

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Telephone Number:

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Date:

April 21, 2000

LEGEND:

TopFund =

Trust A =

Trust B =

Company A =

Company B =

Company C =

Underlying Fund 1 =

Underlying Fund 2 =

Underlying Fund 3 =

Underlying Fund 4 =

Underlying Fund 5 =

Underlying Fund 6 =

Underlying Fund 7 =

Underlying Fund 8 =

Underlying Fund 9 =

Underlying Fund 10 =

Underlying Fund 11 =

Underlying Fund 12 =

Underlying Fund 13 =

Underlying Fund 14 =

Underlying Fund 15 =

Underlying Fund 16 =

Underlying Fund 17 =

State W =

State X =

State Y =

State Z =

Adviser 1 =

Adviser 2 =

Adviser 3 =

Adviser 4 =

Adviser 5 =

Common Adviser =

Date 1 =

Date 2 =

Date 3 =

Dear _____ :

This responds to your request for a ruling dated November 30, 1999, submitted on behalf of all of the Underlying Funds, that certain expense arrangements will not result in the payment of preferential dividends by any of the Underlying Funds within the meaning of section 562(c) of the Internal Revenue Code (the "Code"), and therefore will not adversely affect the qualification of any of the Underlying Funds as regulated investment companies ("RICs") under Subchapter M of the Code.

FACTS

The Common Adviser is a corporation organized under the laws of State Z as an investment adviser under the Investment Advisers Act of 1940, as amended. The Common Adviser created the TopFund as an open-end management investment company registered under the 1940 Act. The TopFund is organized as a business trust under the laws of State W. The TopFund consists of five separate series (referred to as the "TopFund Portfolios"), each of which is treated as a separate corporation for federal income tax purposes pursuant to section 851(g) of the Code. Each TopFund Portfolio intends to elect and qualify annually to be treated as a RIC under Subchapter M of the Code.

The TopFund Portfolios are designed for investors pursuing long-term investment goals, especially participants in tax-deferred retirement plans. Each TopFund Portfolio, pursuant to its fundamental investment objective and policies, invests almost exclusively in shares of other underlying mutual funds (including the Underlying Funds) for which either the Common Adviser or an entity unaffiliated with Common Adviser acts as investment adviser.

Trust A is an open-end management investment company organized as a business trust under State W law. Trust B is an open-end management investment company organized as a business trust under State W law. Company A is an open-end management investment company organized as a corporation under the laws of State X. Trust A, Trust B, and Company A are all registered under the Investment Company Act of 1940, as amended (the "1940 Act"), and each has a currently effective registration statement under the Securities Act of 1933, as amended (the "1933 Act").

The shares of beneficial interest of Trust A currently are divided into separate series, each based upon a particular portfolio of securities. Underlying Fund 1 is a separate series of Trust A that is treated as a separate corporation for federal income tax purposes pursuant to section 851(g) of the Code, and intends to qualify annually as a RIC under subchapter M of the Code. Underlying Fund 1 may offer multiple classes of its shares pursuant to a multiple class distribution arrangement. Underlying Fund 1 has a annual accounting period that ends on Date 1 and uses the accrual method of accounting for maintaining its accounting books and filing its federal income tax return.

The shares of beneficial interest of Trust B currently are divided into separate series, each based upon a particular portfolio of securities. Underlying Fund 2 and Underlying Fund 3 each are a separate series of Trust B that is treated as a separate corporation for federal income tax purposes pursuant to section 851(g) of the Code, and intend to qualify annually as RICs under subchapter M of the Code. Both Underlying Fund 2 and Underlying Fund 3 may offer multiple classes of their shares pursuant to a multiple class distribution arrangement. Underlying Fund 2 and Underlying Fund 3 both have annual accounting periods that end on Date 2 and use the accrual method of accounting for maintaining their accounting books and filing their federal income tax returns.

The shares of common stock of Company A currently are divided into separate series, each based on a particular portfolio of securities. Underlying Fund 4, Underlying Fund 5, Underlying Fund 6, and Underlying Fund 7 are each a separate series of the Company treated as a separate corporation for federal income tax purposes pursuant to section 851(g) of the Code, and each intends to qualify annually as a RIC under subchapter M of the Code. In addition, these Underlying Funds may offer multiple classes of its shares pursuant to a multiple class distribution arrangement. Underlying Fund 4, Underlying Fund 5, Underlying Fund 6, and Underlying Fund 7 each have an annual accounting period that ends on Date 3, and each uses the accrual method of accounting for maintaining its accounting books and filing its federal income tax returns.

Underlying Fund 8, Underlying Fund 9, and Underlying Fund 10 are each open-end management companies organized as corporations under the laws of State X. Each of these Underlying Funds is registered under the Investment Company Act of 1940, as amended (the "1940 Act"), and has a currently effective registration statement under the Securities Act of 1933, as amended (the "1933 Act"). These Underlying Funds may offer multiple classes of its shares pursuant to a multiple class distribution arrangement. Underlying Fund 8, Underlying Fund 9, and Underlying Fund 10 each have an annual accounting period that ends on Date 1, and each uses the accrual method of accounting for maintaining its accounting books and filing its federal income tax returns.

Each of Company B, Company C, and Underlying Fund 17 is an open-end management investment company organized as a corporation under State X law registered under the Investment Company Act of 1940, as amended (the "1940 Act"), and each has a currently effective registration statement under the Securities Act of 1933, as amended (the "1933 Act"). The shares of common stock of Company B and Company C currently are divided into separate series, each based on a particular portfolio of securities. Underlying Fund 16 is a separate series of Company C and Underlying Fund 11, Underlying Fund 12, Underlying Fund 13, Underlying Fund 14, and Underlying Fund 15 are each a separate series of Company B. Each such separate series of Company B and Company C is treated as a separate corporation for federal income tax purposes pursuant to section 851(g) of the Code. Underlying Fund 17 and

each separate series of Company B and Company C intend to qualify annually as RICs under subchapter M of the Code. In addition, these Underlying Funds may offer multiple classes of its shares pursuant to a multiple class distribution arrangement. The annual accounting period for each of these Underlying Fund, except for Underlying Fund 17, ends on Date 1. The annual accounting period for Underlying Fund 17 ends on Date 3. Each of these Underlying Funds uses the accrual method of accounting for maintaining its accounting books and filing its federal income tax returns.

Adviser 1 is a bank organized under the laws of State Y and acts as investment adviser to Underlying Fund 1. The Underlying Fund contracts with other service providers, which may or may not be affiliated with Adviser 1, to provide other services, including fund accounting, transfer agency, dividend paying agent, customer service, recordkeeping, and underwriting services, in exchange for a fee.

Adviser 2 is a limited liability company organized under the laws of State Z registered as an investment adviser under the Investment Advisers Act of 1940, as amended, and acts as investment adviser to Underlying Fund 2 and Underlying Fund 3. These Underlying Funds contract with other service providers, which may or may not be affiliated with Adviser 2, to provide other services, including fund accounting, transfer agency, dividend paying agent, customer service, recordkeeping, and underwriting services, in exchange for a fee.

Adviser 3 is a limited liability company organized under the laws of State Y registered as an investment adviser under the Investment Advisers Act of 1940, as amended, and acts as investment adviser to Underlying Fund 4, Underlying Fund 5, Underlying Fund 6, and Underlying Fund 7. These Underlying Funds contract with other service providers, which may or may not be affiliated with Adviser 3, to provide other services, including fund accounting, transfer agency, dividend paying agent, customer service, recordkeeping, and underwriting services, in exchange for a fee.

Adviser 4 is a limited liability company organized under the laws of State Z registered as an investment adviser under the Investment Advisers Act of 1940, as amended, and acts as investment adviser to Underlying Fund 8, Underlying Fund 9, and Underlying Fund 10. These Underlying Funds contract with other service providers, which may or may not be affiliated with Adviser 4, to provide other services, including fund accounting, transfer agency, dividend paying agent, customer service, recordkeeping, and underwriting services, in exchange for a fee.

Adviser 5 is a corporation organized under the laws of State Z registered as an investment adviser under the Investment Advisers Act of 1940, as amended, and acts as investment adviser to Underlying Fund 11, Underlying Fund 12, Underlying Fund 13, Underlying Fund 14, Underlying Fund 15, Underlying Fund 16, and Underlying Fund 17. These Underlying Funds contract with other service providers, which may or may not be affiliated with Adviser 5, to provide other services, including fund accounting, transfer

agency, dividend paying agent, customer service, recordkeeping, and underwriting services, in exchange for a fee.

The Common Adviser determines the amount which each TopFund Portfolio will invest in any Underlying Fund and the timing of such investments. The Common Adviser may charge the TopFund Portfolios an advisory fee for these asset allocation services. Any such fee must be approved by the board of trustees of each TopFund Portfolio, including a majority of the independent trustees (within the meaning of section 2(a)(19) of the 1940 Act), based on a finding that the fee is charged for services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract.

Asset-based services, Rule 12b-1 fees, and shareholder servicing fees may be charged in connection with the distribution of the shares of the TopFund Portfolios. Any such charges, when aggregated with any such charges paid by a TopFund Portfolio with respect to shares of the Underlying Fund, shall not exceed the applicable limits set forth in the Rules of Conduct of the National Association of Securities Dealers, Inc.

A portion of the remaining expenses incurred in operating the TopFund Portfolios (including expenses for accounting, custody, auditing, legal, participant account and participant employer recordkeeping and shareholder services, collectively the "Operating Expenses") will be paid in accordance with a reimbursement agreement ("Reimbursement Agreement"). More specifically, in consideration of the benefits derived by the Advisers and the Underlying Funds from the establishment and operation of the TopFund Portfolios, all of the Advisers, the Underlying Funds, or both the Advisers and the Underlying Funds, have entered or will enter into a negotiated Reimbursement Agreement whereby the Adviser or Underlying Fund has agreed to pay (conditioned upon the receipt of the ruling requested herein) an arm's length negotiated fee to the Common Adviser to be used by the Common Adviser to reduce the Operating Expenses of the TopFund Portfolios. The Reimbursement Agreements will be substantially identical in all respects relevant to the representations made in application for this ruling request.

The fee is based on the average daily value of the shares of the Underlying Fund held by any TopFund Portfolio during the applicable payment period. The average daily value of the shares of the Underlying Fund held by a TopFund Portfolio during the payment period is computed by totaling the aggregate investment in the Underlying Fund by all TopFund Portfolios (i.e., the per share net asset value multiplied by the total number of shares held by the TopFund Portfolios) on each business day in the payment period, and dividing that sum by the total number of business days in the payment period.

The creation of the TopFund will benefit its Underlying Fund(s) and its shareholders to the extent that the TopFund Portfolios attract assets to the Underlying

Fund(s) which would not otherwise have been invested therein. Also, as the assets in a Underlying Fund increase, the expense ratios of the Underlying Fund are expected to be reduced, which will make the Underlying Fund more attractive to investors. In addition, the cost savings to a Underlying Fund are expected to be derived from the elimination of numerous separate shareholder accounts which are or would have been invested directly in the Underlying Fund and the resulting reduction in shareholder servicing costs.

The Reimbursement Agreement and the expense arrangement provided for in the Agreement will not affect the per share dividend distributions to the shareholders of a Underlying Fund. It is anticipated that there will be periods during which any one or more of the TopFund Portfolios will have an investment of less than \$10 million in any one or more of the Underlying Funds, particularly in the early stages of the TopFund Portfolios' existence.

LAW

Section 851(a) defines a RIC, in part, as a domestic corporation registered under the 1940 Act as a management company.

Section 851(b) limits the definition of a RIC to a corporation meeting certain election, gross income, and diversification requirements.

Section 851(g) provides a special rule for a RIC having more than one fund. This provision treats each fund as a separate corporation for all purposes of the Code, other than the definitional requirement of section 851(a).

A corporation that is a RIC within the meaning of section 851 and that is taxable under subchapter M, part I, pays tax on its investment company taxable income under section 852(b)(2) and on the excess, if any, of its net capital gain over its deduction for dividends paid, determined with reference to capital gain dividends only under section 852(b)(3).

Section 852(b)(2)(D) allows a RIC a deduction for dividends paid (as defined in section 561(a) with certain modifications). Section 561 defines the deduction for dividends paid for purposes of section 852 and applies the rules of section 562 to determine which dividends are eligible for the deduction for dividends paid.

Section 562(c) provides that the amount of any distribution is not considered a dividend for purposes of computing the dividends paid deduction under section 561 unless the distribution is pro rata, does not prefer any share of stock of a class over any other share of stock of that same class, and does not prefer one class of stock over another class except to the extent that one class is entitled (without reference to waivers of their rights by shareholders) to the preference.

Section 562(c) further provides that, in the case of a shareholder who made an initial investment of at least \$10 million in the RIC, an increased distribution to such shareholder will not be treated as non pro rata or as preferential if the increase is made solely by reason of reductions in administrative expenses of the RIC.

Because of the unique nature of open-end RICs, the payments (including reimbursements and waivers) of the Operating Expenses of the TopFund Portfolios by the Advisers or the Underlying Funds pursuant to the Reimbursement Agreement are not preferential dividends within the meaning of section 562(c).

CONCLUSION

The payments (including reimbursements and waivers) of the Operating Expenses of the TopFund Portfolios by the Advisers or the Underlying Funds pursuant to the terms of the Reimbursement Agreement are not preferential dividends within the meaning of section 562(c).

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed as to whether any Underlying Fund or any of the TopFund Portfolios qualify as a RIC that is taxable under subchapter M, part I, of the Code.

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

A copy of the letter should be attached to each of the Underlying Funds' Federal income tax returns for every taxable year in which the Fund has outstanding classes of shares described above.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to each of the Underlying Funds' authorized representative.

Sincerely,
Assistant Chief Counsel
(Financial Institutions & Products)
By: Alice Bennett, Chief, Branch 3

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