

MEMO# 19886

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Letter to Securities and Exchange Board of India on New FII Account Opening Requirement

©2006 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [19886] March 24, 2006 TO: INTERNATIONAL COMMITTEE No. 6-06 INTERNATIONAL INVESTING SUBCOMMITTEE No. 5-06 RE: LETTER TO SECURITIES AND EXCHANGE BOARD OF INDIA ON NEW FII ACCOUNT OPENING REQUIREMENT A recent directive of the Securities and Exchange Board of India ("SEBI") mandates that new accounts may be opened on one of the Indian central depositories after April 1, 2006 only if the account holder has obtained a Permanent Account Number ("PAN") from the Indian Income Tax Department and presented its PAN card to the depository. This requirement will effectively lengthen the FII and subaccount registration process and delay their ability to place trades. After being alerted of this new requirement by a member following our March 9 conference call on Indian FII issues, we raised the issue during our meeting last week at SEBI with Mr. D. Chanda, Chief General Manager of the SEBI division that regulates FII investment. Mr. Chanda appeared to be receptive to our concerns and asked for a written submission as soon as possible to provide SEBI time to consider changes before the April 1 implementation of the new requirement. Following Mr. Chanda's advice, we submitted the attached letter on March 22, asking SEBI to delay implementation of the requirement for 60 days and to exempt FIIs from having to present their PAN before opening a depository account. Background The new SEBI directive requires a depository to (1) obtain a copy of the account holder's PAN card, (2) verify the copy against the original PAN card, and (3) verify the name of the account holder on the Income Tax Department website before opening a depository account. The directive becomes effective for new accounts on April 1, 2006. For existing accounts, depositories have to link all accounts with a valid PAN before October 1, 2006 and suspend accounts without a linked PAN on that date. 2 Currently, an FII or its subaccount may open a depository account and begin trading immediately following SEBI approval. All FIIs and subaccounts must obtain a PAN for tax purposes in the normal course of business, but the PAN is not necessarily linked to the depository account. An FII may start the process of applying for a PAN only after obtaining SEBI approval and uses the SEBI registration as a supporting document in the PAN application. Although there is no fixed turnaround time for the Income Tax Department to issue a PAN or a PAN card, we understand that the process of obtaining a PAN usually takes at least a week, and often much longer. As you know, the usual time for SEBI approval of FII registration is seven business days (three days for subaccount registration), so the new PAN requirement will, in a best-case scenario, effectively double the time to market for FIIs and quadruple it for FII subaccounts. The new SEBI requirement was apparently introduced in

response to recent problems with multiple, fraudulent accounts established by retail investors to receive allocations of initial public offerings. Individual investors in India do not have unique identifying numbers, and the PAN requirement is aimed at reducing this type of fraud. We argued in our meeting with SEBI, and in the attached letter, that the new PAN requirement is not necessary for FIIs because they already have unique identifiers that are assigned during the SEBI registration process, making the new PAN requirement duplicative and inefficient as applied to FIIs. Glen S. Guymon Assistant Counsel - International Affairs Attachment (in .pdf format)

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