

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Fund =  
  
Trust =  
  
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Dear :

This is in response to your letter dated January 18, 2011, submitted by your authorized representative on behalf of Fund. Fund requests that the Internal Revenue Service rule that income derived by Fund from its wholly-owned subsidiary constitutes qualifying income under section 851(b)(2) of the Internal Revenue Code of 1986, as amended (the "Code").

FACTS

Fund is a separate series of Trust, an open-end management investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended (the "1940 Act"). Trust is organized as a State statutory trust. Trust offers a selection of managed investment portfolios or mutual funds, including Fund. Fund is treated as a corporation under section 851(g)(1). Fund expects to qualify as a regulated investment company (RIC) under section 851(b)(2). Fund expects to report its income under an accrual method of accounting, and Fund has an annual accounting period ending on Date 1.

Fund intends to form a wholly-owned foreign subsidiary (Subsidiary) formed as a Type A Entity under the laws of Country. Under the laws of Country, a Type A Entity provides limited liability for all of its shareholders, limited to the amount, if any, unpaid with respect to the shares acquired by the shareholder. Fund will own 100% of the outstanding shares of such Subsidiary. Subsidiary will file an election on Form 8832, Entity Classification Election, to be taxed as a corporation pursuant to section 301.7701-3 of the Procedure and Administration Regulations.

Fund represents that although Subsidiary will not be registered as an investment company under the 1940 Act, Subsidiary will comply with the requirements of Section 18(f) of the 1940 Act, with Investment Company Act Release No. 10666, and with related Securities and Exchange Commission guidance pertaining to asset coverage with respect to investments that would apply if Subsidiary were registered under the 1940 Act.

Fund intends to invest a portion of its assets in Subsidiary, up to x%, subject to the diversification requirements of section 851(b)(3). Subsidiary will invest primarily in commodities futures and swaps on commodities futures, but it may also invest in various other commodity-related instruments, financial futures, option and swap contracts, equity and fixed income securities, cash and cash equivalents, pooled investment vehicles, including those that are not registered pursuant to the 1940 Act, and other investments intended to serve as margin or collateral for Subsidiary's derivative positions.

Fund will be the sole shareholder of Subsidiary and does not expect shares of Subsidiary to be offered or sold to other investors. Because Subsidiary will be wholly owned by Fund, Subsidiary will be a controlled foreign corporation (CFC). Fund expects that Subsidiary's income will be Subpart F income. Fund may also receive income from Subsidiary that is not properly characterized as Subpart F income. Fund intends to include in its income the Subpart F income of Subsidiary under the rules applicable to CFCs under the Code.

#### 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. Under this test, at least 90 percent of its gross income must be derived from certain enumerated sources. Under section 851(b)(2), a corporation's qualifying income includes –

. . . 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 Investment Company Act of 1940) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies. . . .

In addition, the flush language of section 851(b) of the Code provides that, for purposes of section 851(b)(2), there shall be treated as dividends amounts included in gross income under sections 951(a)(1)(A)(i) or 1293(a) for the taxable year to the extent that, under sections 959(a)(1) or 1293(c) (as the case may be), there are distributions out of the earnings and profits of the taxable year which are attributable to the amounts so included.

Section 957 of the Code defines a controlled foreign corporation as any foreign corporation in which more than 50 percent of (1) the total combined voting power of all classes of stock entitled to vote, or (2) the total value of the stock is owned by United States shareholders on any day during the corporation's taxable year. A United States shareholder is defined in section 951(b) as a United States person who owns 10 percent or more of the total combined voting power of all classes of voting stock of a foreign corporation. Fund is a United States person. Fund represents that it will wholly own Subsidiary. Therefore, Fund represents that the Subsidiary will qualify as a CFC under these provisions.

Section 951(a)(1) of the Code provides that, if a foreign corporation is a CFC for an uninterrupted period of 30 days or more during any taxable year, every person who is a United States shareholder of the corporation and who owns stock in the corporation on the last day of the taxable year in which the corporation is a CFC shall include in gross income the shareholder's pro rata share of the CFC's subpart F income for the taxable year.

Section 952(a)(2) of the Code defines subpart F income to include foreign base company income determined under section 954. Under section 954(a)(1), foreign base company income includes foreign personal holding company income determined under section 954(c). Section 954(c)(1) defines foreign personal holding company income to include (among other items): dividends, interest, royalties, rents, and annuities; gains in excess of losses from transactions in commodities (including futures, forwards, and similar transactions but excluding certain hedging transactions and certain active

business gains and losses); and, subject to certain exceptions, net income from notional principal contracts.

Subsidiary's income from investments in commodities and commodity-linked instruments is expected to generate subpart F income. Fund will therefore be required to include in its income Subsidiary's subpart F income for each taxable year in accordance with section 951 of the Code.

### CONCLUSION

Based on the facts as represented, we rule that subpart F income of Subsidiary that is attributable to Fund is income derived with respect to Fund's business of investing in the stock of Subsidiary and thus constitutes qualifying income under section 851(b)(2) of the Code.

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 Fund qualifies as a RIC under subchapter M 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

David B. Silber  
David B. Silber  
Chief, Branch 2  
Office of Associate Chief Counsel  
(Financial Institutions & Products)