

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

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Refer Reply To:  
CC:FIP:1/PLR-121637-03  
Date:  
July 31, 2003

**LEGEND**

- Trust =
- Portfolio A =
- Portfolio B =
- Portfolio C =
- Portfolio D =
- Portfolio E =
- Portfolio F =
- Portfolio G =
- Portfolio H =
- Portfolio I =
- Portfolio J =
- Portfolio K =
- Portfolio L =
- Portfolio M =
- Portfolio N =

Portfolio O =

Portfolio P =

Portfolio Q =

Sub Administrator =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Dear :

This is in reply to your letter dated January 23, 2003, requesting a ruling on behalf of Portfolios A through Q (Portfolios) as their authorized representative. Specifically, you have requested a ruling that each of the Portfolios be granted an extension of time under section 301.9100 of the Procedure and Administration Regulations to make an election under section 855(a) of the Internal Revenue Code for its tax year ended Date 2.

### FACTS

Trust is registered under the Investment Company Act of 1940, 15 U.S.C. section 80a-1, et seq., as amended, as an open-end management investment company. Trust consists of multiple active, but separate, portfolios. Portfolios A through Q are some of the portfolios of Trust. Pursuant to section 851(g), each Portfolio is treated as a separate corporation for federal income tax purposes and each seeks to qualify annually as a regulated investment company (RIC) pursuant to Subchapter M of the Code.

Each Portfolio has a Date 1 year end, and follows the accrual basis of accounting for maintaining its books and filing its federal income tax return. Each Portfolio qualified and has elected to be treated as a RIC in accordance with sections 851-855 for all taxable years since its inception. All prior year tax returns and extensions have been filed on time for each Portfolio.

Each Portfolio completed its most recent taxable year end Date 2; accordingly, each Portfolio's federal tax return on Form 1120-RIC was due on or before Date 4. It has always been the customary and standard operating procedure for each Portfolio to file a Form 7004 requesting an automatic extension of 6-months to file its tax return.

Extension requests for each of the Portfolio's most recent taxable year were timely signed on Date 3 by the Portfolios' assistant treasurer and promptly given to Sub Administrator. However, the extension requests were not mailed until Date 5, one day after they were due.

In accordance with pre-established procedures, it is the responsibility of Sub Administrator to review the Forms 7004 for completeness and accuracy and to confirm that all filings are properly made on or before their due dates. The Portfolios have provided the Service with a detailed statement and affidavit describing a combination of inexperience, reassignment of personnel, and human error by Sub Administrator that resulted in an unintended delay in the mailing of the Forms 7004.

The tax returns for the Portfolios were filed on Date 7. Attached to each tax return was a statement making the applicable spill-back election under section 855(a) and section 1.855-1(b)(1) of the Income Tax Regulations. Each Portfolio represents that the dividend intended to be subject to the section 855(a) election was distributed on or before Date 6.

## **LAW AND ANALYSIS**

Section 855(a) provides, in part, that if a RIC declares a dividend prior to the time prescribed by law for the filing of its return for a tax year (including the period of any extension of time granted for filing such return), and distributes the amount of the dividend to shareholders in the 12-month period following the close of such tax year and not later than the date of the first regular dividend payment made after the 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 otherwise by section 855.

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 301.9100-1(c) provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in section 301.9100-1(b) 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), 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.

Sections 301.9100-3(a) through (c)(1)(i) set forth rules that the Internal Revenue 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(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and section 301.9100-3(c) 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 years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

### **CONCLUSION**

Based on the facts and representations submitted, we conclude that each Portfolio has satisfied the requirements for granting a reasonable extension of time to make the election under section 855(a). Accordingly, each Portfolio is granted an extension until Date 7 to make an election under section 855(a) on its federal income tax return filed for its taxable year ended Date 2.

This ruling is limited to providing an extension of time for filing a section 855(a) election and does not provide relief from any liability incurred as a result of filing a late return. Except as specifically ruled upon herein, we express no opinion concerning any federal excise or income tax consequences relating to the facts herein under any other section of the Code. For example, we express no opinion as to whether each Portfolio, in fact, has satisfied all of the requirements of section 855 and the regulations thereunder. We also express no opinion as to whether each Portfolio qualifies as a RIC under subchapter M, part I, of Chapter 1 of the Code.

Further, no opinion is expressed as to whether any Portfolio's tax liability is not lower in the aggregate for the year to which the regulatory election applies than the Portfolio's 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 return involved, the director's office will determine each Portfolio's tax liability for the year involved. If the director's office determines a Portfolio's liability is lower, that office will determine the federal income tax effect.

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Elizabeth A. Handler  
Chief, Branch 1  
Office of Associate Chief Counsel  
(Financial Institutions & Products)

Enclosures:

Copy of this letter  
Section 6110 Copy