

**Internal Revenue Service**

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LEGEND

Fund 1 =

Fund 2 =

Fund 3 =

Fund 4 =

Trust 1 =

Trust 2 =

Advisor =

Accounting Firm =

Custodian =

State A =

Taxable Year =

Extended Due Date =

Date =

Date 1 =

Dear :

This responds to a letter dated September 25, 2015, submitted on behalf of Fund 1, Fund 2, Fund 3, and Fund 4 (each, a “Fund,” and, together, the “Funds”). The Funds request a reasonable extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to (1) make elections (a) under section 855(a) of the Internal Revenue Code (“Code”) (all Funds); (b) under section 1276(b)(2) (all Funds); and (c) under section 852(b)(8)(A) (Fund 4); and (2) to verify an election made under section 988(a)(1)(B) (Fund 2), for each Fund’s Taxable Year.

## FACTS

Each of Fund 1, Fund 2 and Fund 3 is a series of Trust 1. Fund 4 is a series of Trust 2. Each of Trust 1 and Trust 2 is a State A statutory trust (each, a “Trust”). Each Trust is registered as an open-end, diversified management investment company under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended.

The Funds represent that each Fund: (1) is classified as an association that is taxable as a corporation for federal tax purposes; (2) is a “fund” (as defined in section 851(g)(2)) of the relevant Trust; (3) elected in a taxable year prior to Taxable Year to be a “regulated investment company,” as defined in section 851(a) (“RIC”) by filing its federal income tax return on Form 1120-RIC; and (4) satisfied the requirements of sections 851(b)(2) and 851(b)(3) for Taxable Year.

The Funds further represent that, at all relevant times, each Fund has operated in a manner intended to enable it to qualify as a RIC, consistent with its prospectus, statement of additional information, and financial statements. Each Fund uses a fiscal year that ends on Date each year, including Taxable Year, and employs an accrual method of accounting for federal income tax purposes.

Each Trust has a board of trustees and officers but no employees. The Funds have engaged Advisor to provide them with the facilities and services necessary to administer them. In addition to its furnishing investment management services, Advisor also performs certain accounting functions for Funds for which Advisor directly employs experienced mutual fund accounting professionals. Advisor works with Accounting Firm, which is responsible for preparing and reviewing the Funds' tax returns and extension requests, including any federal income tax elections. Advisor is responsible for reviewing those documents and for arranging for the execution and filing thereof.

Custodian is the custodian for the assets of each Fund. As custodian, Custodian creates and maintains all records relating to each Fund's activities and supplies Advisor with a daily tabulation of the securities each Fund owns and that are held by Custodian. In addition, Custodian is responsible for coordinating with Advisor to ensure that the tax returns for Funds, which are prepared and reviewed by Accounting Firm, are filed in a timely manner. That is accomplished in two steps. First, Accounting Firm delivers the tax returns to Advisor in batches, which a designated person employed by Advisor ("Advisor Designee") compiles and collates, which information is then reviewed by Advisor for accuracy and completeness. Second, Advisor Designee coordinates with a designated person at Custodian ("Custodian Designee"), who sends a checklist of the tax returns that must be filed on each particular due date ("Return Checklist"), to ensure that the tax returns are mailed to the Service by their due date. The administrative coordination of those persons generally has resulted in the timely filing of the Funds' tax returns.

Each Fund filed a timely Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns, for Taxable Year extending the due date for filing its tax return for Taxable Year to Extended Due Date. In accordance with the established practice described above, Advisor Designee and Custodian Designee would have coordinated to ensure each tax return was mailed to the Service by Extended Due Date.

However, months before Extended Due Date, Advisor Designee ceased employment with Advisor. In addition, within the same time frame, Custodian Designee's employment with Custodian ended, and the Return Checklist for tax returns was not prepared and delivered. As a result of the departure of two individuals who were responsible for ensuring that the administrative task of duly and timely filing tax returns with the Service was complete, and who served as each other's backup and control, tax returns were not filed with the Service by Extended Due Date, a fact of which Advisor was not aware at that time. This inadvertent omission was an administrative human error and was discovered by Advisor within days after Extended Due Date, when a review of Advisor Designee's desk contents revealed the unfiled returns, whereupon Advisor immediately mailed the returns to the Service. Prior to this incident, Advisor had never failed to timely file a federal tax return for any of the Funds.

The failure to timely file the Funds' tax returns for Taxable Year resulted in Funds' not timely making certain elections made on such returns. Each Fund's return contained an election under section 855(a) to treat certain distributions paid after Taxable Year as paid during Taxable Year. Each Fund's return also contained an election under section 1276(b)(2) to accrue market discount on the basis of a constant interest rate. Fund 4's return contained an election under section 852(b)(8)(A) to defer its "qualified late-year loss" (as defined in section 852(b)(8)(B)), consisting of its current "late-year ordinary loss" (as defined in section 852(b)(8)(D)). Fund 2's return contained a verification of an election made under section 988(a)(1)(B) ("988 Verification").

Each Fund represents that its Spillover Dividends were duly declared before Extended Due Date for the Fund's tax return for Taxable Year and distributed within twelve months after the end of Taxable Year and not later than the date of the first regular dividend payment made after such declaration.

As required by section 301.9100-3(e)(2) of the Procedure and Administration Regulations, a detailed affidavit from Trusts' Treasurer, who, in that capacity, is the individual who acts on the Funds' behalf with respect to federal tax matters, and who has personal knowledge of the facts and circumstances at issue in this ruling letter, accompanied by the perjury declaration required by that section, was submitted together with the ruling request submitted on behalf of the Funds.

Each Fund makes the following additional representations:

- (1) At no time was either Trust, any Fund, or Advisor contacted by the Service respecting the failure to file a timely tax return;
- (2) This request for relief was filed before the failure to make the elections was discovered by the Service;
- (3) The statutory and regulatory requirements associated with the elections were duly complied with, except as they relate to the filing of a timely filed Return, where applicable;
- (4) Granting the requested relief will not result in the Funds having a lower tax liability in the aggregate for the Taxable Year than the Funds would have had if the elections had been timely made;
- (5) The 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 at the time they requested relief and the new position requires or permits a regulatory election for which relief is requested;

(6) Being fully informed of the required regulatory election and related tax consequences, the Funds did not choose to not file them; and

(7) The Fund has not used hindsight in making its decision to seek the relief requested.

## LAW AND ANALYSIS

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 855(a) provides, in relevant part, that if a RIC declares a dividend by the 15th day of the 9th month following the close of the taxable year 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 dividend payment of the same type of dividend made after such declaration, then 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 year.

Section 1.855-1(b)(1) provides, in relevant part, that a section 855(a) election must be made in the return filed by the RIC for the taxable year and is made by the RIC treating the dividend (or portion thereof) to which the 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 the election applies is a capital gain dividend, in computing the amount of capital gain dividends paid during such taxable year.

Section 988(a)(1)(B) provides that a taxpayer may elect to treat any foreign currency gain or loss attributable to a forward contract, futures contract, or option described in section 988(c)(1)(B)(iii) that is a capital asset in its hands and is not part of a straddle as capital gain or loss if the taxpayer makes the election and identifies the transaction before the close of the day on which the transaction is entered into. Section 1.988-3(b)(3) provides requirements for making the election. Section 1.988-3(b)(4) (“Verification”) provides, in part, that a “taxpayer that has made an election under §1.988-3(b)(3)” must attach to his income tax return a statement setting forth certain specified information.

Section 1276(b)(2) provides that gain on the disposition of any market discount bond is treated as ordinary income to the extent of accrued market discount on the bond. Section 1278(a)(1) defines a market discount bond as any bond having market discount with certain exceptions. Market discount is generally defined by section 1278(a)(2) as the excess of the stated redemption price of a bond at maturity over the basis of the bond immediately after its acquisition. Section 1276(b)(1) states that,

except as otherwise provided, market discount should be calculated by the taxpayer using the ratable accrual method. Section 1276(b) allows an election by a taxpayer to calculate the accrued market discount using the constant interest rate method. This irrevocable election must be made on a bond-by-bond basis, and must be made in an income tax return that is filed by the taxpayer with the Internal Revenue Service no later than the due date (including extensions) for the income tax return for which the taxpayer is required to determine accrued market discount. See Rev. Proc. 92-67, 1992-2 C.B. 429, Section 2.12.

Section 301.9100-1(c) of the Procedure and Administration Regulations 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, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(c)(2) provides special rules for accounting method regulatory elections. Under these rules, the interests of the Government are deemed to be prejudiced except in unusual and compelling circumstances if the accounting method regulatory election for which relief is requested (i) is subject to the procedure described in § 1.446-1(e)(3)(i) (requiring the advance written consent of the Commissioner); (ii) requires an adjustment under section 481(a) (or would require an adjustment under section 481(a) if the taxpayer changed to the method of accounting for which relief is requested in a taxable year subsequent to the taxable year the election should have been made); (iii) would permit a change from an impermissible method of accounting that is an issue under consideration by examination, an appeals office, or a federal court and the change would provide a more favorable method or more favorable terms and conditions than if the change were made as part of an examination; or (iv) provides a more favorable method of accounting or more favorable terms and conditions if the election is made by a certain date or taxable year.

Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the 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(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 on the information submitted and representations made, we conclude that section 301.9100-3(c)(2) does not apply and that each of the Funds has satisfied the requirements for granting a reasonable extension of time to (1) make elections (a) under section 855(a) (all Funds); (b) under section 1276(b)(2) (all Funds); and (c) under section 852(b)(8)(A) (Fund 4); and (2) to verify an election made under section 988(a)(1)(B) (Fund 2). Since each Fund filed its Form 1120-RIC on Date 1, each Fund'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 each Fund'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 transactions described above. Specifically, no opinion is expressed regarding any material item or representation on each Fund's Form 1120-RIC. Additionally, no opinion is expressed

with regard to whether each Fund otherwise qualifies as a RIC under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of each Fund is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the elections 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 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.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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,

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Steven Harrison  
Branch Chief, Branch 1  
Office of Associate Chief Counsel  
(Financial Institutions & Products)

Enclosures (2):

Copy of this letter  
Copy for section 6110 purposes