

**MEMO# 13605**

June 7, 2001

# **GERMANY CONFIRMS THAT REGULATED INVESTMENT COMPANIES ARE ENTITLED TO BENEFITS UNDER US-GERMANY INCOME TAX TREATY**

[13605] June 7, 2001 TO: ACCOUNTING/TREASURERS MEMBERS No. 13-01 BANK AND TRUST ADVISORY COMMITTEE No. 6-01 CLOSED-END INVESTMENT COMPANY MEMBERS No. 19-01 INTERNATIONAL MEMBERS No. 8-01 SECURITIES OPERATIONS SUBCOMMITTEE No. 6-01 TAX MEMBERS No. 17-01 TRANSFER AGENT ADVISORY COMMITTEE No. 43-01 UNIT INVESTMENT TRUST MEMBERS No. 22-01 RE: GERMANY CONFIRMS THAT REGULATED INVESTMENT COMPANIES ARE ENTITLED TO BENEFITS UNDER US-GERMANY INCOME TAX TREATY During 2000, the German Federal Finance Office (FFO) began requiring US regulated investment companies (RICs) seeking “tax reclaims”<sup>1</sup> to certify their percentage of US shareholders as a precondition to payment of any reclaim amounts. Under these procedures, a RIC certifying that it had 99 percent or fewer US shareholders would receive only a partial refund of German taxes.<sup>2</sup> For example, if a RIC certified that it had 98 percent US shareholders, the RIC would receive a refund of 98 percent of outstanding tax reclaims from Germany. The Institute recently submitted a memorandum to the German Ministry of Finance objecting to this procedure for RICs, as a matter of German law.<sup>3</sup> The Institute requested the Ministry of Finance to direct the FFO fully to honor all pending and future tax reclaim requests submitted by RICs, including those previously submitted and only partially granted. 1 For this purpose, a tax reclaim represents a receivable owed to the RIC by the German tax authorities in an amount equal to the difference between the German withholding tax rate on dividends (i.e., 25 percent plus 5.5 percent solidarity tax) and the lower withholding tax rate (i.e., 10 percent) to which RICs are entitled under the US-Germany Income Tax Treaty. 2 Any partial percentage would be rounded to the next whole percentage, with the result that any RIC with over 99 percent US shareholders (e.g., 99.1 percent) would be entitled to a 100 percent refund of pending German tax reclaims. 3 See Institute Memorandum to Bank and Trust Advisory Committee No. 2-01, Closed-End Investment Company Committee No. 2-01, International Committee No. 8-01, Securities Operations Subcommittee, Tax Committee No. 2-01, Transfer Agent Advisory Committee No. 12-01, and Unit Investment Trust Committee No. 5-01, dated February 2, 2001. 2We are pleased to inform you that the German Ministry of Finance has directed the FFO to treat RICs as “US residents” that are entitled to benefits under the US-Germany Income Tax Treaty (Treaty). The substance of the attached letter from the Ministry of Finance may be translated as follows: “Regarding the refund of withholding tax to US investment funds that are treated for tax purposes as Regulated Investment Companies, I have taken the position vis-à-vis the Federal Finance Office that these companies are generally to be treated as

persons resident in the United States entitled to treaty benefits subject to the limitations under Art. 28.” Based on the attached letter, we would expect the FFO to issue revised tax reclaim procedures that (1) eliminate shareholder certification requirements for RICs and (2) treat RICs as eligible to receive a 100 percent refund of pending and future German tax reclaims. We will inform you about revised procedures for tax reclaim requests submitted by RICs as soon as they are issued by the FFO. Deanna J. Flores Associate Counsel

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