

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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, ID No.

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Refer Reply To:

CC:CORP:B04

PLR-107776-14

Date:

June 26, 2014

### Legend:

Taxpayer =

State A =

Exchange =

Date 1 =

Date 2 =

Dear :

This letter responds to your February 21, 2014, request for rulings under sections 301 and 305 of the Internal Revenue Code of 1986, as amended (the "Code"). The information received in that request and in subsequent communications is summarized below.

### Summary of Facts

Taxpayer, a State A corporation, is registered as a closed-end investment company and business development company under the Investment Company Act of 1940, as amended. Taxpayer has elected to be treated as a regulated investment company (a "RIC") under subchapter M of Chapter 1 of Subtitle A of the Code, and files

its federal income tax returns as a RIC. Taxpayer regularly distributes its earnings and profits as required under Section 852(a)(1).

Taxpayer has one class of common stock outstanding (the “Common Stock”), the shares of which are publicly traded and listed on the Exchange. Taxpayer has adopted a dividend reinvestment plan (“DRIP”) that generally provides for the reinvestment of its distributions on behalf of the holders of its Common Stock, unless a shareholder affirmatively elects to receive cash.

Subject to the approval of Taxpayer’s Board of Directors, Taxpayer currently intends to make with respect to its Common Stock one or more future dividends and/or future “spillback” dividends (dividends made after the close of a taxable year that relate back to that taxable year pursuant to an election under section 855) with respect to its taxable years ending on Date 1 and Date 2, in the form of cash or Common Stock, at the election of each stockholder. Except where otherwise indicated, references herein to “a Special Dividend” or “the Special Dividend” refer to each of the dividends referred to in the preceding sentence, and references to the “Special Dividends” refer to all of the Special Dividends.

The total amount of cash payable in a Special Dividend will be limited to not less than 20 percent of the total value of the Special Dividend. In no event will the total amount of cash available be less than 20 percent of the total value of a Special Dividend. Taxpayer expects to declare a Special Dividend using an election mechanism substantially similar to that described below.

Taxpayer will transmit to each holder of Common Stock an election form relating to a Special Dividend. Each holder of Common Stock may elect, by the election deadline, to receive his, her or its portion of the Special Dividend in the form of (a) cash (the “Cash Option”), or (b) Common Stock of equivalent value (the “Stock Option”). If a stockholder fails to make a valid election by the election deadline, that stockholder will be deemed to have made an election to receive 100 percent stock.

The total number of shares of Common Stock to be issued in a Special Dividend will equal (i) the total amount of the Special Dividend minus the amount of cash payable pursuant to elections under the Cash Option (but subject to the Cash Limit, as defined below), divided by (ii) the average trading price of a share of Common Stock on the Exchange as of the close of trading during a three-business-day period ending on a date that is as close as possible to the dividend payment date, but that is sufficiently in advance of that date to allow Taxpayer to determine the number of shares of Common Stock that it will issue and distribute in the Special Dividend (the “Average Trading Price”). Although Taxpayer does not anticipate that the value of a share of Common Stock will change substantially between the time that the Average Trading Price is determined and the dividend payment date, there may be some change in value. In that event, the total value of the shares of Common Stock actually distributed in the Special

Dividend may not be precisely equal to the amount of cash that the shareholders electing to receive such shares would have received if those shareholders had elected to receive all-cash distributions.

While each stockholder will have the option to elect to receive cash in lieu of stock for the stockholder's entire entitlement under a Special Dividend, Taxpayer intends to limit the aggregate amount of cash to be distributed in a Special Dividend to not less than 20 percent of the Special Dividend (such amount, the "Cash Limit"). Any cash paid in lieu of fractional shares of Common Stock will not count towards the Cash Limit. In no event will the total amount of cash available be less than 20 percent of the total value of a Special Dividend. Thus, Taxpayer may pay more than 20 percent of a Special Dividend in cash.

If, for any Special Dividend, the total number of shares of Common Stock for which a cash election is made ("Cash Election Shares") would result in the payment of cash in an aggregate amount that is less than or equal to the Cash Limit, then the entire portion of such Special Dividend that is allocable to such Cash Election Shares will be paid in cash.

If the number of Cash Election Shares would result in the payment of cash in an aggregate amount that is greater than the Cash Limit, then holders of Cash Election Shares will receive their respective portions of such Special Dividend on their Cash Election Shares as follows:

- a. in cash on each stockholder's Cash Election Shares equal to the proportion that such stockholder's Cash Election Shares bear to the total Cash Election Shares of all stockholders, multiplied by an amount equal to the Cash Limit; plus
- b. in shares of Common Stock, based on the Average Trading Price, as to the remainder.

As a result, if too many stockholders elect to receive a Special Dividend in cash, a holder of Cash Election Shares will instead receive a pro rata amount of cash, but in no case less than 20 percent of its entitlement under a Special Dividend in cash.

With respect to any shareholder participating in the DRIP, the DRIP will apply to a Special Dividend only to the extent that, in the absence of the DRIP, the shareholder would have received the distribution in money.

The Taxpayer has represented that it will satisfy all of the requirements of Section 3.02 of Rev. Proc. 2010-12, 2010-3 I.R.B. 302, other than section 3.02(3) thereof, provided that for purposes of the representation "20%" is substituted for "10%" in each place it appears in section 3.02(4).

### **Rulings**

Based solely on the information provided and the representations made, we rule as follows with respect to the Special Dividends:

Any and all cash and stock distributed in each Special Dividend by Taxpayer will be treated as a distribution of cash and property with respect to its stock to which section 301 applies. Sections 301 and 305(b)(1). The amount of the distributions of the stock received by any stockholder who receives stock will be considered equal to the amount of money which could have been received instead. Treas. Reg. §§ 1.305-1(b)(2) and 1.305-2(b), Example 2.

### **Caveats**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the proposed transaction under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from the proposed transaction that is not specifically covered by the above rulings. In particular, no opinion is expressed with regard to whether Taxpayer qualifies as a RIC under subchapter M or whether the distributions made pursuant to the ruling will satisfy the “required distribution” requirement under section 4981(b)(1).

### **Procedural Statements**

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

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

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling.

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,

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Maury Passman  
Branch Chief, Branch 4  
Office of the Associate Chief Counsel  
(Corporate)

cc: