

Internal Revenue Service

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Department of the Treasury
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Date:

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Legend

Trust 1 =

Trust 2 =

Fund 1 =

Fund 2 =

Fund 3 =

Fund 4 =

Fund 5 =

Fund 6 =

Fund 7 =

Fund 8 =

State =

r =

s =

t =

u =

v =

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x =

y =

z =

Index 1 =

Index 2 =

Index 3 =

Index 4 =

Dear :

This responds to the request dated November 9, 2006, and supplemental correspondence dated February 7, 2007, submitted by your authorized representative on behalf of Funds 1 - 8 (collectively, the "Funds"). Funds request that the Internal Revenue Service rule that income and gain arising from the commodities-linked notes ("Notes") described in this letter will constitute qualifying income to the Funds under section 851(b)(2) of the Internal Revenue Code of 1986, as amended (the "Code").

FACTS

Fund 1 and Fund 2 are organized as a separate series of Trust 1. Funds 3 – 8 each are a separate series of Trust 2. Trust 1 and Trust 2 are trusts organized under the laws of State and are registered as open-end management investment companies under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended (the “1940 Act”). Each Fund has elected to be classified as a regulated investment company (RIC) under section 851 of the Code and each Fund is registered under the 1940 Act as an open-end management investment company.

Fund 1, Fund 3, Fund 4, and Fund 5 (collectively hereinafter, the “Bull Funds”) intend to invest in commodities-linked structured notes having the terms and conditions of the following note hereinafter referred to as “Note A.” Fund 2, Fund 6, Fund 7, and Fund 8 (collectively hereinafter, the “Bear Funds”) intend to invest in commodities-linked structured notes having the terms and conditions of the following note hereinafter referred to as “Note B.”

The payout formulas for the structured notes in which Fund 1 and Fund 2 each will invest will be determined with reference to Index 1. The payout formulas for the structured notes in which Fund 3 and Fund 6 each will invest will be determined with reference to Index 2. The payout formulas for the structured notes in which Fund 4 and Fund 7 each will invest will be determined with reference to Index 3. The payout formulas for the structured notes in which Fund 5 and Fund 8 each will invest will be determined with reference to Index 4.

Note A will be issued to the Bull Funds at a par value of \$r. The payout formula for Note A will be determined with reference to the index that corresponds to each Bull Fund’s investment. The term of Note A will be nine months. Each Bull Fund, as holder of Note A, has the right to put Note A to the issuer at the calculated redemption price based upon the closing value of the relevant index as of the end of the next business day after notification to the issuer, or of the same day closing value if notice is made on such day by the time specified in the terms of Note A. In addition, if on any day the intra-day price of the relevant index falls to a level that is equal to or more than s% below the closing price of the relevant index on the day Note A was issued, Note A will “knockout” and automatically redeem at the calculated redemption price based upon the closing price of the relevant index on the next business day.

The repayment obligation for Note A upon early redemption, knockout, or at maturity is equal to (i) the face amount of Note A, plus (ii) the face amount of Note A multiplied by a per annum coupon rate of t, plus (iii) the face amount of Note A multiplied by a leverage factor of u multiplied by the percentage change in the relevant index from the date Note A was issued to the end of the applicable period, minus (iv) a leverage factor of u multiplied by the face amount of Note A multiplied by a fee charge of v basis points per annum.

Note B will be issued to the Bear Funds at a par value of \$w. The payout formula for Note B will be determined with reference to the index that corresponds to each Bear Fund's investment. The term of Note B will be three years. Each Bear Fund, as holder of Note B, has the right to put Note B to the issuer at the calculated redemption price based on the closing value of the relevant index as of the end of the next business day after notification to the issuer, or of the same day closing value if notice is made on such day by the time specified in the terms of Note B. In addition, if on any day the intra-day price of the relevant index rises to a level that is equal to or more than s% above the closing price of the relevant index on the day Note B was issued, Note B will "knockout" and automatically redeem at the calculated redemption price based upon the closing price of the relevant index on the next business day.

The repayment obligation for Note B upon early redemption, knockout, or at maturity is equal to (i) the face amount of Note B, plus (ii) the face amount of Note B multiplied by a per annum coupon rate of x, minus (iii) the face amount of Note B multiplied by a leverage factor of u multiplied by the percentage change in the relevant index from the date Note B was issued to the end of the applicable period, minus (iv) a leverage factor of u multiplied by the face amount of Note B multiplied by a fee charge of v basis points per annum.

In the event of early redemption of either Note A or Note B (through exercise of the put right or through knockout), the repayment obligation will be further reduced by an amount based on the replacement funding cost of the note, equal to the face amount of the note multiplied by (A) one minus (B) the quotient of (1) one, divided by (2) the sum of (a) one and (b) the product of (i) y rate at early redemption or knockout date, times (ii) the quotient of [n] the number of days from the early redemption or knockout date to the maturity date, divided by [m] the number of days in the term of the note. In addition, the repayment obligation is further reduced by an unwind fee equal to z basis points multiplied by u times the face amount of the note.

Funds make the following representations with respect to these two Notes:

- (1) The issuer of the Notes will receive payment in full of the purchase price of the Notes substantially contemporaneously with the delivery of the Notes;
- (2) Each Fund while holding the Notes will not be required to make any payment to the issuer of the Notes in addition to the purchase price paid for the Notes, whether as margin, settlement payment, or otherwise, during the life of the Notes or at maturity;
- (3) The issuer of the Notes is not subject by the terms of the instrument to mark-to-market margining requirements of the Commodities Exchange Act, 7 U.S.C. 2, as amended (CEA); and

(4) The Notes are not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to the CEA.

LAW AND ANALYSIS

Section 851(b)(2) of the Code provides that a corporation shall not be considered a RIC for any taxable year unless it meets an income test (the “qualifying income requirement”). Under this test, at least 90 percent of its gross income must be derived from certain enumerated sources. Section 851(b)(2) defines qualifying income, in relevant part, as—

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 [the RIC’s] business of investing in such stock, securities, or currencies

Section 2(a)(36) of the 1940 Act defines the term “security” as—

any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

Section 2(f)(1) of the CEA provides that the CEA is not applicable to a hybrid instrument that is predominantly a security. Section 2(f)(2) of the CEA provides that a hybrid instrument shall be considered to be predominantly a security if—

(A) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument, substantially contemporaneously with the delivery of the hybrid instrument;

(B) the purchaser or holder of the hybrid instrument is not required to make any payment to the issuer in addition to the purchase price paid under subparagraph

(A), whether as margin, settlement payment, or otherwise, during the life of the hybrid instrument or at maturity;

(C) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

(D) the hybrid instrument is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to the CEA.

Section 2(f)(3) of the CEA provides, in part, that for purposes of section 2(f)(2)(C) of the CEA, mark-to market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.

CONCLUSION

Based on the facts as represented, we rule that income and gain arising from the Notes constitute qualifying income to the Funds under section 851(b)(2) of the Code.

Sincerely,

Susan Thompson Baker
Susan Thompson Baker
Assistant to the Branch Chief, Branch 2
Office of the Associate Chief Counsel
(Financial Institutions & Products)