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LEGEND

Taxpayer	=
Date 1	=
Assets	=
State law trust	=
State law	=
Sponsor	=
Trustee	=
Trust Agreement	=
a	=
b	=

Dear :

This letter is in response to a letter from the Taxpayer dated March 16, 2017, requesting a ruling that the Taxpayer qualifies as an investment trust that is classified as a trust under §301.7701-4 of the Procedure and Administration Regulations.

FACTS

The Taxpayer represents the facts described below. The Taxpayer is a State law trust, organized under State law, that was established on Date 1 by Sponsor with Trustee as the trustee. The Taxpayer's taxable year is a calendar year.

The beneficial interests of the Taxpayer are represented by a single class of units (Units). Each Unit represents the same proportional beneficial interest in the assets of the Taxpayer. In the event of a distribution, each Unit is entitled to a pro rata share of the distribution.

The Taxpayer has and will continue to enter into agreements with certain participating financial institutions (Authorized Participants). Under the Trust Agreement and its agreement with the Taxpayer, an Authorized Participant submits a Creation Order to the Taxpayer requesting new Units. Each Creation Order must be for 1 or more baskets, each representing a Units.

Payment for a Creation Order must be made by an in-kind deposit of the Assets. To determine the quantity of the Assets to be deposited, a per-Unit quantity of the Assets will be determined by dividing the total quantity of the Assets held by the Taxpayer prior to the issuance of the new Units, after adjusting for accrued but unpaid fees and expenses of the Taxpayer, by the number of Units then outstanding. The per-Unit quantity will then be multiplied by a and the number of baskets requested to determine the total quantity of the Assets to be deposited. Under the Trust Agreement, the Taxpayer may only accept a Creation Order and an in-kind deposit from an Authorized Participant.

Under the Trust Agreement and its agreement with the Taxpayer, an Authorized Participant may submit a Redemption Order to the Taxpayer requesting the Taxpayer to redeem Units. Each Redemption Order must be for 1 or more baskets.

Payment by the Taxpayer for a Redemption Order must be made by an in-kind delivery of the Assets to an Authorized Participant. To determine the quantity of the Assets to be delivered, a per-Unit quantity of the Assets will be determined by dividing the total quantity of the Assets held by the Taxpayer, after adjusting for accrued but unpaid fees and expenses of the Taxpayer, by the number of outstanding Units. The per-Unit quantity will then be multiplied by a and the number of baskets redeemed to determine the total quantity of the Assets to be delivered. Under the Trust Agreement, the Taxpayer will only accept a Redemption Order from an Authorized Participant and will only deliver the Assets to an Authorized Participant.

The Taxpayer was established to facilitate investment in the Assets. The Taxpayer represents that the Assets are not stock or securities, so the Taxpayer is not required to register under the Investment Company Act of 1940, as amended. Other than $b contributed by Sponsor at the time the Taxpayer was established, the Taxpayer's assets have consisted solely of the Assets. Under the Trust Agreement, the

Taxpayer may not accept cash as payment for a Creation Order. The Taxpayer is prohibited from owning or holding any assets other than the Assets, except that the Taxpayer may sell the Assets and hold cash temporarily for the payment of expenses or, if the Taxpayer is liquidated, to redeem Units.

Under the Trust Agreement, the Taxpayer pays the Sponsor a fee (the Combined Fee) based upon the daily net asset value of the Assets. The Combined Fee is paid in arrears, usually on a monthly basis. The Taxpayer makes an in-kind distribution to the Sponsor in an amount equal to the Combined Fee. In partial consideration for the Combined Fee, the Sponsor has assumed the obligation to pay the Taxpayer's ordinary expenses, including trustee fees, custodian fees, accounting expenses, and marketing expenses. The Sponsor retains the portion of the Combined Fee that exceeds the assumed expenses. If the Taxpayer incurs extraordinary expenses which are not assumed by the Sponsor, the Taxpayer will sell an appropriate amount of the Assets to provide cash to pay the extraordinary expenses.

LAW AND ANALYSIS

Section 301.7701–2(a) defines the term “business entity” as any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701–3) that is not properly classified as a trust under § 301.7701–4 or otherwise subject to special treatment under the Code. A business entity with two or more owners is classified for federal tax purposes as either a corporation or a partnership. A business entity with only one owner is classified as a corporation or is disregarded.

Section 301.7701–4(a) provides that the term “trust” refers to an arrangement created either by will or by an inter vivos declaration whereby trustees take title to property for the purpose of protecting and conserving it for the beneficiaries. Section 301.7701–4(b) provides that there are other arrangements known as trusts because the legal title to property is conveyed to trustees for the benefit of beneficiaries, but that are not classified as trusts for federal tax purposes because they are not simply arrangements to protect or conserve the property for the beneficiaries. These trusts, which are often known as business or commercial trusts, generally are created by the beneficiaries simply as a device to carry on a profit-making business that normally would have been carried on through business organizations that are classified as corporations or partnerships.

Section 301.7701–4(c)(1) provides that an “investment” trust will not be classified as a trust if there is a power under the trust agreement to vary the investment of the certificate holders. See Commissioner v. North American Bond Trust, 122 F.2d 545 (2d Cir. 1941), cert. denied, 314 U.S. 701 (1942). An investment trust with a single class of ownership interests, representing undivided beneficial interests in the assets of the

trust, will be classified as a trust if there is no power to vary the investment of the certificate holders.

A power to vary the investment of the certificate holders is one that enables the trustee to manage the assets held in the purported “trust” to take advantage of market variations to improve the investment of all beneficiaries. See Commissioner v. North American Bond Trust, 122 F.2d at 546. In Rev. Rul. 78-149, 1978-1 C.B. 448, a trust that invested in municipal obligations would sometimes have the obligations held by the trust redeemed early. Under the trust agreement, the trust was authorized to reinvest the proceeds from an early redemption in additional municipal obligations that matured no later than the maturity date of the trust and which bore an investment grade similar to the instrument that was redeemed early. Rev. Rul. 78-149 holds that the ability to reinvest the early redemption proceeds is a power to vary. Rev. Rul. 78-149 further notes that "[t]he existence of a power to sell trust assets does not give rise to a power to vary the investment. Rather, it is the ability to substitute new investments, the power to reinvest, that requires an investment to be classified as an association," citing Pennsylvania Co. for Insurances on Lives and Granting Annuities v. United States, 146 F.2d 392 (3rd Cir. 1944).

In contrast, in Rev. Rul. 90-63, 1990-2 C.B. 270, the trustee had the power to consent to changes in the credit support of debt held by a trust, but only to the extent that the trustee reasonably believed that the change was advisable to maintain the value of the trust’s assets. Rev. Rul. 90-63 concludes that the trustee did not possess a power to vary the investment of the beneficiaries. The ruling noted that, although the trustee’s actions could result in an increase in the value of a trust asset, any increase would arise due to the maintenance of the trust’s asset value, not because of trading in securities and profiting from market fluctuations.

In Rev. Rul. 75–192, 1975–1 C.B. 384, the trust was required to make quarterly distributions. The trust agreement required the trustee to invest cash on hand between the quarterly distribution dates in short-term obligations of (or guaranteed by) the United States, or any agency or instrumentality thereof, and in certificates of deposit of any bank or trust company having a minimum stated surplus and capital. The trustee was permitted to invest only in obligations maturing prior to the next distribution date and was required to hold such obligations until maturity. Rev. Rul. 75–192 concludes that, because the restrictions on the types of permitted investments limit the trustee to a fixed return similar to that earned on a bank account and eliminate any opportunity to profit from market fluctuations, the power to invest in the specified kinds of short-term investments is not a power to vary the trust’s investment.

Based upon the information provided by the Taxpayer, ownership of the Taxpayer is represented by a single class of Units. Therefore, under § 301.7701–4(c)(1), the Taxpayer will be classified as a trust if there is no power to vary the investment of the Unit holders.

Under the Trust Agreement, the Taxpayer is limited to holding the Assets and, temporarily, cash from the sale of the Assets prior to payment of expenses or, if necessary, distributions in liquidation of the Trust. The Taxpayer is not authorized to accept cash or other assets, and the Taxpayer may only acquire additional quantities of the Assets through deposits by Authorized Participants in exchange for the creation of new Units. Under the formulas described in the Trust Agreement, the quantity of the Assets that is represented by one Unit will not be altered either by the creation of new Units or redemption of existing Units.

Thus, the Taxpayer is required to be invested in either the Assets or in cash. To the extent that the Taxpayer accepts additional deposits, it may only do so by accepting the Assets in-kind in quantities that are carefully calculated to ensure that the additions do not alter the quantity of the Assets underlying each Unit, and, in particular, do not increase the quantity of the Assets underlying each Unit. The Taxpayer is therefore unable to trade in securities and profit from market fluctuations. If there is a change in a Unit's value, the change occurs because the value of the Assets has gone up or down and not because each Unit is entitled to a larger quantity of the Assets.

In addition, although the Taxpayer is authorized to dispose of the Assets to pay expenses, the Taxpayer is not permitted to substitute new investments for the Assets. Further, like the situation described in Rev. Rul. 75-192, the Taxpayer has limited its non-Asset holdings to cash, which, at most, limits the Taxpayer to a fixed return similar to that earned on a bank account and eliminates any opportunity to profit from market fluctuations.

Accordingly, based upon the Taxpayer's representations and the analysis above, we conclude that, for purposes of § 301.7701-4(c)(1), the Taxpayer does not have a power to vary the investment of the Trust's certificate holders. Therefore, because ownership in the Taxpayer is represented by a single class of Units and the Trustee does not have a power to vary the investments of the Taxpayer, we conclude that the Taxpayer qualifies as an investment trust that is classified as a trust under §301.7701–4(c)(1).

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.

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.

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

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 examination.

Sincerely,

Jeffrey T. Rodrick
Jeffrey T. Rodrick
Special Counsel
Office of Associate Chief Counsel
(Financial Institutions & Products)