

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201116014**
Release Date: 4/22/2011
Index Number: 851.02-00

Person To Contact:
ID

Telephone Number:

Refer Reply To:
CC:FIP:B02
PLR-136008-10
Date:
December 28, 2010

Legend:

Fund A =

Fund B =

Fund C =

Sub A =

Sub B =

Sub C =

Company =

State 1 =

State 2 =

Trust =

Country =

Dear _____ :

This is in response to a letter dated August 23, 2010, requesting a ruling that income earned by each Fund from an investment in its respective wholly-owned subsidiary that qualifies as a controlled foreign corporation ("CFC"), constitutes qualifying income under section 851(b)(2) of the Internal Revenue Code.

FACTS

Fund A is organized under the laws of State 1. Funds B and C are each a series of Trust, which is organized under the laws of State 2.

Each of Fund A, B, and C ("Funds") is an open-end management investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq. as amended ("the 1940 Act").

Each Fund has elected to be treated as a regulated investment company ("RIC") under section 851 of the Code.

Each Fund has formed its respective wholly-owned subsidiary, Sub A, Sub B, and Sub C (each a "Sub") under the laws of Country. Under Country's laws, each Sub will be formed as a Company. A Company provides limited liability for its shareholders.

Each Company will file an election on Form 8832 to be taxed as a corporation pursuant to §301.7701-3 of the Procedure and Administration Regulations.

The Funds represent that although each Company will not be registered as an investment company under the 1940 Act, each Company will comply with the requirements of section 18(f) of the 1940 Act, Investment Company Act Release No. 10666, and related SEC guidance pertaining to asset coverage with respect to transactions in commodity futures and other transactions in derivatives.

Each Fund will invest a portion of its assets in its respective wholly owned Sub subject to the asset diversification limitations set forth in section 851(b)(3) of the Code. Each Sub is expected to invest in commodities and commodities-related instruments but may also invest in other securities, debt or cash. A nonexclusive list of proposed investments includes the following: commodity-based futures (both long and short); commodity-based over-the-counter (OTC) options (both long and short); commodity-based exchange-traded options (both purchased and written); commodity-based options on futures (both long and short); commodity-based exchange traded funds (ETFs); OTC and exchange traded options on commodity-based ETFs (both purchased and written); commodity-based total return swaps; commodity-based credit linked/participatory notes and warrants; commodity pools; and investments in precious metals.

It is expected that all of each Sub's income will be subpart F income. However, the Funds may also receive income from the Subs that is not properly characterized as subpart F income.

LAW

Section 851(b)(2) of the Code provides that a corporation is not considered a RIC for any taxable year unless it meets an income test. Under this test, at least 90 percent of its gross income must be derived from certain sources. Under section 851(b)(2), qualifying income includes

. . . dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the 1940 Act) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies

Section 2(a)(36) of the 1940 Act defines the term "security" as

any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

In addition, the flush language of section 851(b) of the Code provides that, for purposes of section 851(b)(2), there shall be treated as dividends amounts included in gross income under section 951(a)(1)(A)(i) or 1293(a) for the taxable year to the extent that, under section 959(a)(1) or 1293(c) (as the case may be), there is a distribution out of the earnings and profits of the taxable year which are attributable to the amounts so included.

Section 957 of the Code defines a CFC as any foreign corporation in which more than 50 percent of (1) the total combined voting power of all classes of stock entitled to

vote, or (2) the total value of the stock, is owned by United States shareholders on any day during the corporation's taxable year. A United States shareholder is defined in section 951(b) as a United States person who owns 10 percent or more of the total voting power of all classes of voting stock of a foreign corporation. Each Fund represents that it will own 100 percent of the voting power of the stock of its respective Sub. The Funds are United States persons. The Funds therefore represent that each of the respective Subs will qualify as a CFC under these provisions.

Section 951(a)(1) of the Code provides that if a foreign corporation is a CFC for an uninterrupted period of 30 days or more during any taxable year, every person who is a United States shareholder of the corporation and who owns stock in it on the last day of the taxable year in which the corporation is a CFC shall include in gross income the sum of the shareholder's pro rata share of the CFC's subpart F income for the taxable year.

Section 952(a)(2) defines subpart F income to include foreign base company income determined under section 954. Under section 954(a)(1), foreign base company income includes foreign personal holding company income determined under section 954(c). Under section 954(c)(1), foreign personal holding company income includes (among other things): dividends, interest, royalties, rents, and annuities; gains in excess of losses from transactions in commodities (including futures, forward, and similar transactions but excluding certain hedging transactions and certain active business gains and losses); and, subject to certain exceptions, net income from notional principal contracts.

Subs' investments may generate foreign personal holding company income under section 954(c), which is subpart F income. Funds would therefore include in income their respective Sub's subpart F income for the taxable year in accordance with section 951.

ANALYSIS AND CONCLUSION

Based on the facts as represented, we rule that subpart F income of the Subs that is attributable to the Funds is income derived with respect to the Funds' business of investing in the stock of Subs, and thus constitutes qualifying income under section 851(b)(2).

Except as expressly 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 with regard to whether the Funds qualify as RICs under subchapter M of the Code.

This ruling is directed only to the taxpayers who requested it, and is limited to the facts as represented by the taxpayers. Section 6110(k)(3) provides that this letter 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,

David B. Silber
David B. Silber
Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions and Products)

cc: