

MEMO# 13968

September 25, 2001

SWITZERLAND ANNOUNCES NEW TAX RECLAIM PROCEDURES FOR REGULATED INVESTMENT COMPANIES FOR 1998 THROUGH 2001

[13968] September 25, 2001 TO: ACCOUNTING/TREASURERS MEMBERS No. 24-01 BANK AND TRUST ADVISORY COMMITTEE No. 18-01 CLOSED-END INVESTMENT COMPANY MEMBERS No. 28-01 INTERNATIONAL MEMBERS No. 15-01 SECURITIES OPERATIONS SUBCOMMITTEE No. 10-01 TAX MEMBERS No. 23-01 TRANSFER AGENT ADVISORY COMMITTEE No. 66-01 UNIT INVESTMENT TRUST MEMBERS No. 32-01 RE: SWITZERLAND ANNOUNCES NEW TAX RECLAIM PROCEDURES FOR REGULATED INVESTMENT COMPANIES FOR 1998 THROUGH 2001 We are pleased to inform you that the Swiss Federal Tax Administration (FTA) has announced new procedures under the US-Switzerland Income Tax Treaty (Treaty) that will permit regulated investment companies (RICs) to receive refunds of tax reclaims for calendar years 1998, 1999, 2000 and 2001. The new procedures implement the agreement between industry representatives and the FTA,¹ as described in the attached letter from the FTA dated July 10, 2001.² The FTA intends separately to announce the procedures under the Treaty for processing RIC tax reclaims arising in calendar year 2002. New Declaration Form (Attachment RIC) Pursuant to the new FTA procedures, a RIC or its authorized representative must complete the attached declaration form (Attachment RIC) certifying "to the best of its knowledge and belief," as of March 31, 2001, (1) the number of share certificates issued by the RIC, (2) the number and percentage of share certificates held directly by investors and (3) the number and percentage of share certificates held directly by US residents. If a RIC has no direct shareholders, the RIC or its authorized representative must (1) certify the number of share certificates issued by the RIC, (2) certify the number and percentage of share certificates held indirectly (i.e., through brokers or other intermediary accounts) by US residents and (3) attach 1 See ICI Memorandum to Board of Governors No. 33-01, Accounting/Treasurers Members No. 16-01, Bank and Trust Advisory Committee No. 9-01, Closed-End Investment Company Members No. 23-01, International Members No. 10-01, Securities Operations Subcommittee No. 8-01, Tax Members No. 18-01, Transfer Agent Advisory Committee No. 49-01, and Unit Investment Trust Members No. 27-01, dated July 12, 2001. 2 The attached letter is a translation of the original German language letter sent to Swiss counsel by the FTA. 2 an explanation of the basis for treating indirect shareholders as US residents. In either case, a RIC would determine its percentage of US residents by reference to the documentation that the RIC must maintain for accounting to the US Internal Revenue Service for US withholding tax purposes (e.g., IRS Form W-9, IRS Form W-8).³ Under the agreement with the FTA, RICs certifying more than 95 percent US resident investors on the

Attachment RIC as of March 31, 2001 will receive a full refund of tax reclaims for calendar years 1998, 1999, 2000 and 2001. RICs certifying 95 percent or less US resident investors on the Attachment RIC as of March 31, 2001 will receive proportional refunds (e.g., a RIC certifying 90.2 percent US resident investors will receive 90.2 percent of its outstanding tax reclaims from Switzerland).⁴ Procedures for RIC Tax Reclaims Previously Filed with the FTA For tax reclaims that have been previously filed with the FTA for calendar years 1998, 1999, 2000 or 2001, a RIC or its authorized representative is required to file the Attachment RIC, together with a copy of the first page of the previously filed Swiss tax reclaim form (i.e., Form 82C or Form 82E) showing the requested tax reclaim amounts and securities information. If a copy of the previously filed Form 82C or Form 82E is not available, the RIC or its authorized representative must contact the FTA directly to discuss the appropriate tax reclaim procedures. A RIC also must provide an IRS Form 6166 as an annex to the Attachment RIC, if not already filed with the FTA. Procedures for Newly Filed RIC Tax Reclaims for Calendar Years 1998 through 2001 For tax reclaims that have not been previously filed with the FTA for calendar years 1998, 1999, 2000 or 2001, a RIC or its authorized representative is required to file Form 82E, together with the Attachment RIC (and, if not already filed with the FTA, an IRS Form 6166). For this purpose, complete questions one through five on the second page of Form 82E. Since the Institute and the FTA have agreed to disagree on the “beneficial owner” status of RICs, a RIC’s refund will not be delayed or otherwise affected by the RIC’s response to question one which asks whether the claimant is “beneficially entitled” to the requested refund amounts. Please be advised that tax reclaims for calendar year 1998 will be time-barred if not filed with the FTA by December 31, 2001. Procedures for RIC Tax Reclaims Arising in Calendar Year 2002 The FTA shortly will issue a new tax reclaim form (Form 82R) to be used by RICs for tax reclaims arising in calendar year 2002. It is presumed that RICs also will use Form 82R for tax reclaims arising in future calendar years, until otherwise notified by the FTA. ³ For this purpose, a “US resident” would not include a direct investor for whom the RIC maintains documentation showing a non-US address as of the time that the RIC completes the Attachment RIC. ⁴ A RIC should not round its certified percentage of US residents on the Attachment RIC to the next whole number. ³ * * * If you have questions regarding the new tax reclaim procedures for RICs, please contact Peter Lemann (peter.lemann@estv.admin.ch or 011 41 31 322 5881) or Daniel Mauron (daniel.mauron@estv.admin.ch or 011 41 31 324 9124) of the Swiss Federal Tax Administration or the undersigned (dflores@ici.org or 202/371-5436). Deanna J. Flores Associate Counsel Attachments Note: Not all recipients receive the attachments. To obtain copies of the attachments, please visit our members website (<http://members.ici.org>) and search for memo 13968, or call the ICI Library at (202) 326-8304 and request the attachments for memo 13968. Attachment no. 1 (in .pdf format)