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Internal Revenue Service

Department of the Treasury

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9100.00-00

Washington, DC 20224

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LEGEND:

Fund =

Trust =
Manager =
Accountant =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =

Month =

Year 1 =
Year 2 =

This responds to your January 11, 1999, letter on behalf of the Fund. The Fund requests that its election under § 851(b)(1) of the Internal Revenue Code to be treated as a regulated investment company (RIC) beginning with its initial taxable year be considered timely filed pursuant to § 301.9100-3 of the Procedure and Administration Regulations.

FACTS

The Fund is a separate series of Trust. Trust is registered as an open-end management investment company under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq., as amended. The

Fund commenced operations on Date 1. The Fund ceased operations and completely liquidated on Date 2. Consequently, the Fund's initial and only taxable year was the short taxable year beginning Date 1 and ending Date 2. The Fund used the accrual method of accounting during the year. At all times since inception, the Fund has been operated in a manner intended to qualify it as a RIC under Subchapter M of the Code.

Manager provides management services to the Trust and all Series of the Trust, including the Fund. Accountant provides fund accounting, fund administration, and tax services to each of the Series of the Trust.

Accountant is in the business of providing accounting, tax, custodial, transfer agent, and other administrative services to mutual funds. Accountant was engaged by the Fund to perform accounting and tax services, including the timely preparation of all tax returns. As soon as Accountant completed the returns, it would send them to Manager, who would arrange for the returns to be filed.

On Date 3, the individual ("Employee") responsible for preparing the Fund's return for the short taxable year ended Date 2, timely filed an extension on behalf of the Fund. As a result of the timely filing of the extension, the due date of the Fund's Year 1 tax return became Date 5.

Accountant failed to prepare the Year 1 tax return for the Fund and present it to Manager by the extended due date. This failure was caused by Employee, who left the employ of Accountant on or about Date 4, without informing anyone of the need to prepare the Fund's Year 1 return.

Accountant uses a computer-based reminder system to keep track of the due dates of clients' tax returns. For any client whose taxable year end falls on a unique date (other than the calendar year end or the June 30th fiscal year end), the individual responsible for that client's tax return is supposed to enter the particular taxable year end into the computer-based reminder system. Employee did not enter into the computer-based reminder system any information about Fund's Date 2 taxable year end or the extension filed on behalf of Fund.

During the second half of Month, Year 2, Accountant prepared extensions of time to file tax returns on behalf of those Series of Trust with taxable years ended June 30, Year 2. Shortly after Date 5, Accountant discovered file materials indicating that a tax return for Fund was due Date 5. Accountant informed Manager of the inadvertent failure on the part of Accountant to prepare the Year 1

tax return for the Fund on a timely basis. Manager instructed Accountant to prepare the Year 1 return for the Fund as soon as possible. Accountant finished preparing the Fund's Year 1 tax return on Date 6. The return was sent to Manager for review on that date. After completing a final review, Manager sent the Year 1 return to the Service on Date 7.

LAW AND ANALYSIS

Section 851(b)(1) provides that a corporation shall not be considered a RIC for any taxable year unless it makes an election to be a RIC on its federal income tax return for the taxable year or has made an election for a previous taxable year.

Section 1.851-2(a) of the Income Tax Regulations provides that the taxpayer shall make its election to be treated as a RIC by computing taxable income as a RIC on its federal income tax return for the first taxable year for which the election is applicable.

Section 301.9100-1(c) provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) 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), 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 Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-3(a) through (c)(1)(i) set forth rules that the Internal Revenue Service generally will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and § 301.9100-3(c) 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 years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

HOLDING

Based upon the facts presented and representations made by the Fund, we hold that the Fund has demonstrated good cause for the granting of relief under § 301.9100-3.

Therefore, the Fund will be treated as having made a timely election under § 851(b)(1) on its federal income tax return filed for the tax year that ended Date 2.

No opinion is expressed as to whether the Fund's tax liability is not lower in the aggregate for the year to which the election applies than the Fund's tax liability would have been if the elections had been timely made (taking into account the time value of money). Upon audit of the federal income tax return involved, the district director's office will determine the Fund's tax liabilities for the year involved. If the district director's office determines that the Fund's liability is lower, that office will determine the federal income tax effect.

This ruling is limited to the timeliness of the Fund's elections. This ruling does not relieve the Fund from any penalty that it may owe as a result of its failure to file its federal income tax returns on time. Except as specifically ruled upon above, no opinion is expressed or implied as to any federal excise or income tax consequences regarding the Fund. In particular, no opinion is expressed or implied whether the Fund qualifies as a RIC that is taxable under subchapter M, part 1 of the Code.

This ruling 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.

Sincerely,

Lon B. Smith

Assistant Chief Counsel
(Financial Institutions and Products)

enclosure: Copy of letter for section 6110 purposes