

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

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Date:

August 13, 1999

**Legend:**

Fund =

Dear:

This is in response to a letter dated July 2, 1999, requesting rulings on behalf of Fund. Fund seeks consent to revoke an election previously made under § 4982(e)(4)(A) of the Internal Revenue Code to apply §§ 4982(b)(1)(B), 4982(e)(2), and 4982(e)(5) on the basis of Fund's taxable year in lieu of the twelve-month period ending on October 31. Additionally, Fund requests that the calculation of its required distribution of capital gain net income under § 4982(e)(2) and foreign currency gains and losses under § 4982(e)(5) for the fiscal year ending November 30, 1999, be determined on the basis of capital gains and losses and foreign currency gains and losses realized and recognized during the eleven-month period from December 1, 1998, through October 31, 1999.

**Facts:**

Fund is an open-ended management investment company organized as a business trust under the laws of Massachusetts. Fund is registered with the Securities and Exchange Commission as an open-end management investment company under the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.* Fund has qualified and elected to be treated as a regulated investment company (RIC) under subchapter M of the Code.

Fund uses a fiscal year of November 30 for tax purposes. For the tax years ending on and after November 30, 1995, Fund made an election pursuant to § 4982(e)(4)(A) to use its tax year in lieu of the twelve-month period ending on October 31 for purposes of calculating the capital gain net income and foreign currency gains and losses. Fund assumed that the election under § 4982 would relieve the administrative burden associated with dual calculations of capital gain net income under

the excise tax and subchapter M regimes. However, Fund's experience is that the election created additional administrative complexities primarily due to time constraints in declaring required excise tax distributions.

When Fund was launched in 1995, it adopted the same quarterly distribution schedule as another related fund, which had an October 31 fiscal year end. The fourth quarter payable date for both funds is December 15. Because Fund measures capital gains through November, only 14 days are available for Fund to close its books, prepare the distribution and process the payments. The number of shareholders has grown to such a level that processing the distributions with this time constraint has become increasingly difficult.

Fund represents that:

- (a) Fund's desire to revoke its election is due to administrative and non-tax related financial burdens caused by the election;
- (b) Fund is not seeking to revoke its election in order to preserve or secure a tax benefit;
- (c) Fund will neither benefit through hindsight nor prejudice the interests of the government as a result of being permitted to revoke its election; and
- (d) Fund will not make a subsequent election under § 4982(e)(4) of the Code for at least five calendar years following the year of the grant of revocation.

### **Law, Analysis and Conclusions:**

Section 4982(a) imposes an excise tax on every RIC for each calendar year equal to 4 percent of the excess (if any) of the "required distribution" for the calendar year over the "distributed amount" for the calendar year.

Section 4982(b)(1) defines "required distribution" to mean, with respect to any calendar year, the sum of 98 percent of the RIC's ordinary income for such calendar year, plus 98 percent of the RIC's capital gain net income for the 1-year period ending on October 31 of such calendar year.

Section 4982(e)(2)(A) provides that for purposes of § 4982, in general, the term "capital gain net income" has the meaning given to that term by § 1222(9), but determined by treating the 1-year period ending on October 31 of the calendar year as the RIC's tax year.

Section 4982(e)(2)(B) provides that a RIC's capital gain net income is reduced by the amount of the RIC's net ordinary loss for the calendar year, but not below the RIC's net capital gain. Section 4982(e)(2)(C)(i) provides that, for purposes of § 4982, the term

"net capital gain" has the meaning given that term by § 1222(11), but determined by treating the 1-year period ending on October 31 of the calendar year as the RIC's tax year.

Section 4982(e)(4)(A) provides that if the tax year of a RIC ends with the month of November or December, the RIC may elect to have the capital gain net income for its tax year applied in lieu of the 1-year period ending on October 31 of the calendar year for purposes of satisfying the required distribution defined under § 4982(b)(1). Section 4982(e)(4)(B) provides that, once made, such election may be revoked only with the consent of the Secretary.

Section 4982(e)(5) provides that any foreign currency gain which is attributable to a § 988 transaction and which is properly taken into account for the portion of the calendar year after October 31 shall not be taken into account in determining the amount of the ordinary income of the RIC for such calendar year but shall be taken into account in determining the ordinary income of the RIC for the following calendar year. In the case of any company making an election under § 4982(e)(4), the preceding sentence shall be applied by substituting the last day of the company's taxable year for October 31.

Based on the information submitted and the representations made, we conclude that Fund desires to revoke its election under § 4982(e)(4)(A) because of administrative burdens and not because of any federal tax-related financial burden caused by the election. Fund does not seek to revoke its election to preserve or secure a federal tax benefit. Additionally, Fund will neither benefit through hindsight nor prejudice the interests of the government by being permitted to revoke the election.

Accordingly, pursuant to § 4982(e)(4)(B), the Secretary consents to the revocation of the election made by Fund under § 4982(e)(4)(A) effective for the calendar year 1999 and subsequent years. In addition, in calculating the "required distribution" for the calendar year 1999, for purposes of §§ 4982(b)(1) and 4982(e), the capital gain net income and foreign currency gains and losses of Fund will be determined on the basis of the capital and foreign currency gains and losses realized and recognized during the eleven-month period from December 1, 1998 through October 31, 1999.

As a condition to the Secretary's consenting to the revocation pursuant to §4982(e)(4)(B), Fund may not make, if applicable, a subsequent election under §4982(e)(4)(A) for a period of 5 calendar years following the year to which the grant of revocation applies, that is, the years 2000 through 2004.

Except as specifically ruled upon above, no opinion is expressed or implied as to the treatment of Fund for federal excise or income tax purposes other than as specified herein. In particular, no opinion is expressed concerning Fund's qualification as a RIC. This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

It is important that a copy of this letter be attached to the federal income and excise tax returns filed by Fund for the first tax year to which this letter applies.

Sincerely yours,

Assistant Chief Counsel  
(Financial Institutions & Products)

By: \_\_\_\_\_  
Alvin J. Kraft  
Chief, Branch 1

Enclosure:  
Copy of this letter  
Copy for 6110 purposes