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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PLR-146202-10

Date:
February 03, 2011

Legend:

Taxpayer =

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Dear :

This is in reply to your letter dated November 8, 2010 requesting rulings on behalf of Taxpayer. In a letter ruling dated August 24, 2010 (PLR-108655-10) (the "Prior Letter Ruling") this office granted Taxpayer a ruling that the issuance of two classes of shares with different distribution fees will not, in itself, result in dividends paid by Taxpayer with respect to its shares being preferential dividends within the meaning of § 562(c). You have requested rulings to supplement the Prior Letter Ruling that (1) the class-specific allocation of class expenses described below will not, in itself, result in dividends paid by Taxpayer with respect to its shares being preferential dividends within the meaning of § 562(c) of the Internal Revenue Code; and (2) the class-specific allocation of the performance component of the advisory fee described below will not, in itself, result in dividends paid by Taxpayer with respect to its shares being preferential dividends within the meaning of § 562(c).

Facts:

Legend terms not defined in this ruling have the meanings assigned to them in the Prior Letter Ruling.

In the Prior Letter Ruling, Taxpayer proposed to issue two classes of its common stock. One class of shares would be subject to an a% selling commission (paid at the stockholder level and subject to waiver) and a b% annual distribution fee (paid at the Taxpayer level) (the Distribution Fee). The second class of shares would not be subject to any selling commission or any allocation of the Distribution Fee.

In the current letter ruling request Taxpayer confirms that in its initial public offering, Taxpayer is offering two classes of its common stock: Class A shares and Class W shares (each a "Class"). The Class A shares are subject to the Distribution Fee and the Class W shares are not. Taxpayer also provides the information below regarding class-specific fees and expenses.

Each Class may be allocated and pay a different share of fees and expenses (such as transfer agent fees and any other class-specific fees and expenses disclosed in a supplement or amendment to Taxpayer's registration statement and incorporated into the charter by reference), not including fees and expenses related to the management of Taxpayer's assets, if these expenses are actually incurred in a different amount for each Class.

In addition, as compensation for its services provided pursuant to the advisory agreement between Taxpayer and Advisor, Taxpayer will pay Advisor an advisory fee comprised of two separate components:

(1) a fixed amount per day equal to 1/365th of c percent of Taxpayer's NAV, payable quarterly in arrears; and

(2) a performance fee component (the Performance Fee) calculated for each Class on the basis of the total return on that class in that calendar year, payable annually.

The Performance Fee will be calculated such that for any calendar year in which the total return (defined for each Class as the change in NAV per share for such Class plus distributions per share for such Class) exceeds e percent, Advisor will receive g percent of that excess, provided that in no event will the Performance Fee exceed f percent of the aggregated total return for such year. The same Performance Fee formula will be applied separately to the Class A and Class W shares. In the event Taxpayer's NAV per share for a Class decreases below $f, the Performance Fee will not be earned on any increase in NAV back up to $f per share with respect to that Class. Advisor will not be obligated to return any portion of the Performance Fee paid based on Taxpayer's subsequent performance.

Because the class-specific allocation of the Distribution Fee will cause the yields on the Class A and Class W shares to vary, Advisor may be entitled to receive a Performance Fee with respect to one Class but not the other.

Law and Analysis:

The Prior Letter Ruling discusses Rev. Proc. 99-40, 1999-2 C.B. 565, which describes conditions under which distributions made to a shareholder of a regulated

investment company (RIC) may vary and nevertheless be deductible as dividends under § 562. One requirement of Rev. Proc. 99-40 is that the advisory fee must not be charged at different rates for different groups of shareholders. However, the groups of shareholders may be allocated and may pay a different advisory fee to the extent that any difference in amount paid is the result of the application of the same performance fee provisions in the advisory contract to the different investment performance of each group of shareholders.

Taxpayer, as a REIT, is not within the scope of Rev. Proc. 99-40. However, the Prior Letter Ruling notes that Congress and the Service have acknowledged the similarity between RICs and REITs in many areas and have afforded them similar treatment in many situations. The ruling then states that the distributions payable to each Class will differ only by reason of the special allocation of the Distribution Fee as permitted under Rev. Proc. 99-40 with respect to RICs. The Prior Letter Ruling also describes the numerous Securities Exchange Commission, state and Financial Industry Regulatory Authority, Inc. restrictions, regulations, and oversight required with respect to its stock offerings, operations and rights of its stockholders. The ruling also notes that Taxpayer's offering is subject to a merit review that is specifically targeted at ensuring that stockholders are treated fairly.

The class specific allocation of class expenses and the class-specific allocation of the Performance Fee described in this letter are also consistent with the requirements for RICs in Rev. Proc. 99-40.

Based on the law and analysis relied upon in the Prior Letter Ruling, we conclude that (1) the class-specific allocation of class expenses described in this letter will not, in itself, result in dividends paid by Taxpayer with respect to its shares, being preferential dividends within the meaning of § 562(c); and (2) the class-specific allocation of the Performance Fee will not, in itself, result in dividends paid by Taxpayer with respect to its shares, being preferential dividends within the meaning of § 562(c).

Except as specifically ruled upon above, no opinion is expressed concerning any federal income tax consequences relating to the facts herein under any other provision of the Code. Specifically, we do not rule whether Taxpayer otherwise qualifies as a REIT under part II of subchapter M of Chapter 1 of the Code.

This ruling is directed only to the taxpayer requesting it. Taxpayer should attach a copy of this ruling to each tax return to which it applies. Section 6110(k)(3) of the Code provides that this ruling 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 representatives.

Sincerely,

Susan Thompson Baker____
Susan Thompson Baker
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)