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Department of the Treasury

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Person To Contact:

Telephone Number:

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February 01, 2008

LEGEND

Taxpayer =

Fund =

Years 1- 6=

\$A =

\$B =

\$C =

Dear:

This letter responds to your letter dated October 11, 2007, submitted on behalf of the Fund requesting the following rulings:

1. The settlement payments from the Fund to the mutual fund investors are not subject to information reporting under section 6041.
2. The settlement payments from the Fund to mutual fund investors are not subject to information reporting under section 6045.
3. The settlement payments from the Fund to mutual fund investors are not subject to information reporting under section 6049.
4. For purposes of meeting any obligation it may have under section 3406 as a payor of "reportable payments," the Fund does not need to solicit TINs from the individuals to whom it will make distributions.

Facts

Based on the facts and the representations made, the Fund is a qualified settlement fund ("QSF") as described in section 468B and the regulations thereunder. The Fund was created as part of the resolution of an investigation by the Attorney General of the State of New York ("AG") and the Securities and Exchange Commission ("Commission"). The investigation involved several market timing arrangements and a failure to prevent other market timing trading. These activities resulted in dilution to the net asset value of several mutual funds. The investigation found the improper conduct described above occurred from Years 1 through 6.

In order to resolve the investigation, Taxpayer and AG entered into an Assurance of Discontinuance Pursuant to Executive Law §63(15). The AG alleged violations of the Martin Act, Section 349 of the General Business Law of the State of New York, and Section 63(12) of the Executive Law of the State of New York. The requesting party represents that the recoveries provided for under the Martin Act are of the same character as the recoveries payable in settlements in response to Orders Instituting Proceedings, instituted by the Commission for similar actions against other mutual fund advisors and administrators. Based on the improper conduct described above and the resulting damage to those who invested in the mutual funds, settlement was reached in which Advisors agreed to pay \$A to settle the claims, \$B of which represents disgorgement and/or restitution. The remaining \$C represents a civil money penalty.

The distributions to injured investors will be made pursuant to the Proposed Distribution Plan (the "Plan"). All money in the Fund, including any interest thereon, will be distributed to shareholders pursuant to the Plan. Section 5 of the Plan describes the manner in which the distribution will be made. Specifically, the calculated dilution amount for the Fund will be allocated to individual days. Allocations to individual accounts will be based on the average account balances for the accounts participating in the distribution.

Law and Analysis

Ruling 1. Section 1.468B-2(l)(2)(i) of the Treasury Regulations provides that, generally, distributions by a QSF are subject to certain information reporting and withholding requirements. Treas. Reg. § 1.468B-2(l)(2)(ii) provides that a QSF must make a return for, or must withhold tax on, a distribution to a claimant if one or more transferors would have been required to make a return or withhold tax had that transferor made the distribution directly to the claimant. The regulations further provide that, for purposes of sections 6041(a) and 6041A, if a QSF makes a distribution on behalf of a transferor or a claimant, the fund is deemed to make the distribution to the recipient of that payment or distribution in the course of a trade or business. In such a situation, the QSF is also deemed to have made the distribution to the transferor or claimant. See Treas. Reg.

§1.468B-2(l)(2)(ii)(C)-(D).

Section 6041 requires all persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income of \$600 or more in any taxable year, to file an information return with the Service and to furnish an information statement to the payee. Treas. Reg. § 1.6041-1(c) provides that payments are fixed when they are paid in amounts definitely predetermined. Income is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained. Thus, payments that are not fixed or determinable are not subject to information reporting under 6041. Treas. Reg. §1.6041-1(a)(2) requires payments that are fixed or determinable to be reported on Form 1099.

There is no question the Fund is engaged in a trade or business, and, under Treas. Reg. §1.468B-2(l)(2)(ii)(C) is deemed to have made a distribution to the investors in the course of its trade or business. The Fund asserts, however, that it should not be required to file an information return under section 6041 because the payments are neither fixed nor determinable. If the payments to investors constitute taxable income rather than restoration of capital, the Fund would need investor information to determine the amount of income chargeable to each investor. The Fund lacks knowledge of this information. Further, the Fund has no authority to compel disclosure of such information. Specifically, the Fund would need information as to the investor's investment in the particular mutual funds. As a result, because the Fund lacks the information and the capacity to obtain the information, any income investors would realize from the Fund distributions is not "fixed or determinable" within the meaning of the regulations under section 6041. Accordingly, subject to the exception noted below pertaining to distributions to qualified retirement plan participants, the Fund has no information reporting obligations under section 6041.

To the extent the Fund makes distributions directly to participants in tax-qualified retirement plans, Section 72 of the Code controls the taxation of such distributions. The distributions must be reported on Form 1099-R pursuant to section 6041, subject to the \$600 reporting threshold set forth in section 6041(a) and Treas. Reg. § 1.6041-1(a)(1)(i)(B).

Ruling 2. Treas. Reg. § 1.468B-2(l)(2)(ii) provides that a QSF must make a return for a distribution to a claimant if one or more transferors would have been required to make a return had that transferor made the distribution directly to the claimant.

Section 6045(a) provides generally that every person doing business as a broker shall, when required by the Secretary, make a return in accordance with such regulations as the Secretary may prescribe. Section 6045(c) defines the term "broker" to include a dealer, a barter exchange, and any other person who (for a consideration) regularly acts

as a middleman with respect to property or services. The regulations further define the term “broker” to mean a person that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others. See Treas. Reg. § 1.6045-1(a)(1).

Treas. Reg. § 1.6045-1(c)(2) provides generally that a broker shall make an information return for each sale effected by the broker in the ordinary course of the broker's trade or business. Treas. Reg. § 1.6045-1(a)(9) defines a sale as any disposition of securities, commodities, regulated futures contracts, or forward contracts for cash, and as including redemptions of stock, retirements of indebtedness and entering into short sales.

The Fund's payments to investors do not result from a “sale” as that term is defined above. The Fund, therefore, has no information reporting obligations under section 6045 with respect to these payments.

Ruling 3. Section 6049(a) provides that every person who makes payments of interest aggregating \$10 or more to any other person during any calendar year, or receives payments of interest as a nominee and who makes payments aggregating \$10 or more during any calendar year to any other person with respect to the interest so received, shall make a return according to the forms or regulations prescribed by the Secretary.

Section 6049 (b)(1) provides that the term “interest” includes interest on any obligation issued in registered form or of a type offered to the public, other than any obligation with a maturity (at issue) of a year or less which is held by a corporation. Pursuant to section 6049(b)(1)(e), “interest” also includes interest on deposits with brokers (as defined in section 6045(c)).

The Fund distributions in the present case do not relate to deposits with brokers or obligations issued in registered form, and do not otherwise qualify as interest within the meaning of section 6049(b). This is so even though interest earnings have accrued on the funds to be paid to investors, from the time such funds were paid to the Fund. The Fund distributions to investors relate to violations of securities law and compensation for financial harm, not to obligations issued in registered form or other instruments that generate interest as section 6049 defines that term. Accordingly, the Fund has no information reporting obligations under section 6049 regarding its distributions to the investors.

Ruling 4. Section 3406(a)(1) generally provides that, in the case of any reportable payment, if (A) the payee fails to furnish his or her TIN to the payor in the manner required, (B) the Secretary notifies the payor that the TIN furnished by the payee is incorrect, (C) there has been a notified payee underreporting of interest and dividends, or (D) there has been a certification failure (collectively referred to as “payee failures”), then the payor shall deduct and withhold from such reportable payment a “backup

withholding" amount totaling 28% of such payment.

Section 3406(b)(1) provides that the term "reportable payment" means any reportable interest or dividend payment and any other reportable payment. Section 3406(b)(3) provides that the term "other reportable payment" includes any payment of a kind, and to a payee, required to be shown on a return under section 6041 or 6045.

In light of Rulings One through Three above, only direct payments by the Fund to participants in tax-qualified plans, if any, will be reportable payments subject to backup withholding under section 3406. In light of the authority it has been granted by the Commission, the Fund will be able to obtain the TINs of plan participants from the plan administrators, mutual funds or transfer agents. The Fund will not be required to solicit TINs from the participants for purposes of applying the backup withholding rules of section 3406.

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. Furthermore, this letter expresses no opinion about information reporting requirements for the Fund distributions that are not made directly to the injured investors. This letter also expresses no opinion about the income tax consequences to investors of the Fund distributions.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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 representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Brinton T. Warren
Senior Technician Reviewer
Office of Associate Chief Counsel Procedure and Administration (Branch 2).