

Internal Revenue Service

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Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

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CC:INTL:B02

PLR-126969-13

PLR-140142-13

PLR-140144-13

PLR-140146-13

PLR-140147-13

PLR-140148-13

PLR-140149-13

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PLR-140172-13

PLR-140173-13

PLR-140174-13

PLR-140175-13

PLR-140176-13

PLR-140177-13

Date: June 30, 2014

TY:

Legend

Fund	=
Trust	=
State X	=
Company 1	=
Company 2	=
Company 3	=
Company 4	=
Company 5	=
Company 6	=
Company 7	=
Company 8	=
Company 9	=
Company 10	=
Company 11	=
Company 12	=
Company 13	=
Company 14	=
Company 15	=
Company 16	=
Company 17	=
Company 18	=
Company 19	=
Company 20	=
Company 21	=
Company 22	=
Company 23	=
Company 24	=
Company 25	=
Company 26	=
Company 27	=
Company 28	=
Company 29	=
Company 30	=
Company 31	=
Company 32	=
Company 33	=
Company 34	=
Advisor	=
Accountant	=
Investment Manager	=
Treasurer	=

Senior Counsel =
Year 1 =
Year 2 =
Year 3 =
Date 4 =

Dear :

This is in response to a letter dated June 5, 2013, submitted on behalf of Fund by its authorized representative, requesting an extension of time under Treas. Reg. §§301.9100-1 and 301.9100-3 to make a mark to market (“MTM”) election under section 1296 of the Internal Revenue Code with respect to its investment in thirty-four companies.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on exam.

FACTS

Trust is a statutory trust organized under the laws of State X. It was registered as an open-end management company under the Investment Company Act of 1940 at all times during the taxable years in question and is so registered as of the date of this ruling request.

Fund is a duly designated and established segregated portfolio of assets of the Trust and is a “fund” as defined in section 851(g)(2). Accordingly, Fund is treated as a separate corporation for federal income tax purposes pursuant to section 851(g)(1) (except with respect to the definitional requirement of section 851(a)). Fund qualifies as a regulated investment company under Subchapter M of the Code because it satisfies the source of income and diversification requirements of section 851(b)(2) and (3).

Fund acquired stock interests in Company 1, Company 2, Company 3, Company 4, Company 5, Company 6, Company 7, Company 8, Company 9, Company 10, and Company 11 (collectively referred to herein as “Group A”) in Year 1. Based on publicly available information, it appears that each of the companies in Group A met the requirements for passive foreign investment company (PFIC) classification under section 1297(a)(2) in Year 1.

Fund acquired stock interests in Company 12, Company 13, Company 14, Company 15, Company 16, Company 17, Company 18, Company 19, Company 20, Company 21, and Company 22 (collectively referred to herein as “Group B”) in Year 2.

Based on publicly available information, it appears that each of the companies in Group B met the requirements for PFIC classification under section 1297(a)(2) in Year 2.

Fund acquired stock interests in Company 23, Company 24, Company 25, Company 26, Company 27, Company 28, Company 29, Company 30, Company 31, Company 32, Company 33, and Company 34 (collectively referred to herein as "Group C") in Year 3. Based on publicly available information, it appears that each of the companies in Group C met the requirements for PFIC classification under section 1297(a)(2) in Year 3.

Fund sold various portions of its holdings in the companies in Group A, Group B, and Group C, and continues to hold an interest in some of the companies as of the date of this ruling request.

For the taxable years involved in this request, Advisor completed Fund's tax returns and Accountant reviewed and signed the returns as the paid preparer. Accountant's review procedures included a review of section 1296 PFIC MTM calculations prepared by Advisor. Advisor based these calculations, in part, on PFIC identifications made by Fund's Investment Manager as part of its PFIC identification process. At all relevant times, Investment Manager had access to the books and records of Fund and other information Fund believed was relevant to make PFIC identifications. Fund has been consistent in the treatment of the companies that have been identified by Investment Manager as PFICs. Historically, when a PFIC was identified as held by Fund, Fund made a MTM election under section 1296 to avoid being subject to the excess distribution rules.

Beginning in the fiscal year ended Date 4, Investment Manager, during ongoing due diligence with respect to PFIC identifications, determined that, based on new sources of data, the companies in Group A, Group B, and Group C held by Fund in prior taxable years were likely classified as PFICs. Fund was informed of these new PFIC identifications and therefore that timely MTM elections under section 1296 had not been made with respect to these companies.

Fund submitted an affidavit from Treasurer, the treasurer of Fund, and an affidavit from Senior Counsel, a senior counsel of Investment Manager, in support of its ruling requests. Treasurer's affidavit states that during the fiscal year ended on Date 4 Investment Manager enhanced its PFIC identification process by obtaining new sources of data to assist in identifying PFICs held by Fund. Upon implementing the enhanced identification procedures, Investment Manager raised the possibility that some of the companies held by Fund could qualify as PFICs. Senior Counsel's affidavit states that Investment Manager's identification process that was utilized in Year 1, Year 2, and Year 3 did not identify the companies in Group A, Group B, and Group C as PFICs. Upon implementing the enhanced approach during Investment Manager's ongoing due diligence in the fiscal year ended Date 4, Senior Counsel determined that the

companies were likely classified as PFICs in the years in which Fund acquired its interests.

Fund has made the following additional representations with respect to each election:

1. The request for relief was filed by Fund before its failure to make the MTM election under section 1296 was discovered by the Internal Revenue Service (IRS).
2. Granting the relief will not result in Fund being placed in a better tax position than if the election had been made on a timely basis.
3. Fund is not seeking to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662, nor is Fund using hindsight in requesting this ruling.
4. No facts have changed subsequent to the due date for making the election that now make it more advantageous for Fund to make the election.
5. It always was, and continues to be, the intent of Fund to make a MTM election under section 1296 with respect to the stock of each of its PFICs.

LAW

Section 1296(a) provides that, in the case of marketable stock in a PFIC that is owned by a United States person at the close of any taxable year, the person may elect to include in gross income the excess of the fair market value of the stock over its adjusted basis.

Treas. Reg. §1.1296-1(h) provides that a MTM election under section 1296 for a taxable year must be made on or before the due date (including extensions) of the person's U.S. income tax return for that year.

Treas. Reg. §1.1296-1(h)(1)(iii) provides that a late MTM election under section 1296 may be permitted only in accordance with Treas. Reg. §301.9100.

Treas. Reg. §301.9100-1(c) provides that the Commissioner of the IRS (Commissioner) has the discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in Treas. Reg. §301.9100-3, to make a regulatory election under all subtitles of the Code, except subtitles E, G, H, and I.

Treas. Reg. §301.9100-1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date

is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. §301.9100-3(a) provides that requests for relief will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. §301.9100-3(e)) 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 U.S. government.

Treas. Reg. §301.9100-3(b)(1) provides that, except as provided in Treas. Reg. §301.9100-3(b)(3), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer:

- (i) requests relief before the failure to make the regulatory election is discovered by the IRS;
- (ii) failed to make the election because of intervening events beyond the taxpayer's control;
- (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election;
- (iv) reasonably relied on the written advice of the IRS; or
- (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Treas. Reg. §301.9100-3(b)(3) provides that a taxpayer is deemed to have not acted reasonably or in good faith if the taxpayer:

- (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief (taking into account any qualified amended return filed within the meaning of Treas. Reg. §1.6664-2(c)(3)) 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.

Treas. Reg. §301.9100-3(c)(1)(i) provides that the granting of relief:

- (i) will prejudice the interests of the U.S. government 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 (taking into account the time value of money); or
- (ii) may prejudice the interests of the U.S. government 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 under section 6501(a) before the taxpayer's receipt of a ruling granting relief.

CONCLUSION

Based on the information and representations submitted, including the representation that Fund requested relief before the failure to make the MTM elections under section 1296 was discovered by the IRS, we conclude that Fund satisfies the requirements for a reasonable extension of time to make the election under section 1296 for each of the companies in Group A, Group B, and Group C. Accordingly, Fund is granted an extension of time of 60 days from the date of this letter to make the election under section 1296, with respect to Fund's taxable Year 1 (with respect to the companies in Group A), Year 2 (with respect to the companies in Group B), and Year 3 (with respect to the companies in Group C).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter.

The granting of an extension of time is not a determination that Fund is otherwise eligible to make the elections under section 1296. Treas. Reg. §301.9100-1(a).

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

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically must satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Powers of Attorney on file with this office, copies of this letter are being sent to Fund's representatives.

Sincerely,

Barbara Rasch
Senior Technical Reviewer, Branch 2
Office of the Associate Chief Counsel
(International)