

Date2 =
Date3 =
Date4 =
Date5 =
Date6 =
Year1 =
Year2 =
\$a = \$
\$b = \$
\$c = \$
\$d = \$

Dear _____ :

This letter is in response to a request for ruling of _____, submitted on behalf of Fund1, Fund2, and Fund3 (collectively Taxpayers) requesting an extension of time for making an Internal Revenue Code section 565(a) consent dividend election. This request is made pursuant to Treasury Regulation sections 301.9100-1 and 301.9100-3, and Revenue Procedure 2006-1. This letter supersedes the letter dated October 27, 2006.

FACTS

Fund1, Fund2, and Fund3 are separate funds of Trust, a series fund that is registered under the Investment Company Act of 1940, as amended. Trust includes other funds that are not included in this request. Pursuant to section 851(g), each separate fund of Trust is treated as a separate corporation for tax purposes and files its own income tax returns.

Taxpayers have been treated as regulated investment companies (RICs) beginning with each funds initial taxable year and all subsequent taxable years. Taxpayers fully intend to continue to qualify to be taxed as RICs for all subsequent tax years.

X is the investment advisor for Taxpayers. Y serves as the administrator for Taxpayers. Z serves as the sub-administrator of Taxpayers. Z serves Taxpayers pursuant to a contract with Y. Pursuant to the terms of this contract, Z supervises all aspects of Taxpayers' operations except those performed by X. Since Date1, A of Z has had responsibility over certain tax matters.

Specifically, A ensures that the returns reflect Taxpayers' intended federal tax treatment, and arranges for the execution and timely filing of such returns. A also oversees the preparation of the taxable income calculation for Taxpayers. Prior to

Date1, A's predecessor had similar responsibilities for the Year1 and Year2 taxable years of Taxpayers.

As of Date 2 and continuing through Date3, Fund1 is wholly owned by M. Fund2 and Fund3 are wholly owned by N, all of whom are insurance companies. Since 1997, Taxpayers have engaged Firm or one of its predecessors firms to prepare their federal income tax returns. Firm reviews the taxable income calculation prepared by Z and uses it as a basis for the preparation of Taxpayers' tax returns.

Taxpayers' federal income tax returns, Form 1120-RIC, U.S. Income Tax Return for Regulated Investment Companies, for the taxable years ending Date2 and Date3 were prepared by Firm, reviewed and filed by Taxpayers prior to the extended due date of Date4 and Date5, respectively.

During the review of the Trust's Date6 financial statements, which included a review of tax calculations supporting footnote disclosures that were prepared by Z, B, a tax partner with Firm, posed questions regarding the tracking of capital calculations. B examined the Year2 federal tax returns for various funds, noted capital loss carryovers subject to such limitations and requested more information from Z as well as prior year Firm files to support such calculations and clarify the origination of the limited capital loss carryovers. After a more detailed section 382 and 383 analysis, it was determined that the limitations had been inappropriately applied in the Year1 and Year2 calculations prepared by Z and reviewed by Firm for Fund1. Tax returns as originally filed for this fund for Year1 and Year2 were based on these calculations.

These calculations applied recognized built-in losses and capital loss carryovers against capital gains in excess of the annual limitation amount. This primarily occurred because unrealized capital losses subject to the same limitations applying to capital loss carryovers were not treated as subject to such limitations when they were recognized. After the preliminary analysis was finalized, the error in the original calculations resulted in Fund1 having undisputed capital gains of \$a for Year1 and \$b for Year2.

When the miscalculations on Fund1 were discovered, Firm discussed possible alternatives with Taxpayers' management on _____ and with Taxpayers' Audit Committee on _____. Alternatives discussed included filing for relief in the time to file a consent dividend election under section 565.

Because undistributed capital gains had been identified on one fund, it was possible that other funds in Trust could have undistributed capital gains as well. On _____,

_____, B directed her team to work closely with Z to prepare a more detailed analysis for the other potentially impacted funds in Trust. Between _____ and _____,

such preliminary analysis was prepared and reviewed by Firm. No other funds were found to have undistributed capital gains for Year1, but similar errors in the original calculations were found with respect to the Year2 returns of Fund2 and Fund3. When the preliminary analysis was later finalized, Firm and Z concluded that the Fund 2 had undistributed capital gain of \$c for Year2, and Fund3 had undistributed capital gain of \$d for Year2.

On _____, Firm presented the analysis to Taxpayers' Board of Trustees. Pursuant to these discussions, it was determined that a request for relief under Treas. Reg. section 301.9100-1 was necessary to request extensions of time to make consent dividend elections for Taxpayers.

It had always been the practice and policy of Taxpayers to calculate the pre-dividend paid deduction taxable income and then declare and pay sufficient dividends to reduce the taxable income, including capital gains (and any related income tax) to zero. However, because taxable income had been originally understated, Taxpayers had understated the necessary dividends that should be paid to eliminate their taxable income. Had Taxpayers been aware of the larger amounts of capital gains at the time each fund declared and paid its capital gain dividends, they would have declared and paid such larger amounts pursuant to section 855 as would have been necessary to reduce net taxable income and net taxable capital gains to zero.

Shareholders of Taxpayers are aware of the undistributed capital gains and have agreed to take all necessary steps including providing Form 972: Consent of Shareholder to Include Specific Amount in Gross Income to Taxpayers.

Accordingly, Fund1 respectfully requests an extension of time to make an election under section 565 for the taxable year ending Date2 and Date3. Fund2 and Fund3 respectfully request an extension of time to make an election under section 565 for the taxable year ending Date3.

LAW AND ANALYSIS

Section 565(a) provides that if any person owns consent stock (as defined in section 565(f)(1)) in a corporation on the last day of the taxable year of such corporation, and such person agrees, in a consent filed with the return of such corporation in accordance with the regulations, to treat as a dividend the amount specified in such consent, the amount so specified shall, except as provided in 565(b), constitute a consent dividend for purposes of 561 (relating to the deduction for dividends paid).

Section 1.565-1(a) provides that the dividends paid deduction, as defined in 561, includes the consent dividends for the taxable year. A consent dividend is a hypothetical distribution (as distinguished from an actual distribution) made by certain corporations to

any person who owns consent stock on the last day of the taxable year of such corporation and who agrees to treat the hypothetical distribution as an actual dividend, subject to specified limitations, by filing a consent at the time and in the manner specified in 1.565-1(b). Section 1.565-1(b)(3) provides that a consent may be filed not later than the due date of the corporation's income tax return for the taxable year for which the dividends paid deduction is claimed. Under Rev. Rul. 78-296, 1978-2 C.B. 183, the due date for purposes of section 1.565-1(b)(3) includes the extended due date of a return filed pursuant to an extension of the time to file.

Section 301.9100-1(c) provides that the Commissioner of Internal Revenue, in exercising his discretion, may grant a reasonable extension of time under the rules set forth in 301.9100-3 to make a regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. The term "regulatory election" is defined in 301.9100-1(b) as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Under Section 301.9100-3(b)(1)(i), except as provided in paragraphs (b)(3)(i) through (iii) of this section, a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service.

Paragraphs (b)(3)(i) through (iii) of 301.9100-3 provide that a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer:

- (i) seeks to alter a return position for which an accuracy-related penalty could be imposed under 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested;
- (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or
- (iii) uses hindsight in requesting relief. If specific facts have changed since the due date for making the election that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief. In such a case, the Service will

grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

In the present case, relief was requested before the failure to make the regulatory elections properly was discovered by the Service. Further, Taxpayers are not seeking to alter a return position for which an accuracy-related penalty could have been imposed. Nor were Taxpayers informed of the required elections, but chose not to file the elections. Moreover, there is no indication that Taxpayers are using hindsight in requesting relief. Specific facts material to the issue under consideration have not changed since the due date for making the elections that make the elections advantageous to Taxpayers.

Section 301.9100-3(c)(1) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made. The interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made, or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment.

In this case, Taxpayers will not have a lower tax liability in the aggregate for any taxable year in which the election applies than Taxpayers would have had if the elections had been made timely. Also, no taxable year that would be affected by the election, had it been timely made, is closed by the period of limitations on assessment.

CONCLUSION

Based upon our analysis of the facts, Taxpayers acted reasonably and in good faith, and granting relief will not prejudice the interests of the government, and therefore the requirements of sections 301.9100-1 and 301.9100-3 have been met.

Under the facts represented, Taxpayers' tardiness in filing the consent dividend election was not due to the intentional disregard of the tax rules, but was an inadvertent error on the part of Taxpayers, and Taxpayers did not affirmatively choose not to file the election. Taxpayers are not seeking to alter a return position or to use hindsight to request relief. Finally, Taxpayers acted promptly in filing its request for relief, before the IRS discovered the failure to make a regulatory election. Therefore, Taxpayers did not act unreasonably or in bad faith.

Furthermore, granting relief will not result in Taxpayers having a lower tax liability in the aggregate for all taxable years affected by the election than Taxpayers would have had

if the election had been timely made, nor will any closed years be affected. Therefore, the interests of the government will not be prejudiced by granting the request for relief.

Because Taxpayers acted reasonably and in good faith, and because the interests of the government will not be prejudiced if the request for relief is granted, Taxpayers are granted an extension of 45 days from the date of this ruling to file their consent dividend elections. A copy of this letter should be attached to the amended returns filed reflecting the elections.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed with regard to whether any of the Taxpayers qualify as a RIC under subchapter M of the Code.

The ruling contained in this letter is based upon facts and representations submitted by the taxpayer. Except as specifically addressed herein, no opinion is expressed regarding the tax treatment of the subject transactions under the provisions of any other sections of the Code or regulations that may be applicable thereto. This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that a private letter ruling may not be used or cited as precedent.

In accordance with the power of attorney on file in our office, a copy of this letter is being sent to your authorized representative(s).

Sincerely yours,
LEWIS FERNANDEZ
Associate Chief Counsel
(Income Tax & Accounting)

By: Clifford M. Harbourt
CLIFFORD M. HARBOURT
Senior Technician Reviewer
Branch 2