

## Internal Revenue Service

## Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

**CC:FIP:2-PLR-116428-03**

Date:

**July 1, 2003**

### Legend:

Fund =

State =

Country =

x =

y =

Dear :

This responds to your request for a ruling dated March 4, 2003, submitted on behalf of Fund. Fund requests a ruling that it will not recognize gain or loss under section 852(b)(6) of the Internal Revenue Code of 1986 upon the distribution of stock or other securities in redemption of shares of Fund upon the request of a shareholder pursuant to a tender offer.

### FACTS

Fund is a closed-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). Its shares are registered under the Securities Act of 1933 and the Securities Exchange Act of 1934, and are listed and traded on a major exchange. Fund is organized as a corporation under the laws of State. Fund has qualified and elected to be treated since its inception as a regulated investment company (RIC) under subchapter M, part I, of the Code.

Fund invests primarily in equity securities of corporations of Country listed on the stock exchange of Country. Fund's shares have historically traded at a substantial discount to the net asset value of Fund's portfolio. In order to combat the substantial

PLR-116428-03

market discount at which its shares trade, Fund is now proposing to conduct a tender offer.

Pursuant to the terms of the tender offer, shareholders will have the right to demand to redeem up to x% of Fund's issued and outstanding share capital at a purchase price, paid in kind, of not greater than y% of net asset value. If the tender offer is oversubscribed, Fund will be required to prorate the number of shares repurchased from participating shareholders. Shareholders redeeming shares pursuant to the tender offer will receive in kind pro rata distributions of portfolio securities, determined as described below, equal to no less than y% of the aggregate net asset value of the shares being redeemed.

Fund represents that it will distribute to a shareholder exercising a redemption right a pro rata share of each of the securities held by Fund, except for (a) securities that are subject to restrictions on resale or transfer, such as private placement securities which, if distributed, would be required to be registered under the Securities Act of 1933, as amended; (b) securities issued by entities in countries which restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles; (c) certain portfolio assets, such as forward currency exchange contracts, futures and options contracts, and repurchase agreements, that include the assumption of contractual obligations, require special trading facilities, or can only be traded with the counterparty to the transaction in order to effect a change in beneficial ownership; (d) portfolio assets consisting of cash or cash equivalent investments; (e) fractional shares and odd lots of securities eliminated by rounding off (up or down); (f) cash distributions for fractional shares and odd lots; and (g) payment of a higher pro rata percentage of equity securities to represent fractional shares and/or odd lots of securities.

Fund represents that the securities distributed will have an aggregate tax basis that, as a percentage of the Fund's aggregate tax basis in all its assets prior to the redemption, is no more than 1 percentage point lower than the percentage of the assets that are being distributed by the Fund. For example, if a total of 36% of Fund securities are distributed in redemption, the Fund's aggregate tax basis in all assets distributed in redemption will equal not less than 35% of the Fund's aggregate tax basis in all its assets prior to the redemption.

## LAW AND ANALYSIS

Section 311(b) of the Code provides, in general, that if a corporation distributes appreciated property to a shareholder, it recognizes gain as if the property were sold to the distributee at its fair market value. Section 852(b)(6) provides, however, that section 311(b) shall not apply to any distribution by a RIC to which subchapter M, part I applies, if the distribution is in redemption of its stock upon the demand of its shareholder.

Section 317(b) defines a redemption as the acquisition of a corporation's stock,

PLR-116428-03

by the corporation, from a shareholder in exchange for property. Section 317(a) defines property as money, securities and any other property, except stock in the corporation making the distribution (or rights to acquire such stock).

Section 852(b)(6) does not define the term “redemption upon demand” of a shareholder. Elsewhere in the tax law, the term has been read to apply to redemptions of stock in an open-end regulated investment company. Cf. Section 162(k)(2)(B); H.R. Conf. Rep. No. 99-841, 99<sup>th</sup> Cong., 2d Sess., at 168.

Under applicable securities law, an open-end management company is a management company which is offering for sale or has outstanding any redeemable security of which it is the issuer. 15 U.S.C. § 80a-5(a)(1). A redeemable security is defined as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. 15 U.S.C. § 80a-2(32).

Fund is not an open-end fund and does not issue redeemable securities within the meaning of the 1940 Act. Pursuant to the terms of the proposed tender offer, however, Fund will be authorized to redeem a limited amount of its shares. Were it required to sell assets to meet these redemption requests, Fund, like a similarly situated open-end fund, would be exposed to the market risk of disadvantageous sale prices and to the risk of potential depletion of its holdings. The policy concerns underlying section 852(b)(6) that are applicable to an open-end fund are therefore also applicable to Fund.

Fund has represented that it will distribute a pro rata share of each of its securities to a redeeming shareholder (subject to exceptions described above) and that the securities distributed will have an aggregate tax basis that, as a percentage of the Fund's aggregate tax basis in all its assets prior to the redemption, is no more than 1 percentage point lower than the percentage of the assets that are being distributed by the Fund. The transaction, therefore, will neither defer the recognition of gain to Fund's nonredeeming shareholders nor permit the disproportionate deferral of tax at Fund's level.

Accordingly, we rule that Fund will recognize neither gain nor loss under section 852(b)(6) of the Code upon the distribution of stock or other securities in redemption of its shares upon the request of a shareholder pursuant to the proposed tender offer.

No opinion is expressed or implied concerning the federal income tax consequences of the transaction described in this letter, except as expressly provided. In particular, no opinion is expressed with respect to the tax treatment of any foreign currency gain or loss that may arise from this transaction.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3)

PLR-116428-03

of the Code provides that it may not be used or cited as precedent.

A copy of this letter should be attached to the federal income tax return of Fund for each taxable year in which it distributes stock or other securities in redemption of its shares upon the request of a shareholder as described in this letter.

Sincerely yours,

William E. Coppersmith  
WILLIAM E. COPPERSMITH  
Chief, Branch 2  
Office of Associate  
Chief Counsel  
(Financial Institutions & Products)

Enclosure: 6110 copy

cc: