sullivan & Cromwell in New York as a young associate. I did general legal work, though at my request I was assigned primarily to tax work, a relatively new field at the time. Sullivan & Cromwell represented many of the investment companies based in New York. Alfred Jaretzki, Jr. was the partner in charge of most of this work, and William F. Kennedy, a senior associate, did most of the tax work for the companies and from time to time I assisted him on various issues.

My recollection is that not long after I arrived at the firm Alfred Jaretzki organized a small team of associates to work with him in representing the New York based investment companies before the S.E.C. in connection with its study and investigation of investment companies as mandated by the Public Utility Holding Company Act of 1935. I believe the group included Dick Storrs, who later was a partner in Sullivan & Cromwell, and Franklin Lincoln, who later was a member of the Nixon, Mudge firm in New York and the principal liaison for the change in the administrations upon the election of Richard Nixon in 1968. Jaretzki and his team spent week after week in Washington before the S.E.C. over a

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long period of time, along with Warren Motley and others from the Gaston Snow firm in Boston, who represented the Boston based companies.

Young associates at Sullivan & Cromwell at the time started out in the "bullpen", four or five in a single large room, and one of my roommates was Robert L. Augenblick, who was primarily assigned to litigation. Soon after his arrival he was asked to work with Allen Dulles, later head of the C.I.A., in litigation arising out of the transfer of control of Continental Securities Company when the buyers proceeded to misappropriate the funds of Continental. The case became one of the classic progenitors of provisions in the 1940 Act. Bob Augenblick and I became close friends, and a quarter century later I had the pleasure of recommending him to ICI as its general counsel. He later became president of the Institute and served with distinction for more than a dozen years until his sad and untimely death.

The long negotiations between the industry representatives and the S.E.C. seemed to have reached an impasse when in midsummer 1940 Congressional pressure caused renewed efforts for compromises. These were finally successful and resulted in agreement on the terms of the 1940 Act.

One Friday afternoon in September, 1940 I was called in by Bill Kennedy and told that the informal agreements that had been reached in the Washington negotiations included changes in the federal income tax provisions relating to regulated investment companies that had been enacted originally in the Revenue Act of 1936. One such agreement was that the provisions, which then applied only to open-end companies, would be expanded to include closed-end companies as well.

The second agreement was that long-term capital gains distributed by investment companies to their shareholders should no longer be treated as dividend income to the shareholders, taxable at the high rates then applicable, but should retain their character as long-term capital gains in the hands of the shareholders, taxable to them at much lower rates. Bill asked me to draft statutory amendments to the Internal Revenue Code to carry out this change. With a smile he said he realized this was a novel and difficult assignment, but emphasized its importance to the industry. He wanted the draft language to be brief and simple, and trusted I would have it for him early the following week. He well knew I had no experience in drafting a federal tax law.

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I remember sitting out in my backyard in White Plains under a large spreading tree the following afternoon pondering various alternatives, all of which seemed too complex. Then, as the sun began to sink low in the West, the thought dawned that the investment company could be required to designate the amount of the capital gain dividend, but the I.R.S. could be allowed to challenge the amount designated if it found it to be too high. This method prevented shareholders from claiming as capital gain dividends more than the company designated, and it turned out to solve the problem.

The result was that the draft provision occupied less than one typewritten page. On Monday morning it passed muster with Bill Kennedy, and with minor changes was approved at the Treasury and was eventually enacted in the Revenue Act of 1942. Fortunately it has survived a half century without significant controversy and has formed the basis for several other pass-through tax provisions for regulated investment companies.

In the fall of 1940 those in New York and Boston that had worked for several years to reach the agreement with the S.E.C. and the Treasury decided that it was advisable to continue the joint efforts through the organization of the National Association of Investment Companies. It was realized that numerous regulations and rulings by the S.E.C. and the Treasury were still to be issued and would require extensive negotiations.

Paul Bartholet, of J. & W. Seligman, became the chairman of the group, and John Sheffey, also of J. & W. Seligman, became the full-time executive secretary. Not long afterwards Bartholet was succeeded by Dorsey Richardson, the head of Lehman Corporation. Dorsey continued to fill that role for many years. John Sheffey stayed for some fifteen years, until he was succeeded by Vincent Broderick, now for many years a Federal District Judge in the Southern District of New York.

In the mid-1940s Bill Kennedy left Sullivan & Cromwell to become the in-house general counsel to International Nickel Company. Upon his departure I took over the tax work for the NAIC under the direction of Alfred Jaretzki, Jr., working with him on many matters. There were so many tax issues to be resolved, and the members of the Board of Governors took so much personal interest in them (often in disagreement as to the solution) that I attended most of the monthly meetings of the Board with Alfred Jaretzki

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for many years. At Alfred's request this continued after I left Sullivan & Cromwell in 1949.

Perhaps I should add that at the monthly meetings of the Board Charlie Eaton always kidded me that I would never make as good a lawyer as Bill Kennedy. I never minded, because Bill was such a top-notch lawyer. Besides, he was fluent in foreign languages, which helps in understanding the federal tax laws.

Sincerely,

A handwritten signature, likely of Matthew Fink, consisting of a stylized 'M' and 'F'.