

LETTERS TO SUPPORT TAX CLAIMS IN FOREIGN JURISDICTIONS

The Court of Justice of the European Union (the “CJEU”) and certain European Union (“EU”) member state courts have held that EU member states could not impose withholding taxes on certain foreign investors if substantially similar domestic investors were not subject to tax.¹ As a result of requests from certain European tax authorities stemming from such holdings, since late 2015 the Division of Investment Management (the “Division”) has been providing U.S.-registered funds with letters addressed to foreign jurisdictions to assist such funds in obtaining refunds of any foreign taxes that were inappropriately withheld. As of the date of this IM Information Update, the Division has provided over 100 funds with letters assisting their tax claims (including in some cases multiple letters for the same fund when a fund has claims in multiple jurisdictions). This effort currently is expected to result in substantial amounts of refunds for U.S.-registered funds making tax claims and, to the extent that inappropriately withheld taxes are refunded, therefore stands to benefit investors of such funds.

We are issuing this Information Update to provide U.S.-registered funds with a framework for making requests for such letters from the Division. In particular, for funds that may have similar outstanding tax claims seeking a letter from the Division, please provide draft letters to the Division. Draft letters should include:

- ▶ The name of the registrant and registration statement file numbers (and series number, if applicable);
- ▶ The first date of the fund’s first fiscal year to which the claims relate;
- ▶ A statement that the fund is an open-end registered investment company;² and
- ▶ The date and state of organization for the relevant fund.

The Division also requests that funds send supporting documentation along with the draft letters that provides a basis for confirmation of the information described above for each request. The supporting documentation is typically a small PDF packet that includes the information described above from the relevant fund’s registration statement filings.



Draft letters and the supplemental information packets should be sent via e-mail to IMEuropeanTaxClaims@sec.gov.

Endnotes

- 1 See, e.g., CJEU, 10 April 2014, C-190/12, Emerging Markets Series of DFA Investment Trust Company, *available at* <http://curia.europa.eu/juris/documents.jsf?num=C-190/12>.
- 2 To date, the Division has provided letters only to open-end registered investment companies. To the extent that a closed-end registered investment company has outstanding tax claims and would like a letter from the Division, we will consider such a request.

The Investment Management Division works to:

- ▲ protect investors
- ▲ promote informed investment decisions and
- ▲ facilitate appropriate innovation in investment products and services

through regulating the asset management industry.

If you have any questions about this IM Information Update, please contact:

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