

## Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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### LEGEND

Fund A =

Fund B =

Trust =

Company =

Auditor =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

This is in reply to a letter dated August 13, 1999, requesting a ruling on behalf of Fund A and Fund B (individually referred to as Fund and collectively referred to as Funds). You have requested a ruling that each Fund be granted an extension of time under § 301.9100 of the Procedure and Administration Regulations to make an election under § 855 of the Internal Revenue Code for Funds' tax year ended Date 1.

**FACTS**

Fund A was organized in Year 1 as a Massachusetts Business Trust. Fund B was organized in Year 1 as a separate portfolio of Trust, which is organized as a Massachusetts Business Trust. Each Fund elected on its initial federal income tax return to be taxed as a regulated investment company (RIC) under subchapter M, part I of Chapter 1 of the Internal Revenue Code. Each Fund has maintained its election and qualification as a RIC in each tax year thereafter. Each Fund files its federal income tax return on the basis of a fiscal year ending Date 1.

Both Funds engage Company to provide overall administrative and other services, including, office facilities and personnel necessary for administration. Funds also retain Auditor as their independent auditor, tax advisor, and tax return preparer in lieu of maintaining an internal tax department.

Each Fund's federal income tax return for its fiscal year ended Date 1 was due on Date 2. On Date 3, Auditor prepared and delivered to Company, on behalf of each Fund, a Form 7004, Application for Automatic Extension of Time to File Corporation Income Tax Return. Each Fund indicated on its Form 7004 that it intended to file Form 1120-RIC, and each Fund had computed its taxable income as a RIC.

An employee of Company inadvertently misplaced each Fund's Form 7004 and was not in the office from Date 4 to Date 5. As a result, each Fund's Form 7004 was not mailed until Date 6, after Date 2. During Date 7, Company discovered that each Fund had failed to timely file its Form 7004 and immediately retained Auditor to address this matter on behalf of Funds. Auditor immediately prepared each Fund's federal income tax returns for the fiscal year ended Date 1. Each return was filed on Date 8 and contained an election under § 855.

**LAW AND ANALYSIS**

Section 855(a) provides, in part, that if a RIC declares a dividend prior to the time prescribed by law for the filing of its return for a tax year (including the period of any extension of time granted for filing such return), and distributes the amount of the dividend to shareholders in the 12-month period following the close of such tax year and not later than the date of the first regular dividend payment made after the declaration, the amount so declared and distributed shall, to the extent the company elects in such return in accordance with regulations prescribed by the Secretary, be considered as having been paid during such tax year, except as provided elsewhere in the section.

Section 1.855-1(b)(1) of the Income Tax Regulations provides that a § 855 election must be made in the return filed by the company for the tax year. The election should be made by the taxpayer by treating the dividend (or portion thereof) to which

such election applies as a dividend paid during the tax year in computing its investment company taxable income, or if the dividend (or portion thereof) to which such election applies is to be designated by the company as a capital gain dividend, in computing the amount of capital gain dividends paid during such tax year. After the time for filing the return for the tax year for which an election is made under § 855(a), the election is irrevocable.

Section 301.9100-1(c) provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-3(a) through (c)(1)(i) set forth rules that the Internal Revenue Service generally will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and § 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

## CONCLUSION

Based on the facts and representations submitted, we conclude that each Fund has satisfied the requirements for our granting a reasonable extension of time to allow it to make the election under § 855(a). Accordingly, each Fund is granted an extension until Date 8 to make an election under § 855(a) on its federal income tax return filed for its tax year ended Date 1.

Except as specifically ruled upon herein, we express no opinion concerning any federal excise or income tax consequences relating to the facts herein under any other section of the Code. For example, we express no opinion as to whether each Fund, in fact, has satisfied the requirements of § 855 and the regulations thereunder. We also express no opinion as to whether each Fund qualifies as a RIC under subchapter M, part I of Chapter 1 of the Code.

Further, no opinion is expressed as to whether each Fund's tax liability is not

lower in the aggregate for all years to which the regulatory election applies than each Fund's tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the district director's office will determine each Fund's tax liability for the years involved. If the district director's office determines either Fund's liability is lower, that office will determine the federal income tax effect.

This ruling is limited to providing an extension of time for filing a § 855(a) election and does not provide relief from any liability incurred as a result of filing a late return.

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

Sincerely yours,  
Assistant Chief Counsel  
(Financial Institutions & Products)

Enclosures:

Copy of this letter  
Section 6110 Copy