

Number: **200637018**
Release Date: 9/15/2006
Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Index Number: 851.02-00

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Refer Reply To:
CC:FIP:B02
PLR-123928-06

Date:
June 1, 2006

Legend

Trust =

Fund A =

Fund B =

State A =

State B =

v =

w =

x =

y =

z =

Index =

Dear _____ :

This responds to the request dated May 1, 2006, and supplemental correspondence dated May 24, 2006 and May 26, 2006, submitted by your authorized representative on behalf of Fund A and Fund B (collectively, the Funds). Funds request that the Internal Revenue Service rule that income and gain arising from the commodities-linked note described in this letter will constitute qualifying income to Funds under section 851(b)(2) of the Internal Revenue Code of 1986, as amended (the Code).

FACTS

Fund A is organized as a series of a business trust (Trust) under the laws of State A. Trust is registered as an open-end management investment company under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended (the 1940 Act). Fund A qualifies as a regulated investment company (RIC) under section 851 of the Code.

Fund B is a statutory trust organized under the laws of State B. Fund B is registered as an open-end management investment company under the 1940 Act. Fund B qualifies as a RIC under section 851 of the Code.

Each Fund intends to invest in commodities-linked notes having the terms and conditions of the following note (Note): The Note will be issued to a Fund at par value of \$v. Its payout formula will be determined with reference to Index. Its term will be a year and twenty three days. A Fund, as holder of the Note, has the right to put the Note to the issuer at the calculated redemption price based on the closing Index as of the end of the next business day after notification to the issuer. In addition, if the Index falls to a level that is equal to or more than w% below the beginning Index value on any day, the Note will "knockout" and automatically redeem based on the closing Index value of the next day. The repayment obligation upon early redemption, knockout, or at maturity equals the face amount of the Note plus or minus the following adjustment. In calculating the adjustment, the face amount of the Note is multiplied by (A) a leverage factor of x, and by (B) the percentage of the increase or decrease of the beginning Index level compared to the ending Index level for the applicable period. The total is then adjusted to account for a coupon amount calculated at a y rate times the face amount of the Note, for an annual fee amount of z basis points of the notional value (leveraged face amount) of the Note, and for the reversal of an interest factor included in the Index.

Funds make the following representations with respect to this Note:

(1) The issuer of the Note will receive payment in full of the purchase price of the Note substantially contemporaneously with the delivery of the Note;

(2) A Fund while holding the Note will not be required to make any payment to the issuer of the Note in addition to the purchase price paid for the Note, whether as margin, settlement payment, or otherwise, during the life of the Note or at maturity;

(3) The issuer of the Note is not subject by the terms of the instrument to mark-to-market margining requirements of the Commodities Exchange Act, 7 U.S.C. 2, as amended (CEA); and

(4) The Note is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to the CEA.

LAW AND ANALYSIS

Section 851(b)(2) of the Code provides that a corporation shall not be considered a RIC for any taxable year unless it meets an income test (the “qualifying income requirement”). Under this test, at least 90 percent of its gross income must be derived from certain enumerated sources. Section 851(b)(2) defines qualifying income, in relevant part, as—

dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the 1940 Act) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to [the RIC’s] business of investing in such stock, securities, or currencies

Section 2(a)(36) of the 1940 Act defines the term “security” as—

any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

Section 2(f)(1) of the CEA provides that the CEA is not applicable to a hybrid instrument that is predominantly a security. Section 2(f)(2) of the CEA provides that a hybrid instrument shall be considered to be predominantly a security if—

(A) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument, substantially contemporaneously with the delivery of the hybrid instrument;

(B) the purchaser or holder of the hybrid instrument is not required to make any payment to the issuer in addition to the purchase price paid under subparagraph (A), whether as margin, settlement payment, or otherwise, during the life of the hybrid instrument or at maturity;

(C) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

(D) the hybrid instrument is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to the CEA.

Section 2(f)(3) of the CEA provides, in part, that for purposes of section 2(f)(2)(C) of the CEA, mark-to-market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.

CONCLUSION

Based on the facts as represented, we rule that income and gain arising from the Note constitute qualifying income to Funds under section 851(b)(2) of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Susan Thompson Baker
Susan Thompson Baker
Assistant to the Branch Chief, Branch 2
Office of the Associate Chief Counsel
(Financial Institutions & Products)