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Internal Revenue Service

Department of the Treasury

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Date:
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Company =

Adviser =

Fund A =

Fund B =

Fund C =

Year A =
Year B =
Year C =
Year D =
Year E =
Year F =
Year G =

State X =

This is in reply to a letter dated June 7, 1999, seeking consent to revoke, for Year A and subsequent calendar years, a previous election made by Fund A, Fund B,

and Fund C (collectively, the "Funds") under § 4892(e)(4)(A) of the Internal Revenue Code of 1986, as amended (the "Code"). Additionally, the Funds request that the calculation of their required distribution of capital gain net income under § 4982(e)(2) for the calendar year ending December 31, Year A, be determined on the basis of capital gains and losses realized and recognized during the eleven-month period from December 1, Year E, through October 31, Year A.

The Funds are each a series of Company, which was organized as a State X corporation. Each Fund was separately incorporated and is treated as a corporation for tax purposes under § 851(h) of the Code. The Funds are registered with the Securities and Exchange Commission as diversified, open-ended management investment companies organized under the Investment Company Act of 1940, 15 U.S.C. §80a-1 et seq. The Funds have elected to be treated as regulated investment companies ("RICs") under subchapter M of the Code and intend to continue to qualify as RICs.

The Funds use the accrual method of accounting for tax and financial reporting purposes. The Funds' primary investment objectives are to invest in stocks of growing companies in order to seek strong capital growth. The Adviser acts as the investment adviser to each of the Funds.

In order to coordinate the income tax provisions applicable to RICs and the provisions of § 4982, each Fund elected under § 4982(e)(4)(A) to use its tax year of November 30, in lieu of the 1-year period ending on October 31, for purposes of calculating the required distribution amount under §§ 4982(b)(1)(B) and 4982(e)(2). The initial elections pursuant to § 4982(e)(4)(A) were made for the calendar year ending on December 31, Year B, for Fund A, for the calendar year ending December 31, Year C, for Fund B, and for the calendar year ending December 31, Year D, for Fund C. The Funds initially assumed that the election under § 4982 would relieve the administrative burdens and costs associated with dual calculations of capital and foreign currency gains and losses under the excise tax and subchapter M provisions of the Code.

The Fund's experience has been that the § 4982(e)(4)(A) election created additional administrative complexities due to the fact that dividend calculations and required excise tax distributions cannot be calculated until the very end of the calendar year, thereby imposing severe time constraints on the accounting staff. Further, the promulgation of regulations coordinating the excise tax and subchapter M provisions has greatly reduced the administrative burden referred to above. Accordingly, the Fund seeks consent to revoke its election to use its taxable year (the year ending November 30) for purposes of §§ 4982(b)(1)(B) and 4982(e)(2).

In addition, to avoid the double inclusion of income, gain, deduction, or loss, each Fund requests that its required distribution under § 4982 for calendar Year A be

calculated by not taking into account capital gains or losses realized and recognized during the 1-month period beginning November 1, Year E and ending November 30, Year E. The capital gain or loss occurring during that 1-month period has been properly taken into account in computing each Fund's required distribution for the calendar year E.

The Funds represent that:

1. The desire to revoke their respective § 4982(e)(4)(A) elections is due to administrative and non-tax related financial burdens caused by the election.

2. Each Fund is not seeking to revoke its election for the purpose of preserving or securing a tax benefit.

3. Each Fund will neither benefit through hindsight nor prejudice the interests of the government as a result of being permitted to revoke its election.

4. Each Fund will not make a subsequent election under § 4982(e)(4)(A) for five calendar years following the year of the grant of revocation.

LAW and ANALYSIS

Section 4982(a) of the Code, which was enacted as part of the Tax Reform Act of 1986 and is effective for tax years beginning after December 31, 1986, imposes an excise tax on every RIC for each calendar year equal to 4 percent of the excess (if any) of the "required distribution" for the calendar year over the "distributed amount" for the calendar year.

Section 4982(b)(1) defines the term "required distribution" to mean, with respect to any calendar year, the sum of 98 percent of the RIC's ordinary income for such calendar year, plus 98 percent of its capital gain net income for the 1-year period ending on October 31 of such calendar year.

Section 4982(b)(2) provides that the amount determined under § 4982(b)(1) for any calendar year shall be increased by the excess (if any) of the "grossed up required distribution for the preceding calendar year," over the distributed amount for such preceding year.

Section 4982(b)(3) defines "grossed up required distribution" for any calendar year to mean the required distribution for such year determined by applying § 4982(b)(2) to such year but substituting "100 percent" for each percentage set forth in § 4982(b)(1).

Section 4982(e)(4)(A) provides that if the tax year of a RIC ends with the month of November or December, the RIC may elect to have its capital gain net income for its tax year applied in lieu of the 1-year period ending on October 31 of the calendar year for purposes of satisfying the required distribution defined in section 4982(b)(1). Section 4982(e)(4)(B) provides that, once made, such election may be revoked only with the consent of the Secretary.

Section 4982(e)(5) provides that any foreign currency gain or loss which is attributable to a § 988 transaction and which is properly taken into account for the portion of the calendar year after October 31 will not be taken into account in determining the amount of the ordinary income of the RIC for such calendar year but will be taken into account in determining the ordinary income of the RIC for the following calendar year. In the case of any company making an election under § 4982(e)(4), the preceding sentence shall be applied by substituting the last day of the company's taxable year for October 31.

Based upon the information submitted and the representations made, we conclude that the Funds' desire to revoke their respective elections under § 4982(e)(4)(A) of the Code is because of administrative burdens and not because of any federal tax-related financial burden caused by the election. The Funds do not seek to revoke their respective elections for the purpose of preserving or securing a federal tax benefit. Additionally, none of the Funds will either benefit through hindsight or prejudice the interests of the government as a result of being permitted to revoke its election.

CONCLUSION

Accordingly, pursuant to § 4982(e)(4)(B), the Secretary consents to the revocation of the election made by the Funds under § 4982(e)(4)(A) effective for calendar Year A and subsequent years. In addition, in calculating the "required distribution" for calendar Year A, for purposes of § 4982(b)(1) and (2), the capital gain net income and foreign currency gains and losses (if any) of the Funds will be determined on the basis of the capital and foreign currency gains and losses taken into account during the eleven-month period from December 1, Year E, through October 31, Year A.

As a condition to the Secretary's consent to the revocation pursuant to § 4982(e)(4)(B), the Funds may not make a subsequent election under § 4982(e)(4)(A) for a period of five calendar years following the year to which the grant of revocation applies, that is Year F through Year G.

Except as specifically ruled upon above, no opinion is expressed or implied as to the federal excise or income tax consequences regarding the Funds.

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.

It is important that a copy of this letter be attached to the federal income and excise tax return filed by the Funds for the first year to which this ruling applies.

Sincerely,

Assistant Chief Counsel
(Financial Institutions & Products)

By: Alice M. Bennett
Alice M. Bennett
Chief, Branch 3

Enclosure:
Copy of this letter
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