

MEMO# 13406

April 11, 2001

UPDATE ON INSTITUTE EFFORTS WITH RESPECT TO INVESTMENTS IN JAPANESE GOVERNMENT BONDS

[13406] April 11, 2001 TO: INTERNATIONAL COMMITTEE No. 27-01 TAX COMMITTEE No. 14-01 SECURITIES OPERATIONS SUBCOMMITTEE RE: UPDATE ON INSTITUTE EFFORTS WITH RESPECT TO INVESTMENTS IN JAPANESE GOVERNMENT BONDS As you know, the Japanese Ministry of Finance (MoF) is considering the appropriate classification of US mutual funds organized as business trusts for purposes of administering the withholding tax regime for Japanese government bonds (JGBs) that became effective April 1, 2001.¹ Under this new regime, certain non-Japanese investors maintaining custody of JGBs through one or more “qualified foreign intermediaries” (QFIs) would be exempt from withholding tax on JGBs. The MoF has been considering which types of non-Japanese collective investment vehicles should qualify for the withholding tax exemption. Their rules would allow a “foreign corporation” (as defined in the Japanese tax laws) to enjoy the exemption, and the MoF has indicated that US mutual funds organized as corporations will qualify. Unincorporated entities also may qualify for the exemption, although the MoF has stated that it will consider these entities on a case-by-case basis. In this regard, the Institute has responded to several inquiries by the MoF over the past several weeks about the legal and tax status of US mutual funds organized as business trusts. In responding to these requests, the Institute has argued that all US investment companies that qualify as “regulated investment companies” (RICs) under the US tax code have legal personality, are taxed as corporations, and present no opportunity for Japanese investors to avoid current taxation on JGB investments made through US RICs. As a result, all RICs should qualify for the exemption. The two most recent letters reiterate these points with regard to US business trusts and provide more detailed supporting information. Copies of the three Institute letters and the memorandum in support of the first letter are attached. ¹ See Memorandum to International Committee No. 15-01, Tax Committee No. 10-01, and Securities Operations Subcommittee, dated February 27, 2001. ² We understand that the MoF is considering the Institute’s position, but that it has not yet made any determination with respect to US mutual funds organized as business trusts. Robert C. Grohowski Associate Counsel Deanna J. Flores Associate Counsel Attachments Attachment (in .pdf format)