

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200446013**

Release Date: 11/12/04

Index Number: 4982.00-00

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Refer Reply To:

CC:FIP:B02 – PLR-129059-04

Date:

July 23, 2004

Legend:

Fund 1 =

Fund 2 =

Fund 3 =

Fund 4 =

Fund 5 =

Series Fund 1 =

Series Fund 2 =

State =

Year A =

Year B =

Year C =

Year D =

Year E =

Year F =

Year G =

Year H =

X =

Dear :

This ruling responds to a letter dated May 18, 2004, submitted on behalf of Funds 1 through 5 (collectively referred to as the "Funds") by their authorized representative. Each Fund requests consent to revoke, for Year F and subsequent calendar years, a previous election made by that Fund under section 4982(e)(4)(A) of the Internal Revenue Code (Code). Additionally, the Funds request that the calculation of each of their required distributions of capital gain net income, net gain or loss from foreign currency transactions and passive foreign investment companies held for which Funds have or will make an election under section 1296(k) ("PFIC"), for purposes of calculating their required distributions under sections 4982(b)(1)(B), 4982(e)(2), 4982(e)(5), and 4982(e)(6) for the calendar year ending December 31, Year F, be determined on the basis of capital gains and losses realized and recognized during the ten-month period from January 1, Year F, through October 31, Year F. Finally, the Funds request that the calendar year ending December 31, Year F shall be considered the first taxable year of each Fund in which the election under section 4982(e)(4)(A) will not apply for purposes of determining its post-October losses, as applied to the Fund's computation of investment company taxable income and net capital gains under sections 852(b)(2), 852(b)(3), 852(b)(8), 852(b)(10) as well as section 1.852-11(f) of the Income Tax Regulations (the regulations), the determination of the Fund's earnings and profits under section 852(c)(2) and section 1.852-11(g) of the regulations, and for purposes of designating capital gain dividends under section 852(b)(3)(C) and section 1.852-11(e) of the regulations.

Fund 1 was incorporated under State law in Year A and is registered under the investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended (the 1940 Act) as an open-end management investment company.

Fund 2 was incorporated under State law in Year B and is registered under the 1940 Act as an open-end management investment company.

Fund 3 is a fund within Series Fund 1. Series Fund 1 was incorporated under State law in Year C and is registered under the 1940 Act as an open-end management investment company.

Funds 4 and 5 are funds within Series Fund 2. Series Fund 2 was incorporated under State law in Year D and is registered under the 1940 Act as an open-end management investment company.

The Funds use an accrual method of accounting for tax and financial accounting purposes. Each of the Funds computes its taxable income and files required tax returns on the basis of a calendar year. The Funds first elected, under Subchapter M of the Code, to be taxed as regulated investment companies ("RICs") for their initial taxable year of operations as indicated above. Thereafter, the Funds have met all of the requirements for such treatment (including the registration requirement of section 851(a) of the Code and the distribution requirement of section 852(a)) for each taxable year.

More than x years ago, each Fund made an election under section 4982(e)(4)(A) of the Code on a timely filed Form 8613 ("Return of Excise Tax on Undistributed Income of Regulated Investment Companies"). Thereafter, the Funds computed their required distribution of capital gain net income and, where applicable, net foreign currency and PFIC gains for excise tax purposes using their taxable year (the calendar year), as opposed to the one year period ending October 31, for all taxable years through and including calendar year E.

The election to measure capital gain, foreign currency, and PFIC net capital income using a calendar year for purposes of applying the distribution rules set forth under section 4982 of the Code was originally made with the intention to simplify the computation of required distributions of ordinary income and capital gain net income. The Funds now realize, however, that greater accuracy in the computation required of ordinary income and capital gain net income distributions can be achieved through the utilization of a one year period ending on October 31 for purposes of measuring foreign currency, PFIC and capital gain net income.

Since the time when the Funds made the section 4982(e)(4)(A) election, there have been significant changes in market conditions causing the Funds to realize various disadvantages from both a financial and administrative standpoint of maintaining the election. Maintaining the election under section 4982(e)(4) of the Code causes the Funds:

- a. to experience significant administrative difficulties in accurately determining the amount of dividends which should be declared and the related distributions; and
- b. to periodically restrict portfolio trading activity in order to avoid imposition of the excise tax.

These financial and administrative difficulties impact the efficient management of the Funds on behalf of their shareholders. The Funds seek revocation of the election under section 4982(e)(4)(A) of the Code, pursuant to authority granted to the Secretary under section 4982(e)(4)(B), solely to avoid the administrative and non-tax related financial burdens caused by the election.

Moreover, the promulgation of regulations coordinating the excise tax and Subchapter M provisions has greatly reduced the administrative burden of having a tax

year different from the period used for determining the required distributions under section 4982 of the Code. Accordingly, the computation of capital gain net income by the Funds on the last business day of their tax year pursuant to their section 4982(e)(4)(A) elections has become administratively impracticable, and the Funds seek consent to revoke their elections to use the taxable year (the calendar year) for purposes of sections 4982(b)(1)(B) and 4982(e)(2).

Permitting the Funds to revoke their section 4982(e)(4)(A) elections and compute capital gain net income for the tax year on October 31, rather than December 31, would significantly lessen the administrative burden of computing capital gain net income in an accurate and timely manner. Additionally, the Funds represent that:

1. The desire to revoke their section 4982(e)(4)(A) elections is due to administrative and non-tax related financial burdens caused by the elections;
2. They are not seeking to revoke their elections for the purpose of preserving or securing a tax benefit;
3. They will neither benefit through hindsight nor prejudice the interests of the government as a result of being permitted to revoke their elections; and
4. They will not make any subsequent elections under section 4982(e)(4)(A) of the Code for five (5) calendar years following the year of the grant of revocation.

### LAW AND ANALYSIS

Section 4982(a) of the Code, which was enacted as part of the Tax Reform Act of 1986 and is effective for tax years beginning after December 31, 1986, imposes an excise tax on every RIC for each calendar year equal to 4 percent of the excess, if any, of the "required distribution" over the "distributed amount" for the calendar year.

Section 4982(b)(1) of the Code defines the term "required distribution" to mean, with respect to any calendar year, the sum of 98 percent of the RIC's ordinary income for such calendar year, plus 98 percent of its capital gain net income for the 1-year period ending on October 31 of such calendar year.

Section 4982(e)(2)(A) of the Code provides that for purposes of section 4982, in general, the term "capital gain net income" has the meaning given to that term by section 1222(9), but determined by treating the 1-year period ending on October 31 of the calendar year as the RIC's tax year.

Section 4982(e)(2)(B) of the Code reduces the RIC's capital gain net income, but not below the RIC's net capital gain, by the amount of the RIC's net ordinary loss for the calendar year. Section 4982(e)(2)(C)(i) provides that, for purposes of section 4982, the

term "net capital gain" has the meaning given that term by section 1222(11), but determined by treating the 1-year period ending on October 31 of the calendar year as the RIC's tax year.

Section 4982(e)(4)(A) of the Code provides that if the tax year of a RIC ends with the month of November or December, the RIC may elect to have its capital gain net income for its tax year applied in lieu of the 1-year period ending on October 31 of the calendar year for purposes of satisfying the required distribution defined in section 4982(b)(1). Section 4982(e)(4)(B) provides that, once made, such election may be revoked only with the consent of the Secretary .

Section 4982(e)(5) of the Code provides that any foreign currency gain or loss attributable to a section 988 transaction and which is properly taken into account for the portion of the calendar year after October 31 shall not be taken into account in determining the ordinary income of the RIC for the calendar year but shall be taken into account in determining the RIC's ordinary income in the following calendar year. However, if a RIC has made an election under section 4982(e)(4), the preceding sentence shall be applied by substituting the last day of the RIC's taxable year for October 31.

Section 4982(e)(6)(A) of the Code provides that for purposes of determining a RIC's ordinary income, section 1296 shall be applied as if the RIC's tax year ended on October 31. Section 4982(e)(6)(B) provides that any ordinary gain or loss from an actual disposition of stock in a passive foreign investment company during the portion of the calendar year after October 31 shall be taken into account in determining the RIC's ordinary income for the following calendar year. However, if a RIC has made an election under section 4982(e)(4), the preceding two sentences shall be applied by substituting the last day of the RIC's tax year for October 31.

Based upon the information submitted and the representations made, we conclude that each Fund's desire to revoke its election under section 4982(e)(4)(A) of the Code is because of administrative burdens and not because of any federal tax-related financial burden caused by the election. The funds do not seek to revoke their elections for the purpose of preserving or securing a federal tax benefit. Additionally, the Funds will neither benefit through hindsight nor prejudice the interest of the government as a result of being permitted to revoke their elections.

## CONCLUSION

Accordingly, based upon the representations made and pursuant to section 4982(e)(4)(B) of the Code, the Secretary consents to the revocation of the elections made by the Funds under section 4982(e)(4)(A), effective for calendar Year F and subsequent years. In addition, in calculating the "required distribution" for calendar Year F, for purposes of section 4982(b)(1) and (e), the capital gain net income and foreign currency gains and losses of the Funds will be determined on the basis of the

capital gains and losses and foreign currency gains and losses, if any, recognized and realized during the 10-month period from January 1, Year F, through October 31, Year F. Finally, the calendar year ending December 31, Year F shall be considered the first taxable year (notwithstanding the fact that the computational period for Year F does not cover the whole year but rather a shortened period of ten months, including only January through October of Year F) of each Fund in which the election under section 4982(e)(4)(A) will not apply for purposes of determining its post-October losses, as applied to the Fund's computation of investment company taxable income and net capital gains under sections 852(b)(2), 852(b)(3), 852(b)(8), 852(b)(10) as well as section 1.852-11(f) of the regulations, the determination of the Fund's earnings and profits under section 852(c)(2) and section 1.852-11(g) of the regulations, and for purposes of designating capital gain dividends under section 852(b)(3)(C) and section 1.852-11(e) of the regulations.

As a condition to the Secretary's consent to the revocation pursuant to section 4982(e)(4)(B) of the Code, none of the Funds may make a subsequent election under section 4982(e)(4)(A) for a period of five (5) calendar years following the year to which the grant of revocation applies (i.e. Year G through Year H).

Except as specifically ruled upon above, no opinion is expressed or implied as to any other federal excise or income tax consequences.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter should be attached to the federal income and excise tax return filed by each of the Funds for the year to which this ruling applies.

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

Sincerely,

Susan Thompson Baker  
Susan Thompson Baker  
Assistant to the Branch Chief, Branch 2  
Office of Associate Chief Counsel

(Financial Institutions & Products)