Internal Revenue Service

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Date:
November 19, 1998

TY:

Fund =

Year A =

Year B =

Year C =

Year D =

State =

Dear

This is in reply to a letter dated August 26, 1998, seeking consent to revoke, for Year A and subsequent calendar years, a previous election made by the Fund under section 4892(e)(4)(A) of the Internal Revenue Code of 1986, as amended (the "Code"). Additionally, the Fund requests that the calculation of its required distribution of capital gain net income under section 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 ten-month period from January 1, Year A, through October 31, Year A.

The Fund is organized as a State corporation and is registered with the Securities and Exchange Commission as a diversified, open-ended management investment company organized under the Investment Company Act of 1940, 15 U.S.C.

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§80a-1 et seq. The Fund has elected and intends to continue to qualify for treatment as a regulated investment company ("RIC") under subchapter M of the Code.

The Fund uses the accrual method of accounting for tax and financial accounting purposes, and uses a calendar year end for tax purposes. For the first tax year ending after December 31, Year B, the Fund elected pursuant to section 4982(e)(4)(A) to use its tax year of December 31 in lieu of the 1-year period ending on October 31, for purposes of calculating the required distribution under sections 4982(b)(1)(B) and 4982(e)(2). The Fund initially assumed that the election under section 4982 would relieve the administrative burden associated with dual calculations of capital gain net income under the excise tax and subchapter M provisions of the Code.

The Fund's experience has been that the section 4982(e)(4)(A) election created additional administrative complexities primarily due to time constraints in declaring required excise tax distributions and the need for the Fund's investment advisor to perform capital gain net income calculations at a different time for the Fund than for other taxpayers not subject to a section 4982(e)(4)(A) election. Further, the promulgation of regulations coordinating the excise tax and subchapter M provisions has greatly reduced the administrative burden of having a tax year different from the period used for determining the required distribution under section 4982. Accordingly, the Fund seeks consent to revoke its election to use its taxable year (the calendar year) for purposes of sections 4982(b)(1)(B) and 4982(e)(2).

The Fund represents that:

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

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

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

4. It will not make a subsequent election under section 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 section 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 section 4982(b)(2) to such year but substituting "100 percent" for each percentage set forth in section 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 section 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 section 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 Fund's desire to revoke its election under section 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 Fund does not seek to revoke it election for the purpose of preserving or securing a federal tax benefit. Additionally, the Fund will neither benefit through hindsight nor prejudice the interests of the government as a result of being permitted to revoke its election.

CONCLUSION

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CONCLUSION

Accordingly, pursuant to section 4982(e)(4)(B), the Secretary consents to the revocation of the election made by the Fund under section 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 section 4982(b)(1) and (2), the capital gain net income and foreign currency gains and losses of the Fund will be determined on the basis of the capital and foreign currency gains and losses taken into account during the 10-month period from January 1, Year A, through October 31, Year A.

As a condition to the Secretary's consent to the revocation pursuant to section 4982(e)(4)(B), the Fund may not make a subsequent election under section 4982(e)(4)(A) for a period of 5 calendar years following the year to which the grant of revocation applies, that is Year C through Year D.

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

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 Fund 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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