

MEMO# 2366

December 6, 1990

UNITED KINGDOM AGREES TO REFUND DIVIDENDS WITHHELD TO MASSACHUSETTS BUSINESS TRUSTS

- 1 - December 6, 1990 TO: BOARD OF GOVERNORS NO. 82-90 RE: UNITED KINGDOM
AGREES TO REFUND DIVIDENDS WITHHELD TO MASSACHUSETTS BUSINESS TRUSTS

We are pleased to inform you that the United Kingdom has consented, subject to the conditions set forth in the attached exchange of letters, to permit funds organized as Massachusetts business trusts to receive refunds of tax withheld in excess of the 15 percent rate provided by the U.S.-U.K. Income Tax Treaty. As you may know, the Institute and three custodian banks (Brown Brothers Harriman & Company, Chase Manhattan Bank, N.A., and State Street Bank and Trust Co.) have been jointly negotiating with the U.K. for over a year to obtain a refund of these monies. (See, e.g., Institute Memorandum to Tax Committee No. 22-90, Accounting/Treasurers Committee No. 25-90, Independent Accountants Advisory Committee and International Funds Task Force No. 18-90, dated August 13, 1990.) As the attached letters indicate, Inland Revenue's consent to permit refunds for the taxes withheld is subject to three conditions. The conditions were imposed because the U.K. continues to believe that only the fund's shareholders are legally entitled to request the refunds; however, the U.K. is willing to let funds request the refunds provided the three specified conditions are met. The industry has agreed to the conditions without prejudice to our legal position that the funds themselves are legally entitled to the refunds. The Three Conditions The three conditions imposed by the U.K. on the payment of refunds to funds organized as Massachusetts business trusts are: 1. The U.K. will reduce reclaims paid to a fund by any amount previously paid to a shareholder in that fund with respect to the same claim. - 2 - 2. The U.K. may change its position permitting these funds to file for refunds if the United States changes its position and no longer permits U.K. collective investment schemes (e.g., unit trusts) to receive the treaty benefits provided to beneficial owners of securities. 3. The U.K. may change its position permitting these funds to file for refunds if there is a material increase in the number of shareholders in these funds (on an industry-wide, rather than fund-by-fund, basis) that are not U.S. residents for Treaty purposes. Procedure for Receiving Reclaims We understand from the U.K. that (1) funds with pending claims that have not been rejected will have their reclaims processed "as quickly as possible"; (2) funds with pending claims that have been rejected must resubmit their claims; and (3) funds that have not yet filed claims should do so now. * * * * We will keep you informed of developments. Keith D. Lawson Associate General Counsel Attachment KDL:bmb

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