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December 7, 2006

LEGEND

Fund =

Dear :

This responds to your request dated June 21, 2006, submitted by your authorized representative on behalf of Fund. You request that the Internal Revenue Service rule that the exchange of securities described in this letter does not constitute an "acquisition" within the meaning of section 851(d) of the Internal Revenue Code of 1986, as amended (Code).

FACTS

Fund is a closed-end interval fund registered as a management company under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended (the 1940 Act). Fund represents that it has qualified to be taxed as a regulated investment company (RIC) under subchapter M, part 1, of the Code.

Fund seeks long-term capital appreciation by making venture capital investments in private companies. These private equity investments compose a significant percentage of Fund's total assets.

Fund is closed to new investors, and its shares are not listed on any exchange. As an interval fund under the securities laws, Fund has committed to offer to repurchase at least 5% of its outstanding shares on a quarterly basis under Rule 23c-3 of the 1940

Act. Since Fund's shares are not listed on an exchange, this repurchase program is the primary means by which Fund provides liquidity to its shareholders. In order to fund repurchases of shares, Fund must liquidate investments.

Fund's private equity investments are generally illiquid unless a private equity company in which Fund holds shares engages in a business combination or an initial public offering. In general, an initial public offering requires a company to conform its capital structure and reporting systems to public company norms in order to permit the company (1) to issue new shares to the general public in exchange for cash and (2) to create a public market in its shares. In order to create a public market in a company's shares, any discrepancies in legal rights, such as special voting, dividend, or liquidation rights, between the existing private shares and the public common stock will be eliminated in conjunction with the initial public offering.

In certain cases, existing private shareholders, such as Fund, of a company engaging in an initial public offering are able to sell shares of the company to the public at the same time the company sells new shares. Such sales are often limited, however, in order to reassure prospective public investors that the original investors believe that the company remains a good investment. Sales by existing private shareholders are customarily restricted during a "lock-up" period following the initial private offering.

Fund held shares of preferred stock in a private company that have been converted into common stock pursuant to a recently completed initial public offering. As a party to a customary lock-up agreement, Fund is contractually prevented from selling its shares of this company's common stock for a period of approximately 6 months.

Fund represents that no business assets were added to the company in the course of the initial public offering. Fund further represents that the exchange of preferred shares for common shares in the course of the initial public offering was structured as a tax-free transaction with respect to Fund under either section 368(a)(1)(E) or section 1036 of the Code.

LAW AND ANALYSIS

Section 851(b)(3) of the Code provides that a corporation shall not be considered a RIC for any taxable year unless, at the close of each quarter of the taxable year, (A) at least 50 percent of the value of its total assets is represented by cash, cash items, Government securities, securities of other RICs, and other securities (limited, in the case of other securities of any one issuer, to not more than 5% of the value of the assets of the RIC and to not more than 10 percent of the voting securities of the issuer); and (B) not more than 25% of the value of the RIC's total assets is invested in (i) securities (other than Government securities or the securities of other RICs) of any one issuer, (ii) the securities (other than the securities of other RICs) of 2 or more issuers

which the RIC controls and which are engaged in the same, similar, or related trades or businesses, or (iii) the securities of one or more qualified publicly traded partnerships.

Section 851(d) of the Code provides in pertinent part that a corporation which meets the requirements of section 851(b)(3) at the close of any quarter shall not lose its status as a RIC because of a discrepancy during a subsequent quarter between the value of its various investments and such requirements unless the discrepancy exists immediately after the acquisition of any security or other property and is wholly or partly the result of this acquisition.

The diversification requirements of section 851 are designed to prevent RICs from concentrating their investment assets in a small number of companies or in certain forms of assets. Rev. Rul. 76-392, 1976-2 C.B. 249. Relief from a strict mechanical application of the percentage limitations set forth in section 851(b)(3) is provided in section 851(d), which distinguishes between cases in which the failure to comply with the percentage limitations results from a fluctuation in the market value of the investment assets held and not from an "acquisition" of a new or additional investment. Id.; see also §1.851-5, Example (5), of the Income Tax Regulations (the regulations). Section 851(d) also offers a corporation the opportunity to cure a failure to meet the diversification requirements occasioned by an acquisition within 30 days after the close of the quarter in which the acquisition occurred. In view of these two "broad areas of classification", or mitigating provisions, Rev. Rul. 76-392 states that it is "reasonable to give the term "acquisition" an expansive interpretation to further the legislative objective of prohibiting concentration of investment assets." Id. at 250.

Rev. Rul. 63-170, 1963-2 C.B. 286, holds that the term "acquisition" as used in section 851(d) of the Code includes the receipt of securities of a third party that is the acquiring corporation in a reorganization with a portfolio company pursuant to section 368(a)(1)(C). This ruling also holds that the term "acquisition" includes the receipt of securities of a third party by in-kind distribution from a portfolio company pursuant to an anti-trust order.

Rev. Rul. 74-133, 1974-1 C.B. 165, holds that a stock split does not constitute an acquisition, as that term is used in section 851(d) of the Code, because it is a mere change in the number of shares, and is therefore distinguishable from the exchange for stock of another company in an acquisitive reorganization described in Rev. Rul. 63-170.

Rev. Rul. 76-392 analyzed the distinction between Rev. Rul. 63-170 and Rev. Rul. 74-133 as dependent on "whether there has been a mere change in the number of shares representing the original investment in a corporation as opposed to a change in the nature or extent of such investment". In making this determination the ruling further alludes to a "significant change in the nature of the investment itself" as one of the relevant considerations. Although the nontaxable exchange of preferred stock for common stock described in this letter represents a change in the nature, if not the

extent, of Fund's original investment that differs from the "mere change in the number of shares" in a corporation undergoing a stock split as described in Rev. Rul. 74-133, the change is not sufficiently significant to warrant the classification of the transaction as an acquisition for purposes of section 851(d). Unlike the receipt of securities of an acquiring corporation in a section 368(a)(1)(C) reorganization as described in Rev. Rul. 63-170, no business assets have been added to the private equity company pursuant to the terms of its initial public offering. The exchange of preferred stock for common stock of a single company under these circumstances also does not fundamentally resemble the receipt of securities of a third party by in-kind distribution from a portfolio company pursuant to an anti-trust order that is treated as an acquisition in Rev. Rul. 63-170.

Furthermore, a closed-end interval fund requires liquidity in order to redeem a percentage of its shares on a periodic basis as it is required to do under the 1940 Act. An initial public offering offers a closed-end interval fund that invests a significant percentage of its assets in private equity investments a principal means of achieving this necessary liquidity. To require instead under the tax law that Fund dispose of its investments in a private equity company prior to an initial public offering would significantly impede Fund from achieving the liquidity necessary to fulfill its securities laws obligations. In view of the requirement that a RIC comply both with the diversification rules of subchapter M and the provisions of the 1940 Act, it is appropriate to consistently interpret these sets of rules. See Rev. Rul. 2003-84, 2003-2 C.B. 289.

CONCLUSION

Where, as described in this letter, Fund, as a closed-end interval fund, exchanges preferred stock of a corporation for common stock of that corporation (A) in a reorganization that is nontaxable under either section 368(a)(1)(E) or section 1036 of the Code, (B) pursuant to the terms of an initial public offering that does not involve a business combination or other infusion of business assets (other than cash), and (C) is contractually prohibited from disposing of the common stock for a significant period of time under a customary "lock-up" agreement, we rule that Fund's receipt of common stock does not constitute an acquisition within the meaning of section 851(d).

No opinion is expressed concerning whether Fund otherwise qualifies as a RIC under subchapter M, part I 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,

William E. Coppersmith
William E. Coppersmith
Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)