

MEMORANDUM OF UNDERSTANDING

The Competent Authorities of the United States and Japan agree to the following Guidelines (“Guidelines”) concerning the meaning of the term “investment bank” under Article 11(3)(c)(i) of the Convention Between the Government of the United States of America and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (the “Treaty”). These Guidelines are entered into under paragraph 3 of Article 25 (Mutual Agreement Procedure).

In order to provide certainty to taxpayers, the Competent Authorities of United States and Japan have confirmed that:

- A. As used in Article 11(3)(c)(i) of the Treaty, the term “investment bank” means any person regularly engaged in one or more of the following activities (“investment bank activities”) if 60% or more of its gross income for each of the three taxable years preceding the taxable year the interest payment is made (or if it has been in existence for less than three taxable years, for each business year of its existence) arises from such activities:
1. Underwriting issues of stock, debt instruments or other securities under best efforts or firm commitment agreements for customers.
 2. Providing merger and acquisition advisory services, fiduciary services, trust services, custodial services, clearing services, agency paying services, collection agency services, investment or correspondent banking services, financial or investment advisory services, or investment management services, including fund management service.
 3. Originating, structuring, purchasing, selling, discounting, or negotiating on a regular basis notes, drafts, checks, bills of exchange, acceptances, mortgages, industrial loans or other evidences of indebtedness for customers including structured, project, and lease financing and factoring evidences of indebtedness for unrelated parties; brokerage activities; purchasing or selling stock, debt instruments, commodities, interest rate, or currency, commodities or economic futures or other securities or derivative financial products (including notional principal contracts) from or to customers; holding stock, debt instruments and other securities as inventory for sale to customers; arranging futures, forwards, options, foreign exchange transactions, or notional principal contracts for, or entering into such transactions with customers; borrowing or lending stocks or securities for customers, or engaging in securities repurchase or reverse repurchase transactions with customers; providing margin or any other financing for a customer secured by securities or money market instruments, including repurchase agreements; providing financing in connection with financial services activities; and engaging in hedging activities with respect to the activities described in this paragraph 3.
 4. Repackaging financial assets, including mortgages, into securities;

purchasing and/or holding such financial assets in contemplation of repackaging them; or servicing activities with respect to such financial assets (including the accrual of interest incidental to such activities).

B. Look-through rules:

1. Except to the extent provided in paragraph 3 of this Section B, for purposes of applying the 60% gross income test of section A, if an entity (tested entity) owns or controls (directly or indirectly) 50% or more of another entity and the tested entity is affiliated with a registered securities dealer that is resident in either the United States or Japan, the tested entity shall be treated as engaging in the same activities as the other entity and as directly earning its proportionate share of the gross income of the other entity with respect to those activities. A tested entity is affiliated with a registered securities dealer if
 - a. the tested entity either owns or controls (directly or indirectly) 80% or more of a registered securities dealer,
 - b. the tested entity is owned or controlled (directly or indirectly) 80% or more by a registered securities dealer, or
 - c. the tested entity, and a registered securities dealer, are both commonly owned or controlled (directly or indirectly) 80% or more by an issuer of publicly traded debt or equity securities.
2. For purposes of paragraphs B.1 and C.1.a, all gross income of a bank shall be treated as gross income arising from investment bank activities and the tested entity (for purposes of paragraph B.1) and owner (for purposes of paragraph C.1.a) shall be treated as directly earning its proportionate share of such gross income.
3. The look-through rules of Section B.1 do not apply to determine the gross income of a tested entity that otherwise meets the gross income test under Section A. A tested entity that meets the gross income test under Section A or this Section B must also meet the group-wide tests under Section C.

C. Group-wide tests.

1. Gross income tests. For purposes of these Guidelines, no entity will be considered an “investment bank” unless
 - a. such entity and its affiliates, considered as a single entity, would qualify under section A (60-percent test), and
 - b. The gross income with respect to the activities described in paragraphs A.1, A.2 and A.4, above, of such entity and its affiliates (other than banks), considered as single entity, is equal to or greater than 10% (ten-percent) of all gross income of such entity

and its affiliates (other than banks) other than the gross income with respect to activities described in paragraphs A.3, above (10-percent test).

2. Activities tests. For purposes of this Guidelines, no entity will be considered an “investment bank” unless
 - a. Such entity or an affiliate is engaged in activities described in paragraph A.1 above,
 - b. Such entity or an affiliate is engaged in activities described in paragraph A.2 above,
 - c. Such entity or an affiliate is a member of one or more recognized stock exchanges within the meaning of Article 22(5)(b)(i) or (ii), or such entity or an affiliate is a market maker in one or more Over-the-Counter (“OTC”) markets located in either the United States or Japan.
3. For purposes of paragraphs C.1 and C.2 above, two entities are affiliates if:
 - a. One of the two entities owns (directly or indirectly) 80% or more of the other entity, or
 - b. Both entities are commonly owned (directly or indirectly) 80% or more by another entity.

D. Publicly traded requirement

A tested entity must either (a) be an issuer of publicly traded debt or equity securities, or (b) have at least 80 percent of its equity owned directly or indirectly by an issuer of publicly traded debt or equity securities.

E. Confirmation of Benefits:

1. The Competent Authority of a Contracting State shall make a primary test (which shall consist of a determination by such Competent Authority that self-certification has been properly submitted according to any applicable domestic procedures) of whether an entity which is a resident of the Contracting State and applies for the treaty benefit under Article 11(3)(c)(i) meets the conditions provided in these Guidelines, and shall notify the Competent Authority of the other Contracting State, as promptly as practicable after the self-certification, of the name of each entity that has so certified.
2. The list of the notified entities shall be announced to the public and renewed on an as-needed basis.

3. If an entity which is a resident of a Contracting State ceases to meet the conditions in these Guidelines due to a material change in the facts and circumstances, or if it has been found to no longer meet the conditions in these Guidelines by the secondary assessment by the Competent Authority of the other Contracting State, such entity shall lose the entitlement to the treaty benefit under Article 11(3)(c)(i) retroactively to the first day the entity does not meet the conditions of these Guidelines.

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December 27, 2005
Date

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Date