

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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April 01, 2011

### Legend:

Fund =

Sub =

Company =

State =

Trust =

Country =

Dear :

This is in response to a letter dated November 16, 2010, requesting a ruling that income earned by Fund from an investment in its wholly owned subsidiary that qualifies as a controlled foreign corporation ("CFC") constitutes qualifying income under section 851(b)(2) of the Internal Revenue Code.

### FACTS

Fund is a series of Trust, which is organized under the law of State.

Trust is an open-end management investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq. as amended ("the 1940 Act").

Fund intends to qualify as a regulated investment company ("RIC") under section 851 of the Code.

Fund has formed a wholly owned subsidiary, Sub, under the laws of Country. Under Country's law, Sub is a Company. A Company provides limited liability for its shareholders.

Fund represents that Sub will qualify as an association taxable as a corporation under sections 301.7701-3(b)(2)(B) and 301.7701-2(b)(2) of the Procedure and Administration Regulations for federal income tax purposes. Sub will file an election (on Form 8832) to be taxed as a corporation pursuant to §301.7701-3 of the regulations.

Fund represents that although Sub will not be registered as an investment company under the 1940 Act, Sub will comply with the requirements of section 18(f) of the 1940 Act, Investment Company Act Release No. 10666, and related SEC guidance pertaining to asset coverage with respect to transactions in commodity futures and other transactions in derivatives.

Fund will invest primarily in securities of limited partnerships, corporations, limited liability companies, and other types of pooled investment vehicles (collectively, "underlying funds"), as well as swap contracts and structured notes. Each underlying fund invests in options, futures, forwards or spot contracts, each of which may be tied to commodities, financial indices and instruments, foreign currencies, or equity indices.

Fund will invest a portion of its assets in Sub subject to the asset diversification limitations set forth in section 851(b)(3) of the Code. Sub will invest in underlying funds, swap contracts, structured notes, and other investments intended to serve as margin or collateral for swap positions.

It is expected that Sub will generate subpart F income.

## LAW AND ANALYSIS

Section 851(b)(2) of the Code provides that a corporation is not considered a RIC for any taxable year unless it meets an income test. Under this test, at least 90 percent of its gross income must be derived from certain sources. Under section 851(b)(2), qualifying income includes

. . . dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the 1940 Act) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies . . . .

Section 851(b) of the Code provides that, for purposes of section 851(b)(2), the term “dividends” includes amounts included in gross income under sections 951(a)(1)(A)(i) or 1293(a) for the taxable year to the extent that, under sections 959(a)(1) or 1293(c), there is a distribution out of the earnings and profits of the taxable year which are attributable to the amounts so included.

Section 957 of the Code defines a CFC as any foreign corporation in which more than 50 percent of (1) the total combined voting power of all classes of stock entitled to vote, or (2) the total value of the stock, is owned by United States shareholders on any day during the corporation’s taxable year. A United States shareholder is defined in section 951(b) as a United States person who owns 10 percent or more of the total voting power of a foreign corporation. Fund has represented that it owns 100 percent of the stock of Sub. Fund is a United States person. Based upon Fund’s representations, Sub will qualify as a CFC under these provisions.

Section 951(a)(1) of the Code provides that if a foreign corporation is a CFC for an uninterrupted period of 30 days or more during any taxable year, every person who is a United States shareholder of the corporation and who owns stock in it on the last day of the taxable year in which the corporation is a CFC shall include in gross income the sum of the shareholder’s pro rata share of the CFC’s subpart F income for the taxable year.

Section 952(a)(2) defines subpart F income to include foreign base company income determined under section 954. Under section 954(a)(1), foreign base company income includes foreign personal holding company income determined under section 954(c). Section 954(c)(1)(A) defines foreign personal holding company income to include dividends, interest, royalties, rents, and annuities.

Sub’s investments may generate foreign personal holding company income under section 954(c), which is subpart F income. Fund would therefore include in income Sub’s subpart F income for the taxable year in accordance with section 951.

### CONCLUSION

Based on the facts as represented, we rule that the subpart F income of Sub that is attributable to Fund is income derived with respect to Fund’s business of investing in the stock of Sub, and thus constitutes qualifying income under section 851(b)(2).

This ruling is directed only to the taxpayer who requested it, and is limited to the facts as represented by the taxpayer. Section 6110(k)(3) provides that this letter 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.

Sincerely,

Susan Thompson Baker  
Senior Technician Reviewer, Branch 2  
Office of Associate Chief Counsel  
(Financial Institutions and Products)