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Date:
January 08, 2021

Legend:

Taxpayer =

CLO A =

Exchange =

Index =

Counsel 1 =

Counsel 2 =

Counsel 3 =

Month =

Year =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This letter responds to a letter dated October 9, 2020, submitted on behalf of Taxpayer and Taxpayer's wholly owned subsidiary, CLO A. Taxpayer and CLO A request an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to elect to treat CLO A as a taxable REIT subsidiary ("TRS") of Taxpayer under section 856(l) of the Internal Revenue Code (the "Code") effective Date 2.

FACTS

Taxpayer is a real estate finance company that originates senior loans that are collateralized by commercial real estate. Taxpayer has elected to be taxed as a real estate investment trust ("REIT") under sections 856 through 859 of the Code.

Taxpayer uses collateralized loan obligations ("CLOs") as a form of financing. Taxpayer's CLOs are defined pools of loans in bankruptcy remote entities that issue classes of debt to third parties. In general, Taxpayer's CLOs meet the definition of a "taxable mortgage pool" under section 7701(i) of the Code ("TMP") and are treated as corporations for federal income tax purposes. A CLO that is wholly owned by Taxpayer, including CLO A, is treated as a qualified REIT subsidiary ("QRS") of Taxpayer for federal income tax purposes pursuant to section 856(i)(2) of the Code, unless a TRS election is made for that entity. Taxpayer, as a REIT that owns a TMP that is a QRS, is required to compute and report to its shareholders any excess inclusion income ("EII") of the TMP with respect to the dividends paid to shareholders during the year.

Taxpayer's Class A stock is listed for trading on Exchange and is eligible for inclusion on Index. As such, Taxpayer is required to disclose that its shares will not generate unrelated business taxable income ("UBTI") to its shareholders. If a tax-exempt shareholder receives EII with respect to Taxpayer's dividends paid, the shareholder is treated as receiving UBTI, and Taxpayer is no longer eligible for inclusion on Index.

Taxpayer represents that it structures its CLOs such that, upon issuance, Taxpayer does not expect its CLOs to generate EII. Taxpayer has policies and procedures in place to monitor EII calculations quarterly. Furthermore, Taxpayer intended to file a TRS election for CLO A in the event CLO A generated EII for Taxpayer.

On Date 1, CLO A issued a new series of notes. The preliminary model done in Month of Year (prior to the issuance and marketing of the series of notes) did not show positive EII for Year. Shortly after Date 1, the Covid-19 pandemic began. The disruptions in business due to the Covid-19 pandemic delayed the normal processes and monitoring of EII. Therefore, the finance and tax teams of Taxpayer were not able

to update the first quarter of Year EII model for CLO A until Date 4. The EII model for CLO A completed Date 4 indicated that Taxpayer would likely have EII in Year. This outcome was unexpected because the preliminary model did not show positive EII for Year. Taxpayer represents that it has never experienced such a significant variation in the EII projected at formation as compared to the actual EII once the CLO A notes were issued.

Beginning on Date 4, Taxpayer worked through the various legal and business steps to effectuate the TRS election needed to remedy the positive EII for CLO A. Because of the wide-ranging effect the Covid-19 pandemic had on business and employees alike, these steps took longer than they normally would. First, Taxpayer worked internally and with Counsel 1, Counsel 2 and Counsel 3 to confirm the EII computation. Once the EII computation was confirmed, Taxpayer consulted with Counsel 1, Taxpayer's counsel that advised in the issuance of the CLO A notes. Pursuant to the indenture of the notes issued by CLO A, the election to treat CLO A as a TRS requires an opinion of nationally recognized counsel that such election will not cause CLO A to be treated as a foreign corporation engaged in a trade or business within the United States for federal income tax purposes, or otherwise to become subject to federal income tax on a net basis. Counsel 1 engaged in its own internal processes and approvals to issue the required tax opinion. Upon resolution of these necessary consultations with their external and internal legal and tax counsel, as well as the business management team and internal legal team to approve the change in structure, Taxpayer moved expeditiously to file the TRS election for CLO A and this request for an extension of time for filing such election.

Taxpayer intended the effective date of the election to be Date 2. The due date for the election was Date 3, and Taxpayer filed the election Date 5.

REPRESENTATIONS

Taxpayer makes the following representations in connection with this request for an extension of time:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Service.

2. Granting the relief will not result in Taxpayer or CLO A having a lower tax liability in the aggregate for all years to which the regulatory election applies than they would have had if the election had been timely made (taking into account the time value of money).

3. Taxpayer and CLO A did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under Code section 6662 at the time they requested relief and the new position requires or permits the regulatory election for which relief is requested.

4. Being fully informed of the required regulatory election and related tax consequences, Taxpayer and CLO A did not choose to not file the election.

5. Taxpayer and CLO A are not using hindsight in making the decision to seek the relief requested. No specific facts have changed since the due date for making the election that make the election advantageous to Taxpayer or CLO A.

6. The period of limitations on assessment under Code section 6501(a) has not expired for Taxpayer or CLO A for the taxable year in which the election should have been filed, nor for any taxable year(s) that would have been affected by the election had it been timely filed.

7. Taxpayer has not yet filed a federal income tax return for Year.

In addition, affidavits on behalf of Taxpayer and CLO A have been provided as required by section 301.9100-3(e)(2) and (3).

LAW AND ANALYSIS

Section 856(l) provides that a REIT and a corporation (other than a REIT) may jointly elect to treat such corporation as a TRS. To be eligible for treatment as a TRS, section 856(l)(1) provides that the REIT must directly or indirectly own stock in such corporation, and the REIT and such corporation must jointly elect such treatment. The election is irrevocable once made, unless both the REIT and the corporation consent to its revocation. In addition, section 856(l) specifically provides that the election, and any revocation thereof, may be made without the consent of the Secretary.

In Announcement 2001-17, 2001-1 C.B. 716, the Service announced the availability of new Form 8875, Taxable REIT Subsidiary Election. According to the Announcement, this form is to be used for taxable years beginning after 2000 for eligible entities to elect treatment as a TRS. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the taxable year. However, the effective date of the election depends on when the Form 8875 is filed. The instructions further provide that the effective date cannot be more than 2 months and 15 days prior to the date of filing the election, or more than 12 months after the date of filing the election. If no date is specified on the form, the election is effective on the date the form is filed with the Service.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) through (c)(1) sets forth rules that the Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in section 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief under this section before the failure to make the regulatory election is discovered by the Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election. A taxpayer will be deemed to have not acted reasonably and in good faith if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c)(1) provides that a reasonable extension of time to make a regulatory election will be granted only when the interests of the Government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Section 301.9100-3(c)(1)(ii) provides that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

CONCLUSION

Based on the information submitted and representations made, we conclude that Taxpayer and CLO A have satisfied the requirements for granting a reasonable extension of time to elect under section 856(l) of the Code to treat CLO A as a TRS of Taxpayer effective Date 2. Accordingly, the Form 8875 filed by Taxpayer and CLO A on

Date 5 will be considered timely filed, and the effective date of the TRS election is Date 2.

CAVEATS

This ruling is limited to the timeliness of the filing the Form 8875. This ruling's application is limited to the facts, representations, and Code and regulation sections cited herein. Except as 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 or implied regarding whether Taxpayer otherwise qualifies as a REIT, or whether CLO A otherwise qualifies as a TRS of Taxpayer under part II of subchapter M of chapter 1 of the Code.

No opinion is expressed with regard to whether the tax liability of Taxpayer and CLO A is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the U.S. federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

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

Andrea M. Hoffenson_____
Andrea M. Hoffenson
Branch Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)

cc: