

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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CC:FIP:2 – PLR-146147-05

Date:

January 26, 2006

In Re:

Legend:

Fund A =

Fund B =

Fund C =

Fund D =

Fund E =

Fund F =

Year =

Advisor =

Accountant =

Firm =

Due Date =

Filing Date =

Dear :

This is in reply to a letter dated August 29, 2005, requesting on behalf of Funds A, B, C, D, E and F (the "Funds") an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to file an income tax return in order to make an election under section 855(a) of the Internal Revenue Code.

#### FACTS

The Funds are corporations that elected in years prior to Year to be treated as regulated investment companies ("RICs") under Subchapter M (sections 851 et seq.) of the Internal Revenue Code.

Prior to the preparation of the Funds' income tax returns due by the Due Date, such return preparation had followed a customary procedure for several years. Advisor, the advisor to the Funds, had Firm, a firm of independent accountants, prepare the tax returns. Firm used information provided by Accountant, an independent accounting firm used by the Funds for both accounting and administrative services. Historically, Accountant did not file the tax returns on behalf of the Funds.

Under the customary procedure, Firm sent prepared tax returns directly to Advisor, who signed and filed them. All such returns were timely filed.

As to the income tax return for Year, the customary procedure changed. Two days before the Due Date (which included extensions) for filing the return for Year, Advisor telephoned Accountant intending to have the Funds' Treasurer/CFO, who is an employee of Accountant, sign and file the Funds' returns. The Treasurer/CFO is a non-tax professional who was not experienced with tax return due dates and filing requirements. This change in procedure was not communicated to Accountant's tax department.

The income tax returns for the Funds were forwarded to the Treasurer/CFO before the Due Date for his signature and filing. The day before the Due Date, the Treasurer/CFO did not check his mailbox, he was out of the office on the Due Date, and he did not return to the office until three days after the Due Date. After his return to the office, the failure to timely file the returns was discovered by the Funds, and the Funds' returns were filed on the Filing Date, which was six days after the Due Date.

The returns filed by the Funds included the election under section 855(a) of the Code.

The Funds have submitted the affidavit of Accountant's Treasurer/CFO in support of this requested ruling.

Funds make the following representations:

1. The request for relief was filed by Funds before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in Funds having a lower tax liability in the aggregate for all years to which the regulatory election applies than Funds would have had if the election had been timely made (taking into account the time value of money).
3. Funds do not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time Funds requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Funds did not choose to not file the election.

## LAW AND ANALYSIS

Under section 855(a) of the Code, if a RIC declares a dividend before the due date (including extensions) for filing its income tax return for a taxable year, and distributes the dividend in the 12-month period following the end of the tax year (and not later than the date of the first regular dividend payment made after the declaration), the dividend is considered paid during the taxable year, if the RIC so elects on its income tax return for the taxable year.

Under section 1.855-1(b)(1) of the Income Tax Regulations, the election under section 855(a) of the Code must be made in the return filed by the RIC for the taxable year.

Section 301.9100-1(c) of the regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in section 301.9100-1(b) as an election whose deadline 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.

Section 301.9100-3(a) through (c)(1)(i) of the regulations sets 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 section 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 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 section 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).

## CONCLUSION

Based upon the facts and representations submitted, we conclude that Funds have shown good cause for granting a reasonable extension of time to elect under 855(a). Accordingly, the Funds' income tax returns for Year, which have already been filed with the election under section 855(a) of the Code, are treated as timely filed for purposes of making the election under that section.

This ruling is limited to the timeliness of the filing of the Funds' income tax returns for purposes of the election under section 855(a) of the Code. This ruling does not

relieve Funds from any penalties they may owe as a result of their failure to file their federal income tax return on time. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Funds otherwise qualify as RICs under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of the Funds is not lower in the aggregate for all years to which the election applies than such 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's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

This ruling is directed only to the taxpayers that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the terms of a power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely yours,

William E. Coppersmith  
William E. Coppersmith  
Chief, Branch 2  
Office of Associate Chief Counsel  
(Financial Institutions & Products)