



not possess an annual accounting period or have its own method of accounting. Each entity (except Trust) will apply for a taxpayer identification number upon formation.

<u>Entity Name</u>	<u>Entity Type</u>	<u>Formation</u>	<u>Entity Taxable As:</u>
US Feeder	Limited partnership	State	Partnership
Foreign Feeder	Limited partnership	Country	Corporation
Master Fund	Limited partnership	State	Partnership
GP	Limited liability company	State	Partnership
Trust	Statutory trust	State	Disregarded entity

The primary activity of US Feeder will be to raise money from US persons. US Feeder will use all the funds that it raises to pay its organizational expenses and purchase an interest in Master Fund. (US Feeder may impose an entity between it and Master Fund. If US Feeder chooses to do so, it will own all of the participating equity interests in this intermediate entity.) The primary activity of Foreign Feeder will be to raise money from foreign persons. Foreign Feeder will use all the funds it raises to pay its organizational expenses and purchase an interest in Master Fund. GP will serve, directly or indirectly, as the general partner of Master Fund.

Taxpayer, directly or through one or more intermediate entities, will acquire an interest in each of US Feeder and Foreign Feeder. (Taxpayer will serve as the ultimate general partner of US Feeder and Foreign Feeder.) As a result of Taxpayer's interest in each of US Feeder and Foreign Feeder, Taxpayer will share in profits and losses allocated to US Feeder and Foreign Feeder by Master Fund. Taxpayer represents that Foreign Feeder and Master Fund will not operate in a manner that will cause Foreign Feeder to be engaged in the conduct of a trade or business in the United States within the meaning of either section 871(b) or 882(a)(1) of the Internal Revenue Code (the "Code").

Taxpayer represents that interests in Master Fund will be transferable only pursuant to procedures described in section 5f.103-1(c)(1) of the Temporary Income Tax Regulations and therefore are in registered form within the meaning of this regulation. Specifically, interests in Master Fund will be transferable only by surrender of the old interest and either reissuance by Master Fund of the old interest or through issuance by Master Fund of a new instrument to the new holder. Alternatively, the right to receive distributions of principal and interest on the assets held by Master Fund will be transferable only through a book entry system maintained by Master Fund. If a book entry system is employed, such system will meet the requirements of section 5f.103-1(c)(2). Taxpayer further represents that Master Fund has no trustees, will be managed by GP, and has a profit-making activity as one of its purposes.

Master Fund will use the amounts received as capital contributions from US Feeder and Foreign Feeder to acquire beneficial interests in "scratch & dent" commercial mortgage loans (each, an "S&D Loan"). As applied to mortgage loans, the

term, “scratch & dent” refers to mortgage loans with incurable defects. Such loans, for example, may have higher loan-to-value ratios, lower debt service coverage ratios, or missed payments. S&D Loans often require modifications in order for the loans to continue payments or become re-performing. Taxpayer represents that S&D Loans secured by mortgages are not in registered form within the meaning of section 5f.103-1(c) of the Temporary Income Tax Regulations.

Master Fund will contribute its interest in the S&D Loan portfolios to Trust. Similar to interests in Master Fund, interests in Trust will be transferable only pursuant to procedures described in section 5f.103-1(c) of the Temporary Income Tax Regulations. Taxpayer anticipates that the independent servicers engaged by Trust to service the S&D Loans will be required to negotiate modifications to certain of the S&D Loans in order for the mortgagors to make regular payments on their respective loans. The modifications on these certain S&D Loans would constitute “significant modifications” within the meaning of section 1.1001-3(b) of the Income Tax Regulations. Taxpayer expects that significant modifications will be made to the mortgage loans after the initial 60-day period following Trust formation. Trust will have the right to acquire S&D Loans more than 60 days after its formation, as well as the ability to dispose of the S&D Loans at any time. The parties expect that the S&D Loans will be acquired by the Trust after such 60-day period, either by purchase or by contribution. Thus, Taxpayer represents that Trust has the power to vary its investments.

Taxpayer’s business reasons for the transaction include providing investors in US Feeder and Foreign Feeder with a return on their investment that is above-market on a risk-adjusted basis. The business reasons also include enabling the Taxpayer to earn income from the overall performance of the S&D Loans.

#### LAW

Section 163(f)(1) of the Code disallows a deduction for interest on any registration-required obligation unless such obligation is in registered form. Section 163(f)(2) defines the term, “registration-required obligation” as an obligation (including any obligation issued by a governmental entity) other than an obligation which (i) is issued by a natural person, (ii) is not of a type offered to the public, or (iii) has a maturity (at issue) of not more than one year.

Section 1.163-5T(d)(1) of the Temporary Income Tax Regulations provides that a pass-through or participation certificate evidencing an interest in a pool of mortgage loans which under Subpart E of Subchapter J of the Code is treated as a trust of which the grantor is the owner (or similar evidence of interest in a similar pooled fund or pooled trust treated as a grantor trust) (“pass-through certificate”) is considered to be a “registration-required obligation” under section 163(f)(2)(A) and section 1.163-5(c) if the pass-through certificate is described in section 163(f)(2)(A) and section 1.163-5(c)

without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in section 163(f)(2)(A) and section 1.163-5(c).

Section 1.871-14(a) of the Income Tax Regulations provides that no tax shall be imposed under section 871(a)(1)(A), 871(a)(1)(C), 881(a)(1) or 881(a)(3) of the Code on any portfolio interest as defined in sections 871(h)(2) and 881(c)(2) received by a foreign person. Under sections 871(h)(2) and 881(c)(2), interest must be paid on an obligation that is in registered form to qualify as portfolio interest. The term “registered form” has the same meaning given such term by section 163(f). Sections 871(h)(7) and 881(c)(7). Section 1.871-14(c)(1)(i) provides that the conditions for an obligation to be considered in registered form are identical to the conditions described in section 5f.103-1 of the Temporary Income Tax Regulations.

Section 1.871-14(d)(1) of the Income Tax Regulations provides that interest received on a pass-through certificate qualifies as portfolio interest if the interest satisfies the conditions in section 1.871-14(c)(1) without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in section 1.871-14(c)(1)(ii). This paragraph only applies to payments made to the holder of the pass-through certificate from the trustee of the pass-through trust and does not apply to payments made to the trustee of the pass-through trust.

Section 5f.103-1(c)(1) of the Temporary Income Tax Regulations provides generally that an obligation is in registered form if (i) the obligation is registered as to both principal and any stated interest with the issuer (or its agent) and transfer of the obligation may be effected only by surrender of the old instrument and either the reissuance by the issuer of the old instrument to the new holder or the issuance by the issuer of a new instrument to the new holder, (ii) the right to the principal of, and stated interest on, the obligation may be transferred only through a book entry system maintained by the issuer (or its agent) as described in section 5f.103-1(c)(2), or (iii) the obligation is registered as to both principal and stated interest with the issuer (or its agent) and may be transferred through most of the methods described in (i) and (ii) above.

Section 5f.103-1(c)(2) of the Temporary Income Tax Regulations provides that an obligation will be considered transferable through a book entry system if the ownership of an interest in the obligation is required to be reflected in a book entry, whether or not physical securities are issued. A book entry is record of ownership that identifies the owner of an interest in the obligation.

Section 301.7701-4(c)(1) of the Procedure and Administration Regulations provides that, an investment trust with a single class of undivided beneficial interest in the trust assets is classified as a trust if there is no power under the trust agreement to vary the investment of the certificate holders.

### ANALYSIS

The purpose of the registration requirement for certain obligations is to prevent the underreporting of tax on gains on sales on both taxable and tax-exempt securities and to ensure that securities will be sold (or resold in connection with the original issue) only to persons who are not United States persons. See section 1.163-5(c)(1)(i) of the Income Tax Regulations.

Taxpayer has represented that such S&D Loans are not in registered form. Section 1.163-5T(d)(1) provides that an interest (a “pass-through certificate”) in a trust that is treated as a grantor trust is considered to be an obligation in registered form if the pass-through certificate is in registered form “without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates” is in registered form. Neither Trust nor Master Fund is treated as a grantor trust under section 301.7701-4(c)(1) of the Procedure and Administration Regulations. Section 1.163-5T(d)(1) of the Temporary Income Tax Regulations does not specify what type of arrangements may qualify as similar pooled funds.

In this case, the interests in Trust and Master Fund each will be transferable only pursuant to the procedures described in section 5f.103-1(c)(1). Interests in Trust and Master Fund each will be transferred in accordance with section 5f.103-1(c)(1)(i). Alternatively, Trust and Master Fund will maintain a book entry system (as described in section 5f.103-1(c)(2)), and the right to receive distributions of principal and interest on the S&D Loans will be transferable only by such book entry system.

### CONCLUSION

We conclude, based on the facts of this case, that the interests in Trust and Master Fund each are similar evidences of interest in a similar pooled fund within the meaning of section 1.163-5T(d)(1), and that if the requirements of section 5f.103-1(c)(1) are satisfied, the interests in Trust and Master Fund will be considered obligations in registered form.

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 or implied regarding whether any payment of interest on the interests in Trust and Master Fund will qualify as portfolio interest for purposes of sections 871 and 881 of the Code. Furthermore, no opinion is expressed or implied as to whether Master Fund is engaged in a trade or business within the United States or whether the interest in Master Fund is effectively connected with that trade or business.

This ruling is directed only to the taxpayer requesting 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 representative.

Sincerely,

Susan Thompson Baker  
Susan Thompson Baker  
Senior Technician Reviewer, Branch 2  
Office of Associate Chief Counsel  
(Financial Institutions & Products)