

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:2 -PLR-113981-00

Date:

December 14, 2000

Legend:

Acquiring =

Target Fund =

State X =

State Y =

a =

Dear:

This letter responds to your representative's July 18, 2000 request for rulings under § 368(a)(1)(C) of the Internal Revenue Code on behalf of the above-captioned taxpayers. Additional information was received on November 15 and December 6, 2000. The information submitted for consideration is summarized below.

Acquiring is organized under the laws of State X and registered under the Investment Company Act of 1940 (the "1940 Act") as a diversified, open-end management investment company. Acquiring has elected to be taxed as a regulated investment company ("RIC") under §§ 851-855 of the Internal Revenue Code (the "Code"). Acquiring currently has outstanding four classes of voting common stock.

Acquiring's present investment objective is to provide shareholders with a high level of current income and safety of principal by investing at least a% of its total assets in adjustable rate securities consisting primarily of mortgage-backed and asset-backed securities issued or guaranteed by United States government agencies. However, it has been proposed that Acquiring's investment objectives be amended to providing high current income and low net asset value fluctuation by investing primarily in United States government securities.

Target Fund is organized under the laws of State Y and registered under the Investment Company Act of 1940 (the "1940 Act") as a diversified, open-end management investment company. Target Fund has elected to be taxed as a regulated investment company ("RIC") under §§ 851-855 of the Internal Revenue Code (the

“Code”). Target Fund currently has outstanding four classes of voting common stock. Target Fund’s investment objective is to provide shareholders with the highest possible current income consistent with the protection of capital by investing primarily in intermediate-term debt securities issued or guaranteed by the United States government, its agencies or instrumentalities.

Acquiring and Target Fund have entered into an agreement and plan of reorganization for what are represented to be valid business reasons. Pursuant to the agreement, the transaction consists of the following steps:

- (1) Target Fund will transfer all of its assets and liabilities to Acquiring in exchange solely for an equal value of newly issued Acquired voting common stock.
- (2) Target Fund will distribute to its shareholders all of the Acquiring stock received in the transaction. Target Fund shareholders will receive shares of Acquiring on a pro rata basis, including fractional shares.
- (3) Target Fund will liquidate and dissolve in accordance with the laws of State Y, and terminate its registration under the 1940 Act.

After the transaction, Acquiring may sell up to 66% of the assets received in the transaction to unrelated parties, and will reinvest the proceeds consistent with its investment objectives and policies.

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

- (a) The fair market value of the Acquiring stock received by Target Fund shareholders will be approximately equal to the fair market value of the Target Fund stock surrendered in the exchange.
- (b) There is no plan or intention by Target Fund shareholders who own 5 percent or more of Target Fund’s stock, and to the best of the knowledge of the management of Target Fund, there is no plan or intention on the part of any other shareholders of Target Fund to sell, exchange, or otherwise dispose of a number of shares of Acquiring stock received in the Reorganization that would reduce such Target Fund shareholders’ ownership of Acquiring stock to a number of shares having a value, as of the date of the Reorganization, of less than 50 percent of the value of all of the formerly outstanding stock of the target Fund as of the same date. For purposes of this representation, shares of Target Fund stock exchanged for cash or other property or surrendered by dissenters will be treated as outstanding stock of Target Fund on the date of the Reorganization. Moreover, shares of Target Fund stock and shares of Acquiring stock held by Target Fund shareholders and otherwise sold, redeemed, or disposed of prior to or subsequent to the Reorganization will be considered in making this representation.

(c) 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 Fund immediately prior to the Reorganization. For purposes of this representation, amounts paid by Target Fund to dissenters, amounts used by Target Fund to pay its reorganization expenses, amounts paid by Target Fund to shareholders who receive cash or other property, and all redemptions and distributions (except for redemptions in the ordinary course of Target Fund's business as an open-end investment company as required by § 22(e) of the 1940 Act pursuant to a demand of a shareholder and regular, normal dividends) made by Target Fund immediately preceding the transfer will be included as assets of Target Fund held immediately prior to the transaction.

(d) Acquiring has no plan or intention to reacquire any of its stock issued in the transaction except in connection with its legal obligations under § 22(e) of the 1940 Act.

(e) Acquiring has no plan or intention to sell or otherwise dispose of any of the assets of Target Fund acquired in the transaction, except for dispositions made in the ordinary course of business.

(f) Target Fund will distribute to its shareholders the stock of Acquiring received pursuant to the Plan of Reorganization.

(g) The liabilities of Target Fund assumed by Acquiring and any liabilities to which the transferred assets of Target Fund are subject were incurred by Target Fund in the ordinary course of its business.

(h) Following the Reorganization, Acquiring will continue the historic business of Target Fund or use a significant portion of Target Fund's historic business assets in the continuing business.

(i) Target Fund, Acquiring and the shareholders of Target Fund will pay their respective expenses, if any, incurred in connection with the Reorganization.

(j) There is no intercorporate indebtedness existing between Target Fund and Acquiring that was issued, acquired, or will be settled at a discount.

(k) Target Fund and Acquiring each qualify as regulated investment companies as defined in section 368(a)(2)(F) of the Code.

(l) The fair market value of the assets of Target Fund transferred to Acquiring will equal or exceed the sum of the liabilities assumed by Acquiring, plus the amount of liabilities, if any, to which the transferred assets are subject.

(m) Acquiring does not own, directly or indirectly, nor has it owned during the past five years, directly or indirectly, any stock of Target Fund.

(n) Target Fund is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).

(o) Target Fund and Acquiring have elected to be taxed as RICs under § 851, and for all of their taxable periods (including the last short taxable period ending on the date of Reorganization, for Target Fund), have qualified for the special tax treatment afforded RICs under the Code. After the Reorganization, Acquiring intends to continue to so qualify.

(p) 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 date of the proposed transaction, with consideration other than Acquiring stock, Acquiring stock furnished in exchange for a proprietary interest in a Target Fund in the proposed transaction, either directly or through any transaction, agreement, or arrangement with any other person.

(q) During the five year period ending on the date of the proposed transaction:
 (i) neither Acquiring, nor any person related (as defined in § 1.368-1(e)(3)) to Acquiring, will have acquired Target Fund stock with consideration other than Acquiring stock; (ii) neither Target Fund, nor any person related (as defined in § 1.368-1(e)(3)) determined without regard to § 1.368-1(e)(3)(i)(A)) to Target Fund, will have acquired such Target Fund's stock with consideration other than Acquiring stock or Target Fund's stock, except for stock redeemed in the ordinary course of Target's business as an open-end investment company under § 22(e) of the 1940 Act; and (iii) no distributions will have been made with respect to Target Fund's stock (other than ordinary, 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) cash paid to dissenters and b) distributions described in §§ 852 and 4982 of the Code.

(r) The aggregate value of the acquisitions, redemptions and distributions discussed in paragraphs (q) and (r), above, will not exceed 50 percent of the value (without giving effect to the acquisitions, redemptions and distributions) of the proprietary interest in Target Fund on the effective date of the proposed transaction.

(s) The four classes of common voting stock of acquiring are substantially similar to the corresponding four classes of common voting stock of Target Fund.

(t) Pursuant to the Reorganization, Target Fund shareholders will receive fractional shares of Acquiring in exchange for their fractional shares of Target Fund. No cash will be distributed in lieu of fractional shares.

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

- (1) The acquisition by Acquiring of substantially all of the assets of Target Fund solely for Acquiring voting stock and the assumption by Acquiring of the liabilities of Target Fund, followed by the distribution of Acquiring voting stock by Target Fund, as described above, will qualify as a reorganization within the meaning of §§ 368(a)(1)(C) and 368(a)(2)(G) of the Code. “Substantially all” means 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 of each Target Fund. Acquiring and Target Fund will each be “a party to a reorganization” within the meaning of § 368(b).
- (2) No gain or loss will be recognized by Target Fund upon the transfer of substantially all its assets to Acquiring solely in exchange for Acquiring voting common stock and the assumption by Acquiring of the liabilities of Target Fund (§§ 357(a) and 361(a)).
- (3) No gain or loss will be recognized by Target Fund upon the distribution of such Acquiring stock to Target Fund shareholders (§ 361(c)).
- (4) Acquiring will not recognize any gain or loss on the receipt of the assets of Target Fund in exchange for voting shares of Acquiring (§1032(a)).
- (5) The basis of Target Fund assets in the hands of Acquiring will be the same as the basis of those assets in the hands of Target Fund immediately prior to the Reorganization (§362(b)).
- (6) Acquiring’s holding period for Target Fund’s assets acquired will include the period during which such assets were held by Target Fund (§ 1223(2)).
- (7) No gain or loss will be recognized by the shareholders of Target Fund upon the receipt of voting common stock of Acquiring solely in exchange for their Target Fund shares, as described above (§ 354(a)(1)).
- (8) The basis of the Acquiring shares received by Target Fund shareholders will be the same as the basis of the Target Fund shares surrendered in exchange, therefor (§ 358(a)(1)).
- (9) The holding period of the Acquiring shares received by Target Fund shareholders in exchange for their Target Fund shares will include the period during which the exchanged Target Fund shares were held, provided that the Target Fund shares are held as a capital asset in the hands of the Target Fund shareholders on the date of the exchange (§1223(1)).
- (10) Pursuant to § 381(b) of the Code and § 1.381(a)-1 of the Income Tax Regulations, the tax year of Target Fund will end on the date of the transfer.

- (11) Acquiring will succeed to and take into account the items of Target described in § 381(c) of the Code, subject to the provisions and limitations specified in §§ 381, 382, 383 and 384 of the Code and the regulations thereunder.

No opinion is expressed about the federal income tax treatment of the proposed 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 proposed transaction that are not specifically covered by the above rulings.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion was requested, and none is expressed, about whether Acquiring or each Target Fund qualify as RICs that are taxable under Subchapter M, Part I of the Code.

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

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

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,
Associate Chief Counsel (Corporate)
By: Lewis K Brickates
Assistant to Chief, Branch 2