

## INTERNAL REVENUE SERVICE

Number: **200020051**

Release Date: 5/19/2000

Index No.: 0855.00-00, 9100.00-00

CC:DOM:FI&P:2-PLR-117153-99

February 23, 2000

Legend:

Fund =

Adviser =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear

This replies to the letter dated October 13, 1999, submitted on behalf of the Fund requesting an extension of time to elect, under section 855(a) of the Code, to treat dividends distributed after the close of the taxable year as having been paid during that year. The Fund requests that its election be considered timely filed pursuant to section 301.9100-1 of the Procedure and Administration Regulations.

### FACTS

Fund is registered under the Investment Company Act of 1940, as an open-end management investment company that has elected to be taxed as a regulated investment company (RIC) pursuant to section 852, et. seq. of the Code. Fund

is an accrual basis taxpayer with a Date 1 fiscal year end, that has previously elected, qualified and intends to continue qualifying, to be taxed as a RIC under subchapter M of the Code.

The Adviser serves as the investment adviser and administrator to the Fund, and provides certain administrative services necessary for the Fund's operations. These services include, but are not limited to, filing all necessary tax returns for the Fund, including Form 7004, Application for Automatic Extension of Time to File Corporation Income Tax Return. The Fund's corporate income tax returns have been filed in timely fashion in all previous years, and each return has included an election pursuant to section 855(a) of the Code and section 1.855-1(b)(1) of the regulations.

Due to unforeseen circumstances occurring at the Adviser, Form 7004 inadvertently was not filed for the taxable year ended Date 2. The combination of events leading to this oversight included the reassignment within the Adviser of the responsibility for preparing and filing the Form 7004, and the sudden departure from the Adviser of the individual to whom this responsibility was reassigned. Due to the combination of these two events, the Fund's request for extension of time to file its corporate income tax return that was due on Date 3, was not filed. Immediately upon discovery of this oversight, the Advisor prepared and submitted the Fund's federal corporate income tax return on Date 4.

It has been the consistent practice of the Fund to declare and pay dividends from short-term capital gains and net long-term capital gains annually. These annual dividends are generally declared and paid in an amount calculated to comply with the distribution requirements of sections 852 and 4982 of the Code. Additionally, to the extent necessary, the Fund has consistently elected, pursuant to section 855 of the Code, to treat dividends paid after the close of its taxable year as having been paid during the taxable year. It was the intention of the Fund to make a section 855 election for the taxable year in question. On Date 5, the Funds declared dividends that were paid on Date 6.

In its submission the Fund represents that:

1. The request for relief was filed by the taxpayer before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not 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).
3. The taxpayer did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the

Code at the time the taxpayer requested relief and the new position requires or permits a regulatory election for which relief is requested.

4. Being fully informed of the required regulatory election and related tax consequences, the taxpayer did not choose to not file the election.

### **APPLICABLE LAW**

Section 301.9100-1(c) of the regulations provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in section 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) of the regulations 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 section 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 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 section 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).

### **ANALYSIS**

In this case, the Fund satisfies the requirements of sections 301.9100-3(a) through (c)(1)(i) of the regulations. The Fund has applied for relief before the failure to make the election was discovered by the Service and therefore, is deemed to have acted reasonably and in good faith. Fund is not seeking to alter any return position for which an accuracy-related penalty could be imposed. Fund is not using hindsight to make an election that has become advantageous since the original due date of the return containing the election. The Fund represents that the grant of relief will not prejudice the interest of the government because the Fund will not have a lower tax liability in the aggregate for the year to which the election applies than it would have had if the election had been timely made (taking into account the time value of money).

### **CONCLUSION**

Based upon the facts and representations submitted, it is held that the Fund has demonstrated good cause for the granting of relief under section 301.9100-1(a) of the

regulations and, therefore, will be treated as having made a timely election under section 855(a) of the Code and section 1.855-1(b) of the regulations for the taxable year ended on Date 2.

No opinion is expressed as to whether the taxpayer's tax liabilities are not lower in the aggregate for all years to which the regulatory elections apply than the taxpayer's tax liabilities would have been if the elections had been timely made (taking into account the time value of money). Upon audit of the federal income tax return involved, the district director's office will determine the taxpayer's tax liabilities for the year involved. If the district director's office determines the taxpayer's liabilities are lower, that office will determine the federal income tax effect.

This ruling is limited to the timeliness of the Fund's election. This ruling does not relieve the Fund from any penalty that may be owed as a result of failing to file its federal income tax return on time. This ruling's application is limited to the facts, Code sections, and regulations cited herein. No opinion is expressed as to whether the Fund qualifies as a RIC that is taxable under subchapter M, part 1 of the Code.

A copy of this letter is being forwarded to the service center where the Fund files its returns with instructions that although Form 1120-RIC was not timely filed for the taxable year ended on Date 2, Fund is to be treated as having made a timely election under section 855 of the Code for that taxable year.

This ruling 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.

Sincerely yours,

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Assistant Chief Counsel  
(Financial Institutions & Products)

Enclosure: Section 6110 Copy