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June 6, 2001

Target =

Acquiring =

Trust =

Company =

state X =

state Y =

y =

This letter responds to your request for rulings dated April 5, 2001, submitted on your behalf by your authorized representative, in which rulings are requested on the federal income tax consequences of a proposed transaction. The information submitted for consideration is summarized below.

Target, a series of Company, a state X corporation, currently operates as a diversified open-end management investment company. Target is treated as a corporation for federal income tax purposes and files its federal income tax returns on a calendar year basis using an accrual method of accounting. Target has elected to be, and is taxed as, a regulated investment company under §§ 851 - 855 of the Internal Revenue Code ("RIC"), and has represented that it has qualified as a RIC each year since its inception. Target invests primarily in a diversified portfolio of equity securities of non-U.S. companies, focusing primarily on companies headquartered in developed countries.

Acquiring is a series of Trust, a state Y business trust, and currently operates as a diversified open-end management investment company. Acquiring is treated as a corporation for federal income tax purposes and files its federal income tax returns on a calendar year basis using an accrual method of accounting. Acquiring has elected to be, and is taxed as, a RIC and has represented that it has qualified as a RIC each year since its inception. Acquiring invests primarily in a diversified portfolio of equity

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securities of non-U.S. companies, focusing primarily on companies headquartered in developed countries.

Target and Acquiring have some common investment restrictions, e.g., generally neither may make loans, borrow money from banks, or make short sales. In addition, the shares of both Target and Acquiring are sold only to separate accounts of insurance companies in connection with variable annuity contracts and/or variable life insurance contracts issued by such companies.

For what are represented to be valid business purposes, the following transaction has been proposed (the "Reorganization"):

- (i) Target will transfer substantially all of its assets to Acquiring solely in exchange for voting shares of Acquiring (including fractional shares) and Acquiring's assumption of substantially all of Target's liabilities.
- (ii) Target will distribute pro rata to its shareholders all of the Acquiring shares received in step (i), above, in complete liquidation of Target. No shareholder of Target will receive property other than stock of Acquiring. There will be no dissenters to the transaction.

The taxpayers have made the following representations in connection with the proposed transaction:

- (a) The fair market value of the Acquiring stock received by each Target shareholder will be approximately equal to the fair market value of the Target stock surrendered in the exchange.
- (b) Acquiring will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Target immediately prior to the Reorganization. For purposes of this representation, amounts used by Target to pay its transaction expenses and all redemptions and distributions (except for distributions and redemptions occurring in the ordinary course of Target's business as an open-end investment company) made by Target immediately before the transfer will be included as assets of Target held immediately prior to the Reorganization.
- (c) After the Reorganization, the shareholders of Target will be in control of Acquiring within the meaning of § 368(a)(2)(H).
- (d) Acquiring has no plan or intention to redeem or otherwise reacquire any of its shares issued in the Reorganization, except to the extent necessary to comply with its legal obligations to redeem its own shares pursuant to § 22(e) of the 1940 Act.

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- (e) Following the Reorganization, Acquiring will either (i) continue the historic business of Target, or (ii) use a significant portion of the historic business assets acquired from Target in its business, except that (A) a portion of these assets may be sold or otherwise disposed of in the ordinary course of Acquiring's business, and (B) Acquiring may sell up to y percent of the assets received in the Reorganization, and Acquiring will reinvest the proceeds consistent with its investment objectives and policies. Otherwise, Acquiring has no plan or intention to sell or otherwise dispose of any of the assets of Target acquired in the Reorganization.
- (f) The liabilities of Target assumed by Acquiring (as determined under § 357(d)) were incurred by Target in the ordinary course of its business and are associated with the assets transferred.
- (g) At the time of the Reorganization, Acquiring will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire shares in Acquiring that, if exercised or converted, would affect the Target shareholders' acquisition or retention of control of Acquiring, as defined in § 368(a)(2)(H).
- (h) Acquiring, Target, and the Target shareholders will pay their respective expenses, if any, incurred in connection with the Reorganization.
- (i) There is no intercorporate indebtedness existing between Acquiring and Target that was issued, acquired, or will be settled at a discount.
- (j) Each of Acquiring and Target has elected to be taxed as a RIC under § 851 and, for all their respective taxable periods (including Target's last short taxable period ending on the effective date of the Reorganization), has qualified, or in the case of the current taxable period and Target's last short taxable period ending on the effective date of the Reorganization, will qualify, for the special tax treatment afforded RICs under the Code, and after the Reorganization, Acquiring intends to continue to so qualify.
- (k) The fair market value of the Target assets transferred to Acquiring will equal or exceed the sum of the liabilities assumed by Acquiring (as determined under § 357(d)).
- (l) The total adjusted basis of the Target assets transferred to Acquiring will equal or exceed the sum of the liabilities to be assumed by Acquiring (as determined under § 357(d)).
- (m) Target is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

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- (n) There is no plan or intention for Acquiring (the issuing corporation as defined in § 1.368-1(b)) or any person related (as defined in § 1.368-1(e)(3)) to Acquiring, to acquire, during the five-year period beginning on the effective date of the Reorganization, with consideration other than Acquiring stock, Acquiring stock furnished in exchange for a proprietary interest in Target in the Reorganization, either directly or through a transaction, agreement, or arrangement with any other person, other than redemptions by Acquiring in the ordinary course of its business as an open-end investment company pursuant to § 22(e) of the 1940 Act.
- (o) During the 5-year period ending on the effective date of the Reorganization: (i) neither Acquiring nor any person related (as defined in § 1.368-1(e)(3)) to Acquiring will have acquired Target stock with consideration other than Acquiring stock, (ii) neither Target nor any person related (as defined in § 1.368-1(e)(3) without regard to § 1.368-1(e)(3)(i)(A)) to Target will have acquired Target stock with consideration other than Acquiring stock or Target stock, and (iii) no distributions will have been made with respect to Target stock (other than normal, regular, dividend distributions made pursuant to Target's historic dividend paying practice), either directly or through any transaction, agreement, or arrangement with any other person, except for (a) distributions described in §§ 852 and 4982 as required for Target's tax treatment as a RIC, and (b) redemptions by Target of its stock in the ordinary course of its business as an open-end investment company pursuant to § 22(e) of the 1940 Act.
- (p) The aggregate value of the acquisitions, redemptions and distributions discussed in paragraphs (n) and (o), above, will not exceed 50 percent of the value (without giving effect to the acquisitions, redemptions, and distributions) of the proprietary interest in Target on the effective date of the Reorganization.

Based solely on the information submitted and on the representations set forth above, we hold as follows:

- (1) The acquisition by Acquiring of substantially all of the assets of Target in exchange solely for voting stock of Acquiring and Acquiring's assumption of Target's liabilities, if any, followed by the distribution by Target to its shareholders of the Acquiring stock, in complete liquidation, will qualify as a reorganization within the meaning of § 368(a)(1)(D). For purposes of this ruling, "substantially all" means at least 70 percent of the fair market value of the gross assets and at least 90 percent of the fair market value of the net assets of Target. Acquiring and Target will each be "a party to a reorganization" within the meaning of § 368(b).

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- (2) No gain or loss will be recognized by Target upon the transfer of substantially all of its assets to Acquiring solely in exchange for voting stock of Acquiring and Acquiring's assumption of Target liabilities (§§ 361(a) and 357(a)).
- (3) No gain or loss will be recognized by Target upon the distribution of Acquiring stock to the Target shareholders (§ 361(c)).
- (4) No gain or loss will be recognized by Acquiring upon the receipt of the assets of Target in exchange for voting stock of Acquiring (§ 1032(a)).
- (5) The basis of each Target asset in the hands of Acquiring will be the same as the basis of that asset in the hands of Target immediately prior to the Reorganization (§ 362(b)).
- (6) Acquiring's holding period for each Target asset received in the Reorganization will include the period during which such asset was held by Target (§ 1223(2)).
- (7) No gain or loss will be recognized by the Target shareholders on the receipt of voting stock of Acquiring solely in exchange for their Target stock (§ 354(a)).
- (8) The basis of the Acquiring shares received by the Target shareholders will be the same as the basis of the Target stock surrendered in exchange therefor (§ 358(a)(1)).
- (9) The holding period of the Acquiring stock received by the Target shareholders will include the period during which the shareholders held the Target stock surrendered in exchange therefor, provided that the Target stock was held as a capital asset by the Target shareholders on the date of the exchange (§ 1223(1)).
- (10) Pursuant to § 381(a) and § 1.381(a)-1, Acquiring will succeed to and take into account the items of Target described in § 381(c), subject to the provisions and limitations specified in §§ 381, 382, 383, and 384, and the regulations thereunder. Pursuant to § 1.381(b)-1, the tax year of Target will end on the effective date of the Reorganization.

We express no opinion about the tax treatment of the transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above rulings.

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This ruling has no effect on any earlier documents and is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Each affected taxpayer must attach a copy of this letter to the taxpayer's federal income tax return for the taxable year in which the transaction covered by this ruling letter is consummated.

Sincerely yours,
Associate Chief Counsel (Corporate)

By Ken Cohen
Senior Technician Reviewer, Branch 3