

INTERNAL REVENUE SERVICE

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Date: October 10, 2000

Legend:

Sponsor =
Trust =
Parent =
a =
b =
c =
d =
e =

Dear:

This is in reply to a letter dated April 20, 2000, and subsequent correspondence, requesting a ruling on behalf of Sponsor. The requested ruling is that Trust, a trust created by Sponsor, will not be classified as a business entity under § 301.7701-2 of the Procedure and Administration Regulations because of the existence or exercise of the redemption election discussed below.

Facts:

Sponsor is a domestic corporation that specializes in the underwriting, trading, and distribution of investment company securities. Parent is the common parent of an affiliated group of corporations that includes Sponsor. Parent files a consolidated return for the group.

Sponsor intends to create Trust to hold a fixed portfolio of securities (the assets). Units representing fractional undivided interests in Trust will be issued to Trust's investors (Unitholders). Each unit will represent an identical fractional undivided interest in each Trust asset and each item of Trust's income and expense. The Unitholders are intended to be considered grantors of Trust under §§ 671-677 of the Internal Revenue Code.

Trust will be organized as a domestic trust under state law. Sponsor represents that Trust will qualify as a unit investment trust under § 4 of the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq. (1988) (the Act). The trustee of Trust will be a financial institution that is a bank under the Act.

For ninety days following the creation of Trust, Sponsor is permitted to convey to

the trustee additional securities (or cash to purchase additional securities) that are substantially similar to those initially deposited in exchange for additional units to sell to investors. After that time, Sponsor will be permitted to convey to the Trustee additional securities (including cash to purchase additional securities) only if the additional securities are identical to those that are on deposit, and as nearly as is practicable, in an identical ratio to the percentage ratio for the securities. Trust assets may be sold only to meet Unitholders' redemption requests or in other very limited circumstances.

Trust will have a fixed term. Sponsor will impose a sales charge of a percent of the public offering price per unit. An initial sales charge will be imposed at the time an investor purchases units and the remaining portion of the sales charge, a deferred sales charge, will be deducted from Trust's income by the Trustee and paid to the Sponsor. The deferred sales charge is \$b per unit of which \$c per unit will accrue during the fourth through twelfth month of Trust's life and \$d per unit will accrue beginning at the sixteenth month of Trust's life. Trust will offer sales charge discounts or waivers for transactions such as large quantity purchases and purchases by employees of Sponsor.

Unitholders may liquidate their units during Trust's life in either of two ways. First, Unitholders may redeem their units on any business day for cash by tendering their units to the Trustee. If funds are unavailable to satisfy the redemption request, Trustee will sell Trust assets. Upon redemption, Unitholders holding at least e units may elect to receive an in-kind distribution of whole securities, representing the Unitholder's pro rata share of Trust assets, and cash in lieu of any fractional shares. Second, Unitholders may sell their units to Sponsor, broker-dealers, or other investors at any time. In such case, Sponsor (or other purchaser) will pay for the units out of its own assets and then may either resell the units in the secondary market or redeem the assets with the Trustee.

At the time of redemption or sale of the units, Unitholders are required to pay the uncollected portion of the deferred sales charge, except in the case of units redeemed pursuant to the redemption election described in this paragraph. Upon formation of Trust, Unitholders will have the option of electing an automatic redemption option (the Redemption Election) at the time units are purchased. The Redemption Election may only be made at the time units are purchased. If the Redemption Election is made for a unit and the unit has not previously been redeemed, the unit will be redeemed at the end of the fifteenth month after creation of Trust without any additional action by the Unitholder. Because these units will be redeemed at the end of the fifteenth month, \$d of the deferred sales charge per unit will remain uncollected. Unitholders that did not make a Redemption Election will have the remaining deferred sales charge deducted from redemption proceeds regardless of when the redemption occurs. However, Unitholders that make the Redemption Election will not pay \$d of the deferred sales charge.

Except for the difference in the deferred sales charge, all Unitholders will have identical rights and liabilities regardless of whether they make the Redemption Election.

All units will represent the identical undivided interest in Trust's assets. Trust's income, fees, and expenses will be apportioned among all outstanding units in the identical proportion.

Sponsor represents that it wishes to establish Trust as a single trust rather than two separate trusts with different trust lives to save costs, including the costs of setting up a second trust and the ongoing expenses of administering a second trust.

Law, Analysis and Conclusion:

Section 301.7701-4(c)(1) of the Procedural and Administrative Regulations provides that 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 under the trust agreement to vary the investment of the certificate holder. An investment trust with multiple classes of ownership interests, in which there is no power under the trust agreement to vary the investment of the certificate holder, will be classified as a trust if the trust is formed to facilitate direct investment in the assets of the trust and the existence of multiple classes of ownership interests is incidental to that purpose.

Based on the facts and circumstances presented and the representations made, we conclude that Trust does not fail to be a trust under § 301.7701-4(c) solely because of the existence or exercise of the Redemption Election. Accordingly, Trust will not be classified as a business entity under § 301.7701-2.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of the transaction discussed in this letter. This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,
Acting Associate Chief Counsel
(Financial Institutions & Products)
By: Jonathan Zelnik
Assistant to the Chief, Branch 1

Enclosure:

Copy of this letter

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