

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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In Re:

Legend

Fund 1 =

Fund 2 =

Fund 3 =

Fund 4 =

Fund 5 =

Fund 6 =

Fund 7 =

Fund 8 =

Fund 9 =

Fund 10 =

Fund 11 =

Fund 12 =

Fund 13 =

Fund 14 =

Fund 15 =

Fund 16 =

Fund 17 =

Fund 18 =

a =

b =

c =

d =

e =

Indexes =

Sub Indexes =

Dear _____ :

This responds to the requests dated September 27, 2007, and October 15, 2007, and supplemental correspondence dated March 11, 2008, submitted by your authorized representative on behalf of Funds 1 through 18 (each a "Fund," and collectively, the "Funds"). Funds request that the Internal Revenue Service rule that income and gain arising from the commodities-linked notes described in this letter will constitute qualifying income to the Funds under section 851(b)(2) of the Internal Revenue Code of 1986, as amended (the "Code").

FACTS

Each of the Funds is an investment company or a series of an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended (the "1940 Act"). Funds 1 through 16 have each elected to be classified as a regulated investment company ("RIC") under section 851 of the Code. Funds 17 and 18 are taxed as partnerships.

Funds intend to invest in commodities-linked notes having the terms and conditions of the following two notes ("Notes"): The first note ("Note") will be issued to a Fund at par value of \$a. Its payout formula will be determined with reference to an Index. Its term will be fourteen months. A Fund, as holder of the Note, has the right to put the Note to the issuer at the calculated redemption price based on the closing value of the referenced Index as of the end of the next day after notification to the issuer. In addition, if the referenced Index falls to a level that is b% or less of the beginning Index value, the Note will "knockout" and automatically redeem based on the closing Index value of the next day.

The repayment obligation upon early redemption, automatic redemption, or at maturity is calculated under a formula that provides for repayment of the face amount of the Note increased or decreased by an amount equal to the face amount of the Note multiplied by a leverage factor of c multiplied by the percentage of the increase or decrease of the beginning value of the referenced Index compared to the ending value of the Index for the applicable period. To this amount is added an amount that reflects interest on the Note at the Coupon Rate of d. From this amount is subtracted an annual fee amount of e basis points of the notional value (leveraged face amount) of the Note. If the referenced Index is based on a total return computation, then the redemption price formula under the Note would also include an adjustment for the reversal of the interest rate factor included in the total return computation.

The second Note will be issued to a Fund at par value of \$a. Its payout formula will be determined with reference to a Sub-Index. Its term will be fourteen months. A Fund, as holder of the Note, has the right to put the Note to the issuer at the calculated redemption price based on the closing value of the referenced Sub-Index as of the end of the next day after notification to the issuer. In addition, if the referenced Sub-Index falls to a level that is b% or less of the beginning Sub-Index value, the Note will “knockout” and automatically redeem based on the closing Sub-Index value of the next day.

The repayment obligation upon early redemption, automatic redemption, or at maturity is calculated under a formula that provides for repayment of the face amount of the Note increased or decreased by an amount equal to the face amount of the Note multiplied by a leverage factor of c multiplied by the percentage of the increase or decrease of the beginning value of the referenced Sub-Index compared to the ending value of the Sub-Index for the applicable period. To this amount is added an amount that reflects interest on the Note at the Coupon Rate of d. From this amount is subtracted an annual fee amount of e basis points of the notional value (leveraged face amount) of the Note. If the referenced Sub-Index is based on a total return computation, then the redemption price formula under the Note would also include an adjustment for the reversal of the interest rate factor included in the total return computation.

Each Fund makes the following representations with respect to these two Notes:

- (1) The issuer of the Notes will receive payment in full of the purchase price of the Notes substantially contemporaneously with the delivery of the Notes;
- (2) A Fund while holding the Notes will not be required to make any payment to the issuer of the Notes in addition to the purchase price paid for the Notes, whether as margin, settlement payment, or otherwise, during the life of the Notes or at maturity;
- (3) The issuer of the Notes is not subject by the terms of the instrument to mark-to-market margining requirements of the Commodities Exchange Act, 7 U.S.C. 2, as amended (CEA); and
- (4) The Notes are not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to the CEA.

LAW AND ANALYSIS

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

from certain enumerated sources. Section 851(b)(2) defines qualifying income, in relevant part, as—

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 [the RIC's] 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.

Section 2(f)(1) of the CEA provides that the CEA is not applicable to a hybrid instrument that is predominantly a security. Section 2(f)(2) of the CEA provides that a hybrid instrument shall be considered to be predominantly a security if—

(A) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument, substantially contemporaneously with the delivery of the hybrid instrument;

(B) the purchaser or holder of the hybrid instrument is not required to make any payment to the issuer in addition to the purchase price paid under subparagraph (A), whether as margin, settlement payment, or otherwise, during the life of the hybrid instrument or at maturity;

(C) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

(D) the hybrid instrument is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to the CEA.

Section 2(f)(3) of the CEA provides, in part, that for purposes of section 2(f)(2)(C) of the CEA, mark-to market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.

CONCLUSION

Based on the facts as represented, we rule that income and gain arising from the Notes constitute qualifying income to the Funds under section 851(b)(2) of the Code.

Sincerely,

Susan Thompson Baker
Susan Thompson Baker
Assistant to the Branch Chief, Branch 2
Office of the Associate Chief Counsel
(Financial Institutions & Products)