

MEMO# 12972

December 28, 2000

IRS PROVIDES GUIDANCE FOR WITHHOLDING ON PAYMENTS TO FINANCIAL INSTITUTIONS ORGANIZED UNDER THE LAWS OF A US POSSESSION

[12972] December 28, 2000 TO: BROKER/DEALER ADVISORY COMMITTEE No. 30-00 OPERATIONS COMMITTEE No. 30-00 TAX COMMITTEE No. 51-00 TRANSFER AGENT ADVISORY COMMITTEE No. 67-00 RE: IRS PROVIDES GUIDANCE FOR WITHHOLDING ON PAYMENTS TO FINANCIAL INSTITUTIONS ORGANIZED UNDER THE LAWS OF A US POSSESSION New withholding tax rules will apply to payments of certain US source income to foreign persons after December 31, 2000.¹ Under these new rules, corporations and partnerships that are organized under the laws of a possession of the United States generally are treated as foreign persons. At the same time, however, financial institutions organized under the laws of a US possession ("possessions financial institutions") are subject to the withholding and information reporting requirements that apply to US withholding agents. Possessions financial institutions also are subject to direct audit supervision by the Internal Revenue Service. In the attached Notice 2001-11 the Internal Revenue Service has announced that, until further notice, any possessions financial institution will be treated as a US branch under the new withholding tax rules. As a result, payments of US source income to the possessions financial institution will not be subject to nonresident withholding tax if a properly completed Form W-8IMY is provided to the US withholding agent on which the possessions financial institution agrees to be treated as a US person. A US withholding agent would report payments to a possessions financial institution that agrees to be treated as a US person on IRS Form 1042-S. Deanna J. Flores Associate Counsel Attachment 1 See, among others, Institute Memorandum to Broker/Dealer Advisory Committee No. 28-00, Operations Members No. 28-00, Pension Members No. 58-00, Pension Operations Advisory Committee No. 90-00, Tax Members No. 36-00, Transfer Agent Advisory Committee No. 64-00, and Unit Investment Trust Members No. 32-00, dated December 12, 2000. ²Attachment (in .pdf format)