

MEMO# 12906

December 12, 2000

IRS PROVIDES TRANSITION RELIEF UNDER NEW WITHHOLDING TAX RULES AND RELEASES UPDATED VERSIONS OF FORMS W-8 AND FORM W-9

[12906] December 12, 2000 TO: BROKER/DEALER ADVISORY COMMITTEE No. 28-00 OPERATIONS MEMBERS No. 28-00 PENSION MEMBERS No. 58-00 PENSION OPERATIONS ADVISORY COMMITTEE No. 90-00 TAX MEMBERS No. 36-00 TRANSFER AGENT ADVISORY COMMITTEE No. 64-00 UNIT INVESTMENT TRUST MEMBERS No. 32-00 RE: IRS PROVIDES TRANSITION RELIEF UNDER NEW WITHHOLDING TAX RULES AND RELEASES UPDATED VERSIONS OF FORMS W-8 AND FORM W-9 New withholding tax rules will apply to payments of certain U.S. source income to foreign persons after December 31, 2000.¹ In order to “smooth” the transition to the new withholding tax rules, the Internal Revenue Service (“IRS”) has issued the attached Notice 2001-4 which addresses a variety of transition issues of importance to U.S. withholding agents and to entities seeking “qualified intermediary” status.² The provisions of Notice 2001-4 of particular interest to U.S. funds and their shareholders are summarized below. However, each U.S. fund that will make distributions to foreign persons after December 31, 2000 should review the transition rules provided by Notice 2001-4 in their entirety. To reflect amendments to the new withholding tax rules since October 1998, the IRS has issued updated versions of the Form W-8 withholding certificates (and instructions) which will be used by shareholders of U.S. funds to establish foreign status and beneficial ownership of income and, if applicable, to claim reduced withholding tax benefits provided by tax treaty. The IRS also has issued an updated version of Form W-9 which shareholders of U.S. funds will use to provide their taxpayer identification number (“TIN”) and to establish U.S. status. Significant revisions to Forms W-8 and Form W-9 are summarized below. Notice 2001-4 Of particular interest to U.S. funds and their shareholders, Notice 2001-4 expressly provides that the IRS will permit a U.S. withholding agent during calendar year 2001 to rely on 1 See, among others, Institute Memorandum to Tax Members No. 17-00, dated June 1, 2000. 2 See Institute Memorandum to Bank and Trust Advisory Committee No. 1-00, Operations Committee No. 1-00, Tax Committee No. 1-00 and Transfer Agent Advisory Committee No. 2-00, dated January 11, 2000. 3 withholding tax certificates prepared under the withholding tax rules in effect prior to January 1, 2001,³ even if the validity period of these forms has expired, provided that the withholding agent can demonstrate on audit that it has made good faith efforts to obtain Form W-8BEN, Form W-8IMY, Form W-8ECI, Form W-8EXP and W-9 from account holders required to provide those forms. A withholding agent may not, however, rely on an old Form W-8 (revised November 1992) to treat a foreign financial institution as the beneficial owner of income if the withholding agent knows, or has reason to know, that the

foreign financial institution is acting as an intermediary on behalf of others. 4 In addition, and until further notice from the IRS, Forms W-8 that contain a P.O. box as a permanent residence address may be relied upon provided that the withholding agent does not know, or have reason to know, that the person providing the form is a U.S. person or that a street address is available. The IRS also will permit a withholding agent to rely on Forms W-8 for which there is a U.S. mailing address, provided that they are received prior to December 31, 2001.⁵ Under no circumstances, however, may a U.S. withholding agent apply the so-called "address rule" after December 31, 2000 to treat dividends as paid to a foreign person or eligible for a reduced rate of income tax withholding under an income tax treaty. Previously, the IRS stated in Notice 98-166 and Notice 99-257 that it would regard calendar years 1999 and 2000 as transition years. In Notice 2001-4, the IRS has announced that it also will treat calendar year 2001 as a transition year. This means that the IRS will take into account in performing audits of year 2001 the extent to which a U.S. withholding agent made good faith efforts in 1999, 2000 and 2001 to transform its business practices and information systems to comply with the new withholding tax regulations. The IRS also will take into account whether a U.S. withholding agent effectively has implemented the new withholding regulations by January 1, 2002. Finally, in light of the new Form W-8 withholding certificates (revised December 2000), as described below, the IRS has stated that withholding agents may rely on the prior versions of Form W-8 (revised October 1998) received before January 1, 2002 for the normal validity period applicable to those forms. However, the IRS advises withholding agents to use the newer versions of Form W-8 in all mailings made after December 2000. 3 These are old Form W-8 (i.e., Form W-8 as revised November 1992), Form 1001, Form 1078, Form 4224, and Form 8709. See Institute Memorandum to Operations Members No. 35-98, Tax Members No. 42-98, and Transfer Agent Advisory Committee No. 82-98, dated December 3, 1998. 4 Notice 2001-4 also provides that a U.S. withholding agent may treat a Form W-8IMY as validly received from a qualified intermediary ("QI") whether or not an employer identification number ("EIN") is provided on the form, unless the withholding agent knows or has reason to know that the provider of the form cannot represent that it is a QI. Where an identification number is provided on Form W-8IMY, the withholding agent is not required to verify whether the number is a QI-EIN or an EIN. 5 This transition relief for U.S. mailing addresses applies notwithstanding the provisions of Treas. Reg. 1.1441-7(b). 6 See Institute Memorandum to Operations Members No. 35-98, Tax Members No. 42-99, and Transfer Agent Advisory Committee No. 82-98, dated December 3, 1998. 7 See Institute Memorandum to Bank and Trust Advisory Committee No. 10-99, Operations Members No. 11-99, Tax Members No. 14-99, and Transfer Agent Advisory Committee No. 29-99, dated May 18, 1999. 3 Form W-8 Withholding Certificates and Form W-9 (Revised December 2000) The IRS has released new versions of (1) Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding), (2) Form W-8ECI (Certificate of Foreign Person's Claim for Exemption from Withholding on Income Effectively Connected with the Conduct of a Trade or Business in the United States), (3) Form W-8EXP (Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding), and (4) Form W-8IMY (Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding). Of the Form W-8 withholding certificates, U.S. funds are likely to receive Form W-8BEN and Form W-8IMY from shareholders. For both forms, and unlike their prior versions, the "certification" section to be signed by the beneficial owner authorizes transmittal of the forms to other withholding agents. For Form W-8BEN, the attached instructions clarify that a form furnished with a TIN will remain in effect "until a change of circumstances makes any information on the form incorrect, provided that the withholding agent reports on Forms 1042-S at least one payment annually to the beneficial owner." (emphasis added). The Form W-8BEN instructions also have been revised to reflect

the circumstances under which a foreign trust or estate may file a Form W-8BEN as a beneficial owner. For Form W-8IMY, the instructions generally have been revised to include references to “withholding statements,” particular accounts for which the intermediary has assumed primary or backup withholding responsibilities, and “QI-EIN” taxpayer identification numbers. In addition, the attached “Instructions for the Requester of Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY (the “General Form W-8 Instructions”) have been revised to reflect the amended “due diligence” requirements for financial institutions, including U.S. funds, that receive Forms W-8 from or on behalf of foreign persons. The General Form W-8 Instructions also clarify that if a withholding agent receives an undated Form W-8 that is otherwise valid, the withholding agent may date the form “from the day it is received and measure the validity period from that date.” The attached Form W-9 (Request for Taxpayer Identification Number and Certification) and “Instructions for the Requester of Form W-9” have been revised to require a certification on Form W-9 (or substitute form) that the payee is a U.S. person (including a U.S. resident alien). Specific instructions also have been added regarding the appropriate named entity or owner in the case of a limited liability company that submits a Form W-9. Deanna J. Flores Associate Counsel Attachments Note: Not all recipients receive the attachments. To obtain copies of the attachments to which this memo refers, please call the ICI Library at (202) 326-8304 and request the attachments for memo 12906. ICI Members may retrieve this memo and its attachments from ICINet (<http://members.ici.org>). Attachment no. 1 (in .pdf format)

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