

**MEMO# 13113**

February 2, 2001

## **GERMANY -- TAX RECLAIM DEVELOPMENTS**

[13113] February 2, 2001 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 UNIT INVESTMENT TRUST COMMITTEE No. 5-01 RE: GERMANY – TAX RECLAIM DEVELOPMENTS During 2000, the German Federal Finance Office (FFO) began requiring US regulated investment companies (RICs) seeking “tax reclaims” to certify their percentage of US shareholders as a precondition to payment of any reclaim amounts. While the effective date for this new certification procedure is unclear, the FFO released a model certification form for use by RICs in August 2000.<sup>1</sup> 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 (Treaty). To the extent a RIC certifies that it has 99 percent or fewer US shareholders, Germany will reduce the refundable tax reclaim amount.<sup>2</sup> For example, if a RIC certifies that it has 98 percent US shareholders, the RIC will receive a refund of 98 percent of outstanding tax reclaims from Germany. The FFO instituted the tax reclaim certification procedure for RICs as a result of its conclusion that RICs are not entitled to benefits under the Treaty at the entity level. German counsel to the Institute made the attached submission (in German) to the German Federal Ministry of Finance objecting to this conclusion of the FFO, as a matter of German law. The memorandum requests that the Federal Ministry of Finance direct the FFO fully to honor all 1 See Institute Memorandum to International Committee No. 30-00 and Tax Members No. 26-00, dated September 13, 2000. 2 The German tax authorities will round any partial percentage to the next whole percentage, with the result that any RIC with over 99 percent US shareholders (e.g., 99.1 percent) will be entitled to a 100 percent refund of pending German tax reclaims. 2pending and future tax reclaim requests submitted by RICs, including those that already have been submitted and only partially granted. Deanna J. Flores Associate Counsel Attachment Attachment (in .pdf format)