



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

AUG 19 2004

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T:EP:RA:TY

Attention: \*\*\*\*\*  
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Legend:

- Company M = \*\*\*\*\*
- Trustee N = \*\*\*\*\*
- Trust T = \*\*\*\*\*
- Custodian C = \*\*\*\*\*
- State A = \*\*\*\*\*
- City B = \*\*\*\*\*
- Country C = \*\*\*\*\*
- Stock Exchange X = \*\*\*\*\*
- Company O = \*\*\*\*\*
- Company P = \*\*\*\*\*

Dear \*\*\*\*\*:

This is in response to a request for a private letter ruling dated December 23, 2002, as supplemented by additional correspondence dated July 24, 2003, October 8, 2003, November 13, 2003, and August 11, 2004, submitted on your behalf by your authorized representative. You request a ruling as to the applicability of section 408(m) of the Internal Revenue Code ("Code") to investments in units in an

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investment trust being formed by Company M made by individual retirement accounts described in section 408(a) and by individually-directed accounts maintained under plans qualified under section 401(a).

The following facts and representations were submitted by your authorized representative.

Company M intends to form Trust T as an investment trust under State A law. Trust T will accept and hold deposits of gold bullion and will issue in exchange for those deposits units designated as Trust T Shares ("shares"), representing undivided fractional beneficial ownership interests in Trust T. Shares of Trust T will be sold as part of an offering of securities to the public pursuant to an effective registration statement under the Securities Act of 1933 and shares will be registered under the Securities Exchange Act of 1934 within 120 days (or such longer time as may be allowed by the Securities and Exchange Commission) after the end of the fiscal year of the issuer during which the offering of such securities to the public occurred. The shares will be listed for trading on Stock Exchange X.

Trust T will accept for deposit, and at all relevant times will hold, only gold bullion with a minimum fineness equal to the minimum fineness of at least 995 parts per 1,000, which is equal to the minimum fineness required to meet the physical delivery standards for gold bullion futures contract transactions under the rules of the Comex division of the New York Mercantile Exchange. Deposits of gold bullion will be accepted only from registered broker-dealers (or other securities market participants) who are members of Company P and who enter into a "Participation Agreement" with the Trustee of Trust T ("Participants"). Trust T will issue shares to such market Participants only in "creation baskets" of \*\*\*\*\* shares, in exchange for delivery to Trust T of the corresponding quantity of gold bullion, which initially will be \*\*\*\*\* ounces per creation basket. Shares so issued to Participants will be offered by them for sale to investors in the secondary securities trading market.

The shares are intended to serve as a vehicle by which investors who wish to obtain investment exposure to the gold market may do so through the purchase and holding of publicly traded, exchange-listed securities whose performance will mirror the price of gold in the physical gold market, thereby avoiding the inconvenience and comparatively greater level of costs (i.e., expenses of buying, storing, insuring and selling gold) that otherwise would be incurred in directly investing in physical gold. Company M believes that the shares will be "widely-held" and "freely transferable" within the meaning of those terms as defined in Department of Labor Regulations sections 2510.3-101(b)(2) and (3).

Company M intends that shares will be available to individual retirement accounts described in section 408(a) of the Code and to individually-directed accounts under

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plans qualified under section 401(a) of the Code for investment through purchase in the secondary market.

Trust T will be established pursuant to a trust indenture that Company M will enter into with Trustee N, which will serve as the Trustee of Trust T. Trust T will be structured so as to qualify for treatment as an "investment trust" under Treasury Regulation section 301.7701-4(c)(1).

Trustee N is a banking corporation incorporated under the laws of State A and is a "bank" within the meaning of section 408(n) of the Code. Trustee N will be responsible for the administration of Trust T.

Custodian C, a national banking association organized under the laws of the United States (and a "bank" as defined in section 408(n) of the Code), will serve as custodian for Trust T.

Pursuant to the custody agreements, which Trust T will enter with Custodian C, Custodian C will provide Trust T with custodial and other services needed for the storage and safekeeping of the gold that is deposited in Trust T. Custodian C will maintain physical possession and custody of the bullion in vaults located in City B, Country C, a foreign country.

Except for a small amount of bullion which Custodian C will hold for Trust T in unallocated form, bullion deposited in Trust T will be held by Custodian C in an "allocated" account which Custodian C will establish and maintain in the name of Trustee N in its capacity as trustee of Trust T. Bullion held in this account will consist of specific bars of gold identified by serial number and other distinguishing characteristics. In its books and records, Custodian C will segregate the specific bars of gold credited to Trust T in this account from any gold it owns or holds for others and will identify Trust T as the owner thereof. Custodian C will not be permitted to trade, lease, lend or borrow against any of the bars in this account.

Under the terms of the custody agreements, Custodian C may transfer or deliver gold it holds for Trust T (whether in allocated or unallocated form) only to such persons, and at such times, as specified in instructions given to it in writing or by authenticated electronic transmission by Trustee N. The custody agreements specifically require Custodian C to act only on instructions furnished to it on Trust T's behalf by Trustee N or its authorized representatives, and expressly prohibit Custodian C from acting "on instructions given by any person claiming to have a beneficial ownership in Trust T. In turn, under the terms of the trust indenture, Trustee N is permitted to instruct Custodian C to transfer or deliver any gold it holds for Trust T only (a) in the case of a sale of the bullion (in those specified circumstances where sales of gold are permitted under the terms of the trust indenture, e.g., to defray Trust T expenses, to

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comply with any requirement of applicable law or in connection with the liquidation of Trust T) to purchasers of the bullions, and (b) in the case of requests for in kind redemptions of shares, to the Participants who request them (either for themselves as beneficial owners of shares, or for non-Participant holders of record of shares on whose behalf they are acting), but in the case of redemptions, gold may be delivered only if the shares to be redeemed are surrendered to Trustee N for cancellation.

Custodian C may appoint one or more subcustodians to provide custodial, storage and safekeeping services with respect to any of the gold bullion held as assets of Trust T. Custodian C has initially selected five institutions that are engaged in rendering gold custody services in the City B market as potential subcustodians for the gold deposited in Trust T. Each of the institutions selected is a clearing member of the City B bullion market association and subject to its rules relating to gold custody practice in the City B market. Only one of the institutions so selected is a "bank" as defined in Section 408(n) of the Code.

It is anticipated that any gold bullion held for Custodian C by subcustodians appointed by it will be held in the subcustodians' vaults located at various sites in Country C. Custodian C will require that any gold held by a subcustodian appointed by it be held in an "allocated" account, and that the subcustodian segregate, by identification on its books and records, the specific bars of gold held for Custodian C in such account from any gold owned by the subcustodian or held by it for other parties. It is expected that Custodian C will not enter into a written contract with any subcustodian it appoints that sets forth the subcustodian's duties. However, it is Company M's understanding that under the law of Country C, the relationship between Custodian C and any such subcustodian will be treated as one of bailment, and that as a bailee, the subcustodian will be under a legal duty to hold any bullion which Custodian C delivers into its custody only for Custodian C and to follow Custodian C's instructions with respect to it. It is Company M's further understanding that under the law of Country C, any subcustodian appointed by Custodian C, as bailee, will not have any title to any of the bullion it holds for Custodian C, and that any purported transfer or delivery by the subcustodian of such bullion to any party other than as directed by Custodian C would constitute a breach of the subcustodian's duty under the law of Country C.

Shares will be evidenced only by a single global certificate issued by Trust T to Company P and registered in the name of Company O, as nominee for Company P. Individual certificates for shares will not be issued, and shares may be transferred only through Company P's book-entry system. The ownership of shares by an individual retirement account or individually directed account will be evidenced only on the books and records of the broker-dealer through which the shares are purchased.

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The holders of two-thirds of the outstanding shares will be entitled to call for and vote upon the removal of the Trustee and the termination and liquidation of Trust T. In the event of a termination of Trust T, all of the gold bullion held in Trust T will be sold, and the proceeds will be distributed to the holders of shares in cash, in cancellation of their shares. Amendments to the Trust T indenture will require the consent of holders of at least 51 percent (and for certain amendments, 100 percent) of the outstanding shares. The holders of shares will not otherwise have voting rights, will not be entitled to participate to any extent in the management of Trust T's operations, and will not have, with respect to the shares any of the other statutory rights normally associated with ownership of shares in a corporation.

In accordance with procedures set forth in the trust indenture and the Participant Agreement, a Participant may request a redemption in kind of shares of which it is the beneficial owner, or of shares owned by other holders who are not Participants. Only Participants may place an order for the redemption of shares, and shares may be redeemed only in one or more "baskets," each consisting of shares.

Shareholders who are not Participants will not have any direct right to have their shares redeemed in kind. However, a non-Participant shareholder that owns one or more baskets of shares can have any of its baskets redeemed in kind through a Participant acting on its behalf. It also may be possible for a non-Participant shareholder that owns less than a full basket of shares to arrange with a Participant to have its shares combined with shares held by one or more other holders of shares to form a full basket, and to have the Participant request a redemption in kind of the shares included in that "combined" basket. However, as indicated above, gold will be delivered to the record holder of shares in connection with an in kind redemption only if the shares to be redeemed are surrendered to the Trustee of Trust T for cancellation.

Apart from a right to obtain an in kind redemption of shares under the conditions described above, ownership of shares will not give their holder any immediate possessory interest in the bullion represented by the shares. A holder of shares will not have any right or ability to obtain possession of the bullion represented by the shares it owns, unless and until those shares are surrendered for redemption.

Based on the above facts and representations you request the following ruling:

The purchase of shares by a trustee or custodian of an individual retirement account or an individually-directed account under a plan qualified under section 401(a) of the Code will not be treated as resulting in a taxable distribution from such account under section 408(m)(1) of the Code.

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Section 408(m)(1) of the Code provides that the acquisition of any collectible by an individual retirement account or by an individually-directed account under a plan described in section 401(a) shall be treated as a distribution from such account in an amount equal to the cost to such account of such collectible.

Section 408(m)(2) of the Code provides that for purposes of section 408(m), the term "collectible" means (A) any work of art, (B) any rug or antique, (C) any metal or gem, (D) any stamp or coin, (E) any alcoholic beverage, or (F) any other tangible personal property specified by the Secretary for purposes of section 408(m).

Section 408(m)(3) of the Code provides that for purposes of section 408(m), the term "collectible" shall not include (A) any coin which is (i) a gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31, United States Code, (ii) a silver coin described in section 5112(e) of title 31, United States Code, (iii) a platinum coin described in section 5112(k) of title 31, United States Code, or (iv) a coin issued under the laws of any State, or (B) any gold, silver, platinum or palladium bullion of a fineness equal to or exceeding the minimum fineness that a contract market (as described in section 7 of the Commodity Exchange Act, 7 U.S.C. 7) requires for metals which may be delivered in satisfaction of a regulated futures contract, if such bullion is in the physical possession of a trustee described in section 408(a).

With respect to your ruling request, we conclude, based on the information submitted and the representations contained herein, that the acquisition of shares by a trustee or custodian of an individual retirement account or an individually-directed account does not constitute the acquisition of a collectible for purposes of section 408(m) of the Code, and thus the acquisition of such shares does not result in a taxable distribution for such accounts under section 408(m)(1) of the Code. However, in the event of a redemption of shares that results in the distribution of gold bullion to the trustee or custodian or an individual retirement account or individually-directed account, such distribution would constitute the acquisition of a collectible for purposes of section 408(m) of the Code except to the extent section 408(m)(3) of the Code is satisfied.

Accordingly, we conclude, that the purchase of shares by the trustee or custodian of an individual retirement account or an individually-directed account under a plan qualified under section 401(a) of the Code will not be treated as resulting in a taxable distribution from such account under section 408(m)(1) of the Code.

However, if a trustee or custodian of an individual retirement account or an individually-directed account under a plan qualified under section 401(a) of the Code distributes the shares or the bullion to the owner of an individual retirement account or the owner of an individually-directed account maintained under a plan qualified under section 401(a), the value of the shares or gold bullion will be treated as a



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distribution and taxable to the distribute to the extent provided under the applicable provisions of Code sections 408 and 402.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable thereto.

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

If you have any questions please contact \*\*\*\*\*. He may be contacted at \*\*\*\*\*.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative.

Sincerely yours,



Donzell Littlejohn, Manager  
Employee Plans, Technical Group 4

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose, Notice 437