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Person to Contact:

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Refer Reply To:

CC:DOM:CORP:5-PLR-104466-00;
PLR-104468-00;PLR-104467-00

Date:

June 27, 2000

Re:

Acquiring =

Target 1 =

Target 2 =

Target 3 =

State A =

State B =

We reply to a letter, dated February 22, 2000, from your representatives in which rulings are requested as to the federal income tax consequences of a proposed transaction. The information submitted for consideration is summarized below.

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Acquiring is organized under the laws of State A and registered under the Investment Company Act of 1940 (the 1940 Act) as a non-diversified open-end management investment company. Acquiring has elected to be taxed as a regulated investment company (RIC) under §§851 through 855 of the Internal Revenue Code. Acquiring's investment objective is to provide shareholders with high total investment return by investing primarily in the securities of corporate and governmental issuers.

Target 1 is organized under the laws of State B and registered under the 1940 Act as a non-diversified open-end management investment company. Target has elected to be taxed as a RIC under §§851 through 855. Target's investment objective is to provide shareholders with high total investment return by investing a significant portion, or as much as all, of its total assets in equity securities. Target 1 also may invest a smaller portion of its assets in junk bonds and will not invest in debt securities rated CC or lower by S&P or Ca or lower by Moody's.

Target 2 is organized under the laws of State B and registered under the 1940 Act as a non-diversified open-end management investment company. Target has elected to be taxed as a RIC under §§851 through 855. Target's investment objective is to provide shareholders with a high level of current income by investing in U.S. and foreign debt, equity and money market securities and, secondarily, capital appreciation.

Target 3 is organized under the laws of State B and registered under the 1940 Act as a non-diversified open-end management investment company. Target has elected to be taxed as a RIC under §§851 through 855. Target's investment objective is to provide shareholders with a high total investment return through a fully managed investment policy utilizing U.S. and foreign equity, debt and money market securities, the combination of which will be varied from time to time both with respect to types of securities and markets in response to changing economic trends. Target 3 may invest up to 34 percent of its assets in junk bonds.

Acquiring, Target 1, Target 2 and Target 3 each offers four classes of shares with substantially similar rights and fees. All file their income tax returns based on the accrual method of accounting.

Acquiring and each of Target 1, Target 2 and Target 3 have approved a plan of reorganization for what are represented to be valid business reasons. Pursuant to the plan, the following transaction is proposed (the Transaction):

- (i) Target 1, Target 2 and Target 3 (the Targets) will transfer all of their assets and liabilities to Acquiring in exchange for newly-issued Acquiring voting common stock (the Transfer).
- (ii) Each of Target 1, Target 2 and Target 3 will liquidate and distribute to

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their respective shareholders all of the Acquiring stock received in the exchange. Each shareholder of a Target will receive, on a pro rata basis, shares of the class of Acquiring stock with the same class designation and respective rights as the Target stock held by such shareholder immediately prior to the Transfer.

- (iii) Each Target will dissolve in accordance with the laws of State B and will terminate its registration under the 1940 Act.
- (iv) Acquiring may sell up to 66 percent of the assets received in the Transaction to unrelated purchasers and will reinvest any proceeds consistent with its investment objectives and policies.

The taxpayers have made the following representations in connection with the Transaction:

- (a) The fair market value of the Acquiring stock received by each Target shareholder will be approximately equal to the fair market value of the Target stock surrendered in the exchange.
- (b) Acquiring will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by each of the Targets immediately prior to the Transaction. For purposes of this representation, amounts used by a Target to pay its reorganization expenses, amounts paid by a Target to shareholders who receive cash or other property, and all redemptions and distributions (except for redemptions in the ordinary course of a Target's business as an open-end investment company as required by section 22(e) of the 1940 Act pursuant to a demand of a shareholder and regular, normal dividends) made by a Target immediately preceding the transfer will be included as assets of the Target held immediately prior to the Transaction.
- (c) Acquiring has no plan or intention to reacquire any of its stock issued in the Transaction except in connection with its legal obligations under section 22(e) of the 1940 Act.
- (d) After the Transaction, Acquiring will use the assets acquired from the Targets in its business, except that a portion of these assets may be sold or otherwise disposed of in the ordinary course of Acquiring's business. Any proceeds will be invested in accordance with Acquiring's investment objectives. Acquiring has no plan or intention to sell or dispose of any of the assets of the Targets acquired in the Transaction, except for dispositions made in the ordinary course of business.

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- (e) Each Target will distribute to its shareholders the stock of Acquiring it receives pursuant to the plan of reorganization.
- (f) The liabilities of each Target assumed by Acquiring and any liabilities to which the transferred assets of a Target are subject were incurred by the Target in the ordinary course of its business.
- (g) Following the Transaction, Acquiring will continue the historic business of each Target or use a significant portion of each Target's historic business assets in the continuing business.
- (h) Acquiring, each Target, and the shareholders of each Target will pay their respective expenses, if any, incurred in connection with the Transaction.
- (i) There is no intercorporate indebtedness existing between any Target and Acquiring that was issued, acquired or will be settled at a discount.
- (j) Acquiring and each Target meet the requirements of a regulated investment company as defined in §368(a)(2)(F).
- (k) The fair market value of the assets of each Target transferred to Acquiring will equal or exceed the sum of the liabilities assumed by Acquiring, plus the amount of liabilities, if any, to which the transferred assets are subject.
- (l) The Targets are not under the jurisdiction of a court in a Title 11 or similar case within the meaning of §368(a)(3)(A).
- (m) The Targets and Acquiring have elected to be taxed as RICs under §851 and, for all of their taxable periods (including the last short taxable period ending on the date of the Transaction, for the Targets), have qualified for the special tax treatment afforded RICs under the Internal Revenue Code, and after the Transaction, Acquiring intends to continue to so qualify.
- (n) There is no plan or intention for Acquiring (the issuing corporation as defined in §1.368-1(b) of the Income Tax Regulations), or any person related (as defined in §1.368-1(e)(3)) to Acquiring, to acquire, during the five year period beginning on the date of the Transaction, with consideration other than Acquiring stock, Acquiring stock furnished in exchange for a proprietary interest in a Target in the Transaction, either directly or through any transaction, agreement, or arrangement with any other person, other than redemptions in the ordinary course of Acquiring's business as an open-end investment company as required by section 22(e) of the 1940 Act.

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- (o) During the five year period ending on the date of the Transaction,
 - (i) neither Acquiring, nor any person related (as defined in §1.368-1(e)(3)) to Acquiring, will have acquired Target stock with consideration other than Acquiring stock, (ii) no Target, nor any person related (as defined in §1.368-1(e)(3)) to a Target, will have acquired such Target's stock with consideration other than Acquiring stock or the Target's stock, except for stock redeemed in the ordinary course of such Target's business as an open-end investment company as required by section 22(e) of the 1940 Act; and (iii) no distributions will have been made with respect to a Target's stock (other than ordinary, regular, normal dividend distributions made pursuant to the Target's historic dividend paying practice), either directly or through any transaction, agreement, or arrangement with any other person, except for (a) cash paid to dissenters and (b) distributions described in §§852 and 4982, as required for Target's tax treatment as a RIC.
- (p) The aggregate value of the acquisitions, redemptions, and distributions described in paragraphs (n) and (o) above will not exceed 50 percent of the value (without giving effect to the acquisitions, redemptions, and distributions) of the proprietary interest in a Target on the effective date of the Transaction.

Based solely on the information submitted and on the representations set forth above, we hold as follows:

- (1) The acquisition by Acquiring of substantially all of the assets of each Target in exchange for voting stock of Acquiring and Acquiring's assumption of Targets' liabilities, followed by the distribution by a Target to its shareholders of Acquiring stock and any remaining assets, in complete liquidation, will qualify as a reorganization within the meaning of §368(a)(1)(C). Each Target and Acquiring will be a "party to a reorganization" within the meaning of §368(b).
- (2) Each Target will recognize no gain or loss upon the transfer of substantially all of its assets to Acquiring in exchange for voting stock of Acquiring and Acquiring's assumption of each Target's liabilities or upon the distribution of the Acquiring stock to each Target's shareholders (§361(a) and (c) and §357(a)).
- (3) Acquiring will recognize no gain or loss on the receipt of the assets of each Target in exchange for voting stock of Acquiring (§1032(a)).
- (4) The basis of each Target's assets in the hands of Acquiring will be the

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same as the basis of those assets in the hands of the Targets immediately prior to the Transaction (§362(b)).

- (5) Acquiring's holding period for the Targets' assets acquired will include the period during which such assets were held by each Target (§1223(2)).
- (6) The shareholders of each Target will recognize no gain or loss on the receipt of voting stock of Acquiring solely in exchange for their Target stock (including fractional shares to which they may be entitled) (§354(a)(1)).
- (7) The basis of the Acquiring stock received by Target shareholders will be the same as the basis of the Target stock surrendered in exchange therefor (§358(a)(1)).
- (8) The holding period of the Acquiring stock received by Target shareholders in exchange for their Target stock (including fractional shares to which they may be entitled) will include the period that the shareholder held the Target stock exchanged therefor, provided that the shareholder held such stock as a capital asset on the date of the exchange (§1223(1)).
- (9) Pursuant to §381(a) and §1.381(a)-1, the tax year of each Target will end on the effective date of the Transaction and Acquiring will succeed to and take into account the items of each Target described in §381(c), subject to the provisions and limitations specified in §§381, 382, 383, and 384, and the regulations thereunder.

No opinion is expressed about the tax treatment of the Transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions that are not specifically covered by the above rulings. Specifically, no opinion was requested, and none is expressed, about whether Acquiring or the Targets qualify as RICs that are taxable under Subchapter M, Part 1 of the Code.

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.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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A copy of this letter must be attached to any income tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayers.

Sincerely,

Assistant Chief Counsel (Corporate)

By *Filiz A. Serbes*

Filiz A. Serbes

Assistant to the Chief, Branch 5