

## Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

**CC:FIP:B03 / PLR-123149-03**

Date:

**September 26, 2003**

In re:

### LEGEND

Fund A =

Fund B =

Fund C =

Fund D =

Fund E =

Fund F =

Fund G =

Fund H =

Fund I =

Fund J =

Fund K =

Fund L =

Fund M =

Fund N =

Fund O =

Fund P =

Fund Q =

Fund R =

Fund S =

Fund T =

Fund U =

Fund V =

Fund W =

Fund X =

Fund Y =

State X =

Administrator =

Accounting Firm =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Date 12 =

Date 13 =

Dear :

This responds to a letter dated March 27, 2003, submitted on behalf of Fund A through Fund Y (the Funds). The Funds request that their elections under § 855(a) of

the Internal Revenue Code to treat dividends distributed after the close of a taxable year as having been paid during that taxable year be considered timely filed pursuant to section 301.9100-3 of the Procedure and Administration Regulations. Fund P also requests that its election under § 851(b)(1) to be treated as a regulated investment company (RIC) beginning with its initial taxable year be considered timely filed pursuant to § 301.9100-3.

### FACTS

The Funds are open-end management investment companies, organized as State X business trusts, and registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, as amended. The Funds file their federal income tax returns on a fiscal year basis with a Date 1 year end. The Funds, with the exception of Fund P, were organized and commenced operation prior to the beginning of the tax year ended Date 2. Fund P's initial tax year was the taxable year ended Date 2. From its inception, each Fund has been operated in a manner intended to qualify it as a RIC under Subchapter M of the Code.

Administrator is responsible for the overall management and administration of the Funds, including the filing of federal income tax returns. The Funds' income tax returns for the taxable year ended Date 2 were due on Date 3. Administrator intended to file an extension (Form 7004) for each Fund. The Administrator's employee responsible for filing the Funds' Forms 7004, however, was preoccupied with a heavy compliance volume, training of new staff, and unexpected staff absence, and increased personal responsibilities during the weeks surrounding Date 3. As a result, Administrator inadvertently failed to prepare and file the Forms 7004 for the Funds.

During Date 4, Administrator's employee discovered the error and began preparing the Funds' returns. By Date 13, Administrator filed the returns for each of the Funds except Fund E. Those returns included elections under § 855(a) of the Code for Funds A through Y (except Fund E) and under § 851(b)(1) for Fund P. Accounting Firm submitted a request seeking a Private Letter Ruling that the Funds' late elections under § 855(a) for Funds A through Y and Fund P's election under § 851(b)(1) be considered timely filed pursuant to § 301.9100-3.

Fund P intended to make the election under § 851(b)(1) of the Code on its federal income tax return, Form 1120-RIC, which was due on Date 3, for the taxable year ended Date 2. Consistent with this intent, Fund P computed its taxable income as a RIC for its initial taxable year. Funds A through Y intended to make timely elections under § 855(a) to treat dividends paid in the 12-month period following the end of the taxable year ended Date 2 as having been paid during each Fund's taxable year ended Date 2. Consistent with this intent, the Funds declared and paid dividends in the following manner:

Funds A, B, C, E, J, K, L, M, N, P, S, and T declared dividends on Date 5 and paid those dividends on Date 6. Funds D, F, and G declared dividends on Date 7 and paid those dividends on Date 9. Funds H and I declared dividends on Date 5 and Date 7 and paid those dividends on Date 6 and Date 9. Funds O, Q, W, and X declared dividends on Date 12 and paid those dividends on Date 10 and Date 11. Funds R and V declared dividends on Date 7 and paid those dividends on Date 8. Funds U and Y declared dividends on Date 12 and paid those dividends on Date 10.

### LAW AND ANALYSIS

Section 851(b)(1) of the Code 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 855(a) of the Code provides that, if a RIC –

(1) declares a dividend prior to the time prescribed by law for the filing of its return for a taxable year (including the period for any extension of time granted for filing such return), and

(2) distributes the amount of such dividend to shareholders in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration,

the amount so declared and distributed shall, to the extent the company elects in such return in accordance with regulations prescribed by the Secretary, be considered as having been paid during such taxable year, except as provided in subsections (b), (c) and (d).

Section 1.855-1(b)(1) sets forth the method of making the election and provides that the election must be made in the return filed by the RIC for the taxable year.

Section 301.9100-1(c) of the Procedure and Administration Regulations 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 Funds, we hold that the Funds have demonstrated good cause for the granting of relief under § 301.9100-3. Accordingly, Fund P will be treated as having made a timely election under § 851(b)(1) of the Code on its federal income tax return filed for the tax year that ended Date 2, and each of Funds A through Y (except Fund E) will be treated as having made a timely election under § 855(a) of the Code on its federal income tax return filed for the tax year ended Date 2. Fund E will be given a period of time not to exceed 45 days from the date of this letter to make a timely election under § 855(a) for the tax year ended Date 2.

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

This ruling is limited to the timeliness of each Fund's election. This ruling does not relieve each 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 each Fund. In particular, no opinion is expressed or implied whether each 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely yours,

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ALICE M. BENNETT  
Chief, Branch 3  
Office of Associate  
Chief Counsel  
(Financial Institutions & Products)

Enclosures:

Copy of this letter  
Copy for section 6110 purposes