

Internal Revenue Service

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Department of the Treasury

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Date:

August 05, 2015

Legend

Taxpayer =

Trust =

Advisor =

Company X =

Company Y =

Company Z =

Firm A =

Firm B =

State A =

Person A =

Person B =

Exchange =

Year 1 =

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 =

Date 14 =

Date 15 =

Date 16 =

Date 17 =

Date 18 =

Month 1 =

Month 2 =

a =

b =

c =

Dear :

This is in response to your letter dated January 30, 2015, and subsequent correspondence, seeking an extension of time to make the following elections (collectively the "Elections"): (1) an election under section 851(b)(1) of the Internal Revenue Code to be a regulated investment company ("RIC"); (2) an election under section 855(a) to treat as paid within Year 1 ordinary income dividends and capital gain dividends declared prior to Date 1 and paid prior to Date 2 and not later than the first regular dividend paid following such declaration; (3) an election under section 852(b)(8)(A) and section 1.852-11(f) of the Income Tax Regulations to treat any portion of any qualified late-year loss for such taxable year as arising on the first day of the following taxable year for federal tax purposes; and (4) a mark to market election under section 1296(a) with respect to marketable stock in Company X and Company Y, which are both passive foreign investment companies ("PFICs").

FACTS

Trust was organized as a State A statutory trust on Date 3. Trust is registered under the Investment Company Act of 1940, as amended ("1940 Act"), as an open-ended management investment company issuing its shares in series, with each series representing a distinct portfolio with its own investment objectives and policies.

Taxpayer is a series of Trust that is classified as non-diversified under the 1940 Act and is traded on Exchange. Taxpayer is an investment vehicle with the objective of providing investors with a positive return regardless of the direction and fluctuations of the U.S. equity markets generally. As such, Taxpayer represents that it is a "fund" as defined in section 851(g)(2) and generally is treated as a separate corporation for federal income tax purposes pursuant to section 851(g)(1).

Taxpayer commenced operations on Date 4 under the name a, and on Date 5, Taxpayer's name was changed to the current name. During Year 1, in addition to its other investments, Taxpayer owned stock in Company X and Company Y, both PFICs.

Trust is governed by a Board of Trustees ("Board of Trustees") that is responsible for overseeing all business activities of Trust. Subject to the overall authority of the Board of Trustees, Advisor furnishes investment advice, supervision, and management, as well as office space, equipment, and management personnel to Taxpayer. Advisor is registered with the Securities and Exchange Commission as an investment advisor.

From Taxpayer's inception, Advisor has engaged Company Z to provide Taxpayer with accounting services, inclusive of federal tax compliance services such as the preparation of the federal income tax returns and all extension requests related to those returns. Company Z performed these services for Taxpayer's Year 1 in a correct and timely manner.

On Date 6, Taxpayer declared a long term capital gain dividend in the amount of b ("First Dividend"). Taxpayer paid the First Dividend on Date 7, which was a date prior to the date taxpayer paid any other regular dividend following such declaration. Thereafter, on Date 8, Taxpayer declared and paid a long term capital gain dividend in the amount of c ("Second Dividend"). Date 8 was also a date prior to the date Taxpayer paid any other regular dividend following such declaration.

On Date 9, the Board of Trustees and Advisor engaged Firm A, a firm of accounting and tax professionals, to review Taxpayer's Form 1120-RIC, U.S. Income Tax Return for Regulated Investment Companies ("Form 1120-RIC"), for Year 1 ("Year 1 Return"). For taxable years prior to Year 1, the Board of Trustees and Advisor had engaged Firm B, another firm of tax and accounting professionals, to review the federal income tax returns of the only other fund within Trust at the time.

On or about Date 10, Taxpayer timely filed a Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns ("Form 7004"), with respect to its Form 1120-RIC for Year 1 pursuant to which the due date for the Year 1 Return was extended to Date 1.

Between Date 11 and Date 12, Company Z provided Firm A work papers and supporting documentation used or anticipated to be used in the preparation of Taxpayer's Year 1 Return. During this period, Company Z, Advisor, and Firm A worked together to prepare the final draft of the Year 1 Return. On Date 13, following Firm A's review of the final draft of the Year 1 Return, a senior manager of Firm A signed the Year 1 Return. The Year 1 Return included each of the Elections and was prepared in accordance with each such Election having been timely made.

Historically, when Firm B had completed its review of a tax return for the other fund within Trust, an employee of Firm B would sign the return and forward it to Person A, a director of Advisor, for signature by an authorized representative and filing with the Service.

However, Person A left Advisor's employ shortly before Firm A completed its review of the Year 1 Return. Consequently, Firm A forwarded the Year 1 Return to Advisor in a package addressed to Person B, Taxpayer's Secretary and Treasurer and Advisor's CFO, for signature by an authorized representative and filing with the Service. The Year 1 Return was delivered to Person B on Date 14.

Person B, being unaware of the process used by Person A and Firm B for the preparation, review, signature, and filing of tax returns, believed the Year 1 Return had already been filed and that the package contained Advisor's administrative file copies. Consequently, Person B did not immediately open the package.

Person B opened the package containing the Year 1 Return and filed the Year 1 Return on or about Date 15, approximately two and a half weeks after the extended due date for the Year 1 Return.

Upon realizing that the Year 1 Return had not been filed timely, Person B contacted Firm A to determine if there would be any ramifications to Taxpayer or its investors due to the late filing of the Year 1 Return. On Date 16, Firm A informed Person B of the potential consequences to Taxpayer and its investors due to the late filing of the Year 1 Return and specifically the Elections included therein. At that time, Firm A also informed Person B of the possibility of seeking section 9100 relief for the late Elections. On Date 17, the Board of Trustees and Advisor approved Firm A's preparation, on Taxpayer's behalf, of this request for relief under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

The following representations are made in connection with the request for an extension of time:

1. Taxpayer qualified as a RIC under section 851 at all times during Year 1.
2. On Date 6 and Date 8, Taxpayer declared the First Dividend and the Second Dividend, respectively, which were dates prior to the 15th day of the 9th month following the close of Year 1 and the extended due date of Taxpayer's return for Year 1.
3. Taxpayer paid the First Dividend and the Second Dividend on Date 7 and Date 8, respectively, which were dates that were prior to both: (1) Date 2, and (2) the date Taxpayer paid any other regular dividend following the declaration of the First Dividend and the Second Dividend.
4. Any outstanding stock of Taxpayer and any stock of Taxpayer that is currently being offered for sale is redeemable at its net asset value.
5. As of the date of the submission of this ruling request, the Service has not discovered Taxpayer's failure to timely make the Elections for Year 1.
6. Taxpayer is not attempting to alter a return position taken for which a penalty has been or could be imposed under section 6662 at the time Taxpayer is requesting relief and for which the new position requires or permits a Regulatory Election for which relief is requested.

7. This is not a situation in which Taxpayer was informed of all material aspects of the Elections and related tax consequences, but chose not to file the Elections.
8. Taxpayer is not using hindsight in requesting relief. No facts have changed since the due date of the Elections that would make the Elections more advantageous.
9. The interests of the government are not prejudiced, within the meaning of section 301.9100-3(c), because granting relief will not result in Taxpayer having a lower tax liability in the aggregate for all years to which the Elections apply than Taxpayer would have had if the Elections had been timely made. In fact, Taxpayer included all such Elections in the Year 1 Return that it filed in Month 1.
10. The period of limitations on assessment under section 6501(a) for Taxpayer for Year 1 or for any other taxable year that would have been affected by the Elections if they had been timely filed will not expire before Month 2 and, therefore, is not closed.

In addition, affidavits on behalf of Taxpayer and Firm A have been provided as required by section 301.9100-3(e).

LAW AND ANALYSIS

Section 851(b)(1) provides that a corporation shall not be considered a RIC for any taxable year unless it files with its return for the taxable year an election to be a RIC or has made such 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. No other method of making such election is permitted.

Section 852(b)(8)(A) provides that a RIC may elect for any taxable year to treat any portion of any qualified late-year loss for such taxable year as arising on the first day of the following taxable year. Section 1.852-11(f) provides that a RIC may elect to compute its taxable income for a taxable year without regard to part or all of any post-October capital loss or post-October currency loss for that year. Section 1.852-11(i) provides that a RIC may make an election under section 1.852-11(f)(1) for a taxable year to which the section applies by completing its income tax return (including any necessary schedules) for that taxable year in accordance with the instructions for the form that are applicable to the election.

Section 855(a) provides that, if a RIC 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 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 RIC 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) provides that a section 855(a) election must be made in the return filed by the RIC for the taxable year. The election shall be made by the taxpayer by treating the dividend (or portion thereof) to which such election applies as a dividend paid during the taxable year in computing its investment company taxable income, or if the dividend (or portion thereof) to which such election applies is to be designated by the company as a capital gain dividend, in computing the amount of capital gain dividends paid during such taxable year.

Section 1296(a) provides that, in the case of marketable stock in a PFIC that is owned (or treated as owned under section 1296(g)) by a United States person at the close of any taxable year, the United States person may elect to include in gross income the excess of the fair market value of the stock as of the close of the taxable year over its adjusted basis and to deduct the lesser of (a) the excess of the adjusted basis of the stock over its fair market value as of the close of the taxable year or (b) the unreversed inclusions (as defined in section 1296(d)). Section 1.1296-1(h) provides that an election under section 1296 for a taxable year must be made on or before the due date (including extensions) of the person's U.S. income tax return for that year. Section 1.1296-1(h)(1)(iii) provides that a late mark to market election under section 1296 may be permitted only in accordance with section 301.9100.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, 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 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by regulations or by a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the Service generally will use to determine whether, under the particular 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(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in section 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief under this section before the failure to make the regulatory election is discovered by the Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election. Moreover, a taxpayer will be deemed not to have acted in good faith if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c) provides that a reasonable extension of time to make a regulatory election will be granted only when the interests of the government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(i) 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 taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Section 301.9100-3(c)(ii) provides that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

CONCLUSION

Based upon the facts and representations submitted, we conclude that Taxpayer has satisfied the requirements for granting a reasonable extension of time to make the following elections: (1) an election under section 851(b)(1) to be a RIC; (2) an election under section 855(a) to treat as paid within Year 1 ordinary income dividends and capital gain dividends declared prior to Date 1 and paid prior to Date 2 and not later than the first regular dividend paid following such declaration; (3) an election under section 852(b)(8)(A) and section 1.852-11(f) to treat any portion of any qualified late-year loss for such taxable years as arising on the first day of the following taxable year for federal tax purposes; and (4) a mark to market election under section 1296(a) with respect to marketable stock in a PFIC. Since Taxpayer filed its Form 1120-RIC on or about Date 15, Taxpayer's Elections, as described in this letter, will be treated as having

been timely made, despite having been made after the due date prescribed for making the Elections.

This ruling is limited to Taxpayer's timeliness of filing the Elections described herein. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above. Specifically, no opinion is expressed regarding any material item or representation on Taxpayer's Form 1120-RIC. Additionally, no opinion is expressed with regard to whether Taxpayer otherwise qualifies as a RIC under subchapter M of the Code or whether the stock of Company X or Company Y is marketable stock under section 1296(e). Furthermore, no opinion is expressed with regard to Trust.

No opinion is expressed with regard to whether the tax liability of Taxpayer 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.

This ruling is directed only to the taxpayer 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 Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Andrea M. Hoffenson
Andrea M. Hoffenson
Branch Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)