Internal Revenue Service

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Date:
June 22, 2010

Legend

Fund 1 =

Fund 2 =

Trust =

Advisor =

State =

Country =

Index 1 =

Index 2=

p =

q =

r =

s=

t =

u =

v=

w=

Type A Company =

Dear :

This responds to the request dated December 18, 2009, submitted by your authorized representative on behalf of Fund 1 and Fund 2 (each a “Fund,” collectively the “Funds”). Funds request rulings that: 1) income and gain arising from Notes A and B (the “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; and 2) income and gain earned from Funds’ investment in foreign corporation subsidiaries of Funds constitutes qualifying income under section 851(b)(2) of the Code.

FACTS

Funds are organized as series funds of Trust, a State corporation. Funds are organized 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”). The investment manager of both Funds is Advisor.

Pursuant to section 851(g), each Fund will be treated as a separate corporation for federal tax purposes. Funds have each elected to be treated as a regulated investment company (“RIC”) under subchapter M of the Code. Funds either have or will adopt the accrual method of accounting and a taxable year ending on June 30.

Funds will invest in the Notes, and each will establish a wholly-owned foreign corporate subsidiary which will be authorized to invest in commodities and commodity-linked instruments, such as the Notes and commodity-linked derivatives.

Commodity-linked Notes

Funds will invest in commodity linked Notes A and B having the following characteristics.

Note A

Note A will have a par value of $p. The payout formula will vary depending on the performance of Index 1 or Index 2 ("Index"). Note A will have a term of r, and interest on Note A will be payable monthly during the entire term of the note at a rate equal to s. Funds, as holders of Note A, have the right to put Note A to the issuer at the calculated redemption price at any time prior to maturity based on the closing value of Index (a) on the date of notification, if notification is communicated to the issuer by a specified time on the business day, or (b) on the business day following the date of notification if not communicated by such specified time. The issuer of a note has the right to redeem Note A (in whole but not in part) if (a) the Index is no longer published, or (b) the issuer is unable to hedge its risk with respect to the Note.

Under the given terms of Note A, a knockout trigger will occur when the product of the par value of the note and the percentage point decrease in the closing price of the Index pertaining to the note between the knockout trigger date and the date when the Fund acquired Note A exceeds t percent of the Note A's par value. When the knockout trigger occurs, Note A will automatically redeem based on the closing value of the Index on the business day following the day on which the knockout trigger occurred.

The repayment obligation upon early redemption, knockout, or maturity of Note A will equal the par value of Note A, plus or minus the par value of Note A multiplied by the percentage point increase or decrease in the closing price of the Index from the day Note A was first acquired to the business day on which the redemption occurs. To this amount the amount of any unpaid interest on Note A is added, and the unpaid portion of the annual fee of v payable to the issuer is subtracted. Notes based on Index 1 will also provide for an adjustment for the reversal of the interest rate factor included in the index.

Note B

Note B will have a par value of $q. The payout formula will vary depending on the performance of Index. Note B will have a term of u, and interest on Note B will be payable monthly during the entire term of the note at a rate equal to s. Funds, as holders of Note B, have the right to put Note B to the issuer at the calculated redemption price at any time prior to maturity based on the closing Index value (a) on the date of notification, if notification is communicated to the issuer by a specified time on the business day, or (b) on the business day following the date of notification if not communicated by such specified time. The issuer of a note has the right to redeem Note B (in whole but not in part) if (a) the Index is no longer published, or (b) the issuer is unable to hedge its risk with respect to the Note.

Under the given terms of Note B, a knockout trigger will occur when the product of the par value of the note and the percentage point decrease in the closing price of the Index pertaining to the note between the knockout trigger date and the date when the Fund acquired Note B exceeds t percent of the Note B's par value. When the knockout trigger occurs, Note B will automatically redeem based on the closing value of the Index on the business day following the day on which the knockout trigger occurred.

The repayment obligation upon early redemption, knockout, or maturity of Note B will equal the par value of Note B, plus or minus the par value of Note B multiplied by the percentage point increase or decrease in the closing price of the Index from the day Note B was first acquired to the business day on which the redemption occurs. To this amount the amount of any unpaid interest on Note B is added, and the unpaid portion of the annual fee of w payable to the issuer is subtracted. Notes based on Index 1 will also provide for an adjustment for the reversal of the interest rate factor included in the index.

Funds make the following representations with respect to Notes A and B:

(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) Funds, 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.

Controlled Foreign Corporation

Funds will each be authorized to organize a wholly-owned foreign subsidiary (each a “Subsidiary,” collectively the “Subsidiaries”) under the laws of Country. Each Subsidiary is incorporated as a Type A Company. Under the laws of Country, a Type A Company provides limited liability for all holders of shares. A shareholder’s liability is limited to the amount, if any, unpaid with respect to the shares acquired by the shareholder. As a result, Subsidiaries will be treated as corporations for federal income tax purposes under default entity classification rules, but they intend to ensure such classification by filing a protective election on Form 8832 to be treated as corporations under § 301.7701-3 of the Income Tax Regulations.

Neither Subsidiary will be registered as an investment company under the 1940 Act; however, each Subsidiary 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 investments that would apply if Subsidiaries were registered under the 1940 Act.

Each Fund may invest a portion of its assets in its wholly-owned subsidiary, subject to the asset diversification limitations of section 851(b)(3). Each Subsidiary will invest primarily in one or more of the following types of instruments: commodity and financial futures and option contracts, forward, swap or spot contracts; commodity-linked notes (including exchange-traded commodity-linked notes); and fixed income securities that serve as collateral for these contracts. The commodity-linked instruments will be linked to the performance of one or more commodities (including one or more commodity indices) or a commodity future or option contract.

It is expected that each Fund will own all of the outstanding shares of the Subsidiary it organizes. The Funds represent that so long as a Subsidiary is wholly owned by one of the Funds, the Subsidiary will be classified as a controlled foreign corporation (“CFC”) under section 957. Each Fund further represents that it will include its pro rata share of “Subpart F income” attributable to its respective Subsidiary to the extent required under section 951.

One or more other funds managed by Advisor and registered under the 1940 Act may invest in either Funds’ Subsidiary in varying degrees over time. If a sufficient number of such other funds invest in a Subsidiary, each Fund may end up owning less than 10 percent of the voting power of that Subsidiary. In such a case, the Funds represent that the Subsidiary would qualify as a passive foreign investment company (“PFIC”) under section 1297. Funds represent that if a Fund becomes a less than ten percent owner of its respective Subsidiary, it will elect to treat the Subsidiary as a qualified electing fund (“QEF”) under section 1295 for the first taxable year of the Fund for which the Subsidiary is a PFIC. Funds further represent that a Fund will not revoke this election unless and until the Subsidiary is no longer a PFIC. The Fund will take income from the Subsidiary into account under the PFIC rules of section 1291 *et. seq.*;

specifically, the Fund will include its pro rata share of the QEF inclusions attributable to the Subsidiary in income in accordance with section 1293(a) for each taxable year a QEF election is in place.

LAW AND ANALYSIS

Section 851(b)(2) 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, as amended) 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.

In addition, the flush language of § 851(b) provides that, for purposes of section 851(b)(2), there shall be treated as dividends 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) (as the case may be), there is a distribution out of the earnings and profits of the taxable year which are attributable to the amounts so included.

Section 957 defines a controlled foreign corporation (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.

Section 951(a)(1) 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 this corporation and who owns stock in this corporation 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 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.

Subsidiary's income from its investments in commodities and commodity-linked instruments may generate subpart F income. Funds therefore represent that they will include in income Subsidiary's subpart F income for the taxable year in accordance with section 951.

Section 1297(a) defines a PFIC as a foreign corporation with either (1) seventy-five percent or more of the gross income of such corporation for the taxable year is passive income, or (2) the average percentage of assets held by the corporation during the taxable year which produce passive income or which are held for the production of passive income is at least fifty percent. Section 1297(b) defines passive income as any income which is of a kind that would be foreign personal holding company income as defined in section 954(c), with exceptions for certain active business income.

Section 1295(a) provides that a PFIC shall be treated as a QEF with respect to the taxpayer if the taxpayer makes an election with respect to the PFIC and the PFIC complies with such requirements as the Secretary of the Treasury may prescribe for the purpose of determining the ordinary earnings and net capital gain or such company. Section 1295(b) provides that once a taxpayer makes such an election for any taxable year, the election applies to all subsequent taxable years unless revoked by the taxpayer with the consent of the Secretary.

Section 1293(a) provides that every United States person who owns (or is treated as owning under section 1298(a)) stock of a QEF at any time during the taxable year of such fund shall include in gross income (A) as ordinary income, such shareholder's pro rata share of the ordinary earnings of the QEF for such year, and (B) as long-term capital gain, such shareholder's pro rata share of the net capital gain of the QEF for such year. Any such QEF inclusion shall be for the taxable year of the shareholder in which or with which the taxable year of the QEF ends.

Over time, it is possible that other RICs will invest in the CFCs. If other RICs invest in a foreign corporation so that a Fund owns less than ten percent of the Subsidiary, Taxpayer represents that the Fund will elect to treat the PFIC as a QEF and will include in income it's Subsidiary's QEF income for the taxable year in accordance with section 1293.

Conclusion:

Based on the facts as represented, we rule that income and gain arising from the Notes constitutes qualifying income to the Funds under section 851(b)(2) of the Code. We further rule that subpart F income, or QEF inclusions of the Subsidiaries attributable to the Funds, without regard to whether the income has been distributed, is income derived with respect to Funds' business of investing in the stock of Subsidiaries and thus constitutes qualifying income under section 851(b)(2).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed with regard to whether the Funds qualify as RICs under subchapter M.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it 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,

David B. Silber
David B. Silber
Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)