

MEMO# 11042

June 7, 1999

AUSTRALIA SECURITIES & INVESTMENTS COMMISSION SEEKS COMMENT ON POLICIES TO FACILITATE US MUTUAL FUND SALES IN AUSTRALIA

1 Managed Investments: Discretionary powers and closely related schemes. 2 Australia has special tax rules which discourage Australian residents from purchasing shares in offshore mutual funds. Several years ago, the Institute submitted a comment letter requesting an exemption from the FIF rules for investments in US funds that qualify as regulated investment companies (RICs) for US federal income tax purposes. In mid-1998, a bill was introduced to amend the FIF rules to exempt interests in RICs, as well as interests in other types of U.S. entities, including corporations, real estate investment trusts, and, in some cases, common trust funds and entities taxed as partnerships. The exemptions are proposed to be effective for notional accounting periods of Australian investors ending after July 1, 1998. See Memoranda to International Members Nos. 16-98 (July 15, 1998) and 1-98 (Jan. 15, 1998). [11042] June 7, 1999 TO: INTERNATIONAL COMMITTEE No. 24-99 RE: AUSTRALIA SECURITIES & INVESTMENTS COMMISSION SEEKS COMMENT ON POLICIES TO FACILITATE US MUTUAL FUND SALES IN AUSTRALIA

Last week, the Australia Securities & Investment Commission (ASIC) announced amendments to a number of their policy statements relating to collective investment schemes and requested comment on its policy regarding foreign investment schemes. ASIC has confirmed that it will grant relief to US mutual funds to facilitate the offering and sale of US mutual fund shares in Australia. Copies of the relevant press releases and policy statements are attached. In Policy Statement 136,¹ ASIC stated that it intends to undertake a review of Policy Statement 65, which sets forth ASIC's policy regarding foreign investment schemes. According to PS 65, ASIC will grant conditional relief on a case-by-case basis to the operator of a foreign investment scheme from certain procedural and disclosure aspects of their securities laws. The relief is provided when ASIC considers that the regulatory regime under which the foreign investment scheme operates provides a comparable level of investor protection. ASIC is reviewing PS 65 in light of certain changes to Australia's corporate and tax law that are expected to take retroactive effect from July 1, 1998, including the proposed exemption for US funds from the rules on the taxation of foreign investment funds (FIFs). It is anticipated that the Australian Parliament will act favorably on the proposed exemption in the near future. The change in the FIF rules has been an Institute priority.² In light of these anticipated changes, ASIC has clarified that it will grant relief to US mutual funds in accordance with the policies set out in PS 65. ASIC seeks comment on this approach to US mutual funds under PS 65 by Tuesday, June 15, 1999. The Institute expects

to comment favorably on the clarification. Due to the extremely short comment period on this aspect of the proposals, if there are any particular comments you wish the Institute to make in this regard, please notify me immediately. ASIC also invites comment as to whether there are new issues in relation to the operation and regulation of foreign investment schemes which ASIC should take into account during its more general review of PS 65. At this stage, ASIC is seeking only initial views and has asked interested persons not to comment on the broader market implications of the proposed tax amendments. Comments on the scope of ASIC's review of PS 65 must be submitted by Friday, September 3, 1999. The Institute is considering whether to comment. If there are comments that you would like the Institute to make, please contact me no later than Friday, July 23, 1999. I can be reached by phone at (202) 371-5430, by fax at (202) 326-5841 or by e-mail at rcg@ici.org. Robert C. Grohowski Assistant Counsel Attachments

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