

**Internal Revenue Service**

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Date:  
February 05, 2008

**LEGEND:**

Acquiring Fund =

Acquiring Series =

Target Fund =

Target Series =

State A =

X =

Y =

a =

b =c =d =e =f =

Adviser =

Dear :

This letter responds to your representative's letter dated April 25, 2007, requesting rulings as to the federal income tax consequences of a proposed transaction. Additional information was submitted by letters dated June 19, August 2, September 12, October 26, and November 27 of 2007 and January 9, and January 28 of 2008. The material information submitted is summarized below.

#### SUMMARY OF FACTS

The Acquiring Fund is organized as a diversified series of the Acquiring Series, a State A statutory trust registered under the Investment Company Act of 1940 (the "1940 Act") as an open-end management investment company. The Acquiring Fund has elected to be treated as a regulated investment company (a "RIC") under §§ 851 through 855 of the Internal Revenue Code (the "Code") and is treated as a separate corporation and separate taxpayer for federal income tax purposes pursuant to § 851.

The Acquiring Fund's investment objective is X. The Acquiring Fund is allowed to invest up to a% of its portfolio in other types of assets as permitted by its investment objectives, strategies, policies, risks and restrictions. This allows the portfolio manager to use, at his/her discretion, a% of the portfolio to meet the Acquiring Fund's investment objective and to meet shareholder redemptions. The Acquiring Fund has historically invested a portion of the a% in b, a type of asset that meets the investment objective of the Target Fund. The amount that the Acquiring Fund has invested in b assets has ranged from \$c to \$d and on average has been \$e.

The Target Fund is organized as a diversified series of the Target Series, a State A statutory trust registered under the 1940 Act as an open-end management investment company. The Target Fund has elected to be treated as a RIC under §§ 851 through

855 and is treated as a separate corporation and separate taxpayer for federal income tax purposes pursuant to § 851.

The Target Fund's investment objective is Y. The Target Fund has approximately \$f in assets under management. The Target Fund's assets are similar to the b assets that are held by the Acquiring Fund. Adviser manages both the Target Fund as well as the b assets in the Acquiring Fund. The value of the Target Fund assets under management is less than \$c. After the proposed transaction described below, Adviser will manage the b assets in the Acquiring Fund consistent with how they are currently managed and in accordance with the Acquiring Fund's investment objectives, strategies, policies, risks and restrictions, which will not change and are not inconsistent with the Target Fund's investment objectives, strategies, policies, risks and restrictions.

## PROPOSED TRANSACTION

For business reasons and pursuant to a plan of reorganization, it is proposed that the Acquiring Fund and the Target Fund undertake the following transactions (the "Reorganization"):

- (i) The Target Fund will transfer all of its assets and liabilities to the Acquiring Fund in exchange for shares of the Acquiring Fund having a value equivalent to the net assets transferred;
- (ii) The Target Fund will distribute pro rata the shares of the Acquiring Fund received in step (i) in redemption of all shares of the Target Fund; and
- (iii) The Target Fund will liquidate and dissolve in accordance with the laws of State A, and terminate its registration under the 1940 Act.

## REPRESENTATIONS

The following representations have been made in connection with the Reorganization:

- (a) The fair market value of the shares of the Acquiring Fund that will be received by the Target Fund shareholders will be approximately equal to the fair market value of the shares of the Target Fund to be surrendered in exchange therefor. In the Reorganization, the Acquiring Fund will issue no consideration to the Target Fund shareholders other than the Acquiring Fund shares (including fractional shares, if any) in exchange for their Target Fund shares.

- (b) On the date of the Reorganization, there will be no plan or intention for the Acquiring Fund or any person related to the Acquiring Fund (as defined in § 1.368-1(e)(4) of the Income Tax Regulations) to acquire or redeem any of the Acquiring Fund shares issued in the Reorganization either directly or through any transaction, agreement, or other arrangement with any other person, other than redemptions that the Acquiring Fund will make as an open-end investment company pursuant to § 22(e) of the 1940 Act.
- (c) During the five years ending on the date of the Reorganization, neither the Target Fund nor any person related to the Target Fund (as defined in § 1.368-1(e)(4) without regard to § 1.368-1(e)(4)(i)(A)) will have (i) acquired Target Fund shares with consideration other than shares of Acquiring Fund or Target Fund, except in the ordinary course of the Target Fund's business as an open-end investment company pursuant to § 22(e) of the 1940 Act, or (ii) made distributions with respect to the Target Fund shares except for (a) normal, regular, dividend distributions made pursuant to the historic dividend paying practice of the Target Fund, and (b) distributions and dividends declared and paid in order to ensure the Target Fund's continuing qualification as a RIC and to avoid the imposition of fund-level tax.
- (d) Prior to or in the Reorganization, neither the Acquiring Fund nor any person related to the Acquiring Fund (as defined in § 1.368-1(e)(4)) will have acquired, directly or through any transaction, agreement or arrangement with any other person, Target Fund shares with consideration other than Acquiring Fund shares.
- (e) The Acquiring Fund will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by the Target Fund immediately prior to the Reorganization. For purposes of this representation, amounts to be paid by the Target Fund to dissenters, amounts used by the Target Fund to pay its reorganization expenses, amounts paid by the Target Fund to shareholders who receive cash or other property, and all redemptions and distributions made by the Target Fund immediately preceding the transfer (except for (i) redemptions of shares pursuant to § 22(e) of the 1940 Act and (ii) distributions and dividends declared and paid in order to ensure the Target Fund's continuing qualification as a RIC and to avoid the imposition of fund-level tax) will be included as assets of the Target Fund held immediately prior to the Reorganization.
- (f) The liabilities of the Target Fund that will be assumed by the Acquiring Fund (within the meaning of § 357(d)) were incurred by the Target Fund in the ordinary course of business and are associated with the assets transferred to the Acquiring Fund.

- (g) On the date of the Reorganization, at least 33 1/3% of the Target Fund's portfolio assets will meet the investment objectives, strategies, policies, risks and restrictions of the Acquiring Fund. On the date of the Reorganization, the Target Fund will not have altered its portfolio in connection with the Reorganization to meet the 33 1/3% threshold. On the date of the Reorganization, neither the Acquiring Fund nor the Target Fund will have modified any of its investment objectives, strategies, policies, risks or restrictions as part of the plan of Reorganization for purposes of §1.368-1(d)(2). On the date of the Reorganization, the Acquiring Fund will have no plan or intention to change any of its investment objectives, strategies, policies, risks and restrictions after the Reorganization. To the best of the knowledge of the Acquiring Fund's management, there is no plan or intention by the Target Fund shareholders to sell, exchange, or otherwise dispose of a number of Target Fund shares (or Acquiring Fund shares received in the Reorganization), in connection with the Reorganization, that would reduce the Target Fund shareholders' ownership of Target Fund shares (or equivalent Acquiring Fund shares) to a number of shares that is less than 50% of the current number of Target Fund shares outstanding.
- (h) The Target Fund will distribute all of the Acquiring Fund shares received by it in the Reorganization to its respective shareholders in complete liquidation in proportion to the number of Target Fund shares owned by each shareholder.
- (i) The Acquiring Fund, the Target Fund and the shareholders of the Target Fund will pay their respective expenses, if any, incurred in connection with the Reorganization based proportionately on the expected benefits to each as a result of the Reorganization. The remainder of the expenses, if any, will be assumed and have been or will be paid directly by the Adviser. Any such expenses borne by Adviser will be solely and directly related to the Reorganization in accordance with the guidelines established in Rev. Rul. 73-54, 1973-1 C.B. 187.
- (j) At the time of the Reorganization, there will be no intercorporate indebtedness existing between the Acquiring Fund and the Target Fund that was issued, acquired, or settled at a discount.
- (k) The Acquiring Fund and the Target Fund have elected to be taxed as RICs under § 851, and for all of their taxable periods (including the last short taxable period ending on the date of Reorganization for the Target Fund), have qualified or intend to qualify for the special tax treatment afforded to RICs under the Code. After the Reorganization, the Acquiring Fund intends to continue to so qualify.

- (l) The Acquiring Fund does not own, directly or indirectly, nor will it have owned during the five years preceding the date of Reorganization, directly or indirectly, any Target Fund shares.
- (m) On the date of Reorganization, the Target Fund will not be under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

## RULINGS

Based solely on the information submitted and the representations set forth above, we hold as follows:

- (1) The Reorganization will qualify as a "reorganization" within the meaning of §368(a)(1)(C). The Acquiring Fund and the Target Fund are each "a party to a reorganization" within the meaning of §368(b).
- (2) No gain or loss will be recognized by the Target Fund upon the transfer of all of its assets to the Acquiring Fund in exchange for Acquiring Fund stock and the assumption by the Acquiring Fund of the Target Fund liabilities. Sections 361(a) and 357(a).
- (3) No gain or loss will be recognized by the Target Fund on the distribution of Acquiring Fund stock to its shareholders. Section 361(c).
- (4) No gain or loss will be recognized by the Acquiring Fund upon the receipt of the assets of the Target Fund in exchange for Acquiring Fund stock. Section 1032(a).
- (5) The basis of the assets of the Target Fund in the hands of the Acquiring Fund will be the same as the basis of those assets in the hands of the Target Fund immediately prior to the transfer. Section 362(b).
- (6) The holding period of the assets of the Target Fund in the hands of the Acquiring Fund will include the period during which those assets were held by the Target Fund. Section 1223(2).
- (7) No gain or loss will be recognized by the Target Fund shareholders on the receipt of the Acquiring Fund stock solely in exchange for their Target Fund stock. Section 354(a).
- (8) The basis of the shares of the Acquiring Fund stock received by Target Fund shareholders will be the same as the basis of the Target Fund stock surrendered in exchange therefore. Section 358(a)(1).

- (9) The holding period of the Acquiring Fund stock received by the Target Fund shareholders will include the period during which the Target Fund shareholders held the Target Fund stock surrendered in exchange therefor, provided the Target Fund stock was held as a capital asset on the date of the exchange. Section 1223(1).
- (10) Pursuant to §§ 381(a) and 1.381(a)-1, the Acquiring Fund will succeed to and take into account the items of the Target Fund described in § 381(c), subject to the provisions and limitations specified in §§ 381, 382, 383, and 384, and the regulations thereunder. Pursuant to § 1.381(b)-1, the tax year of the Target Fund will end on the effective date of the Reorganization.

#### CAVEATS

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

We express no opinion about the tax treatment of the transactions described above under other provisions of the Code or Income Tax Regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions described above that are not specifically covered by the above rulings.

#### PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, any taxpayer filing its return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter ruling.

In accordance with the power of attorney on file in this office, a copy of this ruling letter will be sent to your authorized representative.

Sincerely,

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Lisa A. Fuller  
Senior Counsel, Branch 1  
Office of Associate Chief Counsel (Corporate)