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Dear _____ :

This responds to a letter dated January 24, 2017, submitted on behalf of Funds (collectively, "Taxpayers"). Taxpayers request an extension of time under § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 853 of the Internal Revenue Code for Years 1, 2, and 3.

Facts

Corporation is a State corporation registered as an open-end investment company under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended. Each Taxpayer is a series fund of Corporation and a regulated investment company ("RIC") as defined in § 851(a). Each Taxpayer is either wholly or substantially owned by Life Insurance Company. Each Taxpayer uses the calendar year as its taxable year and an accrual method as its overall method of accounting.

Taxpayers own shares in other RICs within a fund of funds structure. During the taxable years for which relief is sought, certain of the RICs in which Taxpayers invest qualified under § 853 to elect the benefits of that section to pass through the benefit of foreign tax credits to Taxpayers, their shareholders. Taxpayers intended to also make the election under § 853 to have their shareholders treated as if they had paid their proportionate share of these foreign taxes.

Preparer is a bank and financial services provider that prepared Taxpayers' income tax returns in Years 1, 2, 3 and 4. Advisor, an accounting firm that provided tax consulting and compliance services to Taxpayers, reviewed these tax returns and signed them as a paid preparer.

Corporation's tax staff informed Preparer in Month 1 of Year 1 of Taxpayers' intention to make the foreign tax credit pass-through election under § 853. In Month 2 of Year 2, Corporation asked Preparer to perform the foreign tax credit pass-through calculations necessary for such an election and to inform Taxpayers' shareholders. Preparer completed the foreign tax credit calculations and informed Taxpayers' shareholders. Preparer was unsure, however, whether a final decision had been made regarding the § 853 election and failed to mark the appropriate checkbox for the election or attach the Form 1118 for the Year 1 tax return. In preparing the returns for Years 2 and 3, Preparer again made the foreign tax credit calculations and provided them to shareholders. Preparer subsequently incorrectly prepared the tax returns for Years 2 and 3 in the same fashion as the Year 1 return.

On Date 1, a staff person under the direction of Tax Manager, the mutual funds tax manager for Corporation, asked Advisor whether Taxpayers needed to check the

Schedule K, line 10a, foreign tax credit election box on the Year 4 Form 1120-RIC. On Date 2, Advisor determined that box 10b, not 10a, of Schedule K should be checked for a § 853 election and that Form 1118 should also be prepared and attached to Form 1120-RIC. On Date 2, Advisor informed Tax Manager of these requirements. On Date 3, Tax Manager relayed this information to Preparer and directed Preparer to revise the Year 4 return before it was due.

Advisor recommended that Taxpayers seek relief under § 301.9100-1 and § 301.9100-3 to make late elections under § 853 for Years 1, 2 and 3, which led to the filing of the present request. As of the date of filing of the present request, Years 2 and 3 were not closed by the period of limitations on assessment under § 6501(a). Taxpayers filed a Form 872 to extend the period of limitations on assessments for Year 1 prior to its expiration for that year.

In support of their letter ruling request, Taxpayers submitted affidavits from Preparer, Advisor, and Corporation as required by § 301.9100-3(e).

Taxpayers make the following additional representations:

1. The request for relief was filed by Taxpayers before the failure to make the regulatory elections was discovered by the Service.
2. Taxpayers do not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 at the time Taxpayers requested relief and the new position requires or permits a regulatory election for which relief is requested.
3. Being fully informed of the required regulatory elections and related tax consequences, Taxpayers did not choose to not file the elections.
4. Granting the relief will not result in Taxpayers or their shareholders having a lower tax liability in the aggregate for all years to which the regulatory elections apply than Taxpayers or their shareholders would have had if the elections had been timely made (taking into account the time value of money).
5. Taxpayers are not using hindsight in requesting relief because no specific facts have changed since the due date for making the elections that would make the elections more advantageous to Taxpayers.

Law and Analysis

Section 853(a) provides that a RIC, more than 50 percent of the value of whose total assets at the close of the taxable year consist of stock or securities in foreign corporations, and which meets the requirements of section 852(a) for the taxable year, may elect the application of § 853 for the taxable year with respect to certain taxes paid by the RIC during the taxable year to foreign countries and possessions of the United States.

Section 853(b)(1) provides that the effect of the election is to deny an electing RIC any deduction under § 164(a) or any credit under section 901 for these taxes. The electing RIC is allowed an addition to its dividends paid deduction for the taxable year for the amount of these taxes.

Section 853(b)(2) further describes the effect of the election by providing that each shareholder of the RIC shall include in gross income and treat as paid by him his proportionate share of these taxes. Each shareholder shall treat as gross income from sources within the respective foreign countries and possessions of the United States the sum of his proportionate share of these taxes and the portion of any dividend paid by the RIC which represents income derived from sources within foreign countries and possessions of the United States.

Section 853(c) provides that the amount to be treated by the shareholder as his proportionate share of taxes paid to any foreign country or possession of the United States, and gross income derived from sources within any foreign country or possession of the United States, shall not exceed the amounts so reported by the RIC in a written statement furnished to the shareholder.

Section 852(g) provides a special rule for a fund of funds in this context. A qualified fund of funds, defined under § 852(g)(2) as a RIC, at least 50 percent of whose assets at the close of each quarter of the taxable year is represented by interests in other RICs, may elect the application of § 853 without regard to the requirement that more than 50 percent of the value of its total assets at the close of the taxable year consist of stock or securities in foreign corporations.

Section 1.853-4(a) and (b) of the Income Tax Regulations provide that an election under § 853 must be made not later than the time prescribed for filing the return (including extensions thereof), and is irrevocable with respect to the dividend (or portion thereof), and the foreign taxes paid with respect thereto, to which the election applies. Section 1.853-4(c) of these regulations requires that certain information pertinent to the election, including the date, form and contents of its notice to its shareholders, shall accompany the RIC's timely filed federal income tax return for the taxable year on or with a modified Form 1118, *Foreign Tax Credit-Corporations*.

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 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(a) through (c)(1) 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 for automatic extensions under § 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)(1) 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)(1)(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). Similarly, if the tax consequences of more than one

taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made. Section 301.9100-3(c)(1)(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 § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section. The IRS may condition a grant of relief on the taxpayer providing a statement from an independent auditor (other than an auditor providing an affidavit pursuant to paragraph (e)(3) of § 301.9100-3) certifying that the interests of the Government are not prejudiced under the standards set forth in paragraph (c)(1)(i) of § 301.9100-3.

Conclusions

Based on the information submitted and representations made, we conclude that Taxpayers have satisfied the requirements for granting a reasonable extension of time to make an election under § 853 for years 1, 2 and 3. Accordingly, each Taxpayer has 90 days from the date of this letter to make its intended election.

This ruling is limited to the timeliness of the filing of the election under § 853. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. 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. No opinion is expressed with regard to whether Funds otherwise qualify as RICs under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of each Taxpayer or its shareholders 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.

The ruling contained in this letter is based upon information and representations submitted by Taxpayers and accompanied by a penalty of perjury statements executed by appropriate parties. 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.

This ruling is directed only to the taxpayers 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 representatives.

Sincerely,

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