

MEMO# 16625

October 9, 2003

INSTITUTE MEETINGS IN JAPAN REGARDING TAX TREATMENT OF OFFSHORE FUNDS

[16625] October 9, 2003 TO: INTERNATIONAL MEMBERS No. 34-03 INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 40-03 TAX MEMBERS No. 54-03 RE: INSTITUTE MEETINGS IN JAPAN REGARDING TAX TREATMENT OF OFFSHORE FUNDS

Institute representatives met in Japan last week with Japanese officials regarding the tax treatment of offshore funds in Japan. Japan adopted a significant package of tax reforms last Spring, elements of which, scheduled to take effect January 1, 2004, will inadvertently have very adverse consequences for Japanese investors in offshore funds. The Institute has been engaged in an effort since last March to prevent these adverse consequences.¹ The Institute had meetings with senior officials of the Ministry of Finance, Financial Services Agency, National Tax Agency, Investment Trusts Association, and the Japanese Securities Dealers Association, as well as member firms and U.S. embassy officials.² These meetings allowed the Institute to discuss the specific problems created by the tax reform legislation and to emphasize the importance of resolving those problems as quickly as possible. Attached is a follow-up letter the Institute sent to the Financial Services Agency, with copies to other relevant agencies, reiterating the need for new guidance before January 1, 2004 that makes investors in offshore funds subject to the same 10% tax rate as investors in domestic funds. We will be supplementing the letter with a memorandum explaining why we believe this result is not only appropriate as a matter of policy, but also as a matter of Japanese law.³ The Institute's letter further requests that the Japanese authorities publicly state their commitment, before the end of the year, to provide a comprehensive legislative solution by April 1, 2004 to the adverse tax treatment of investors in offshore funds. David Orlin Assistant Counsel Attachment (in .pdf format)

1 See Institute Memorandum to International Members, No. 10-03, International Operations Advisory Committee, No. 16-03, and Tax Members, No. 20-03, (15806) dated March 25, 2003. 2 The ITA and the JSDA, although not government agencies, have been delegated certain regulatory responsibilities. 3 We will distribute this memorandum once we submit it to the Japanese authorities. 2

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