

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:B2-PLR-110760-00

Date:

September 7, 2000

LEGEND:

Acquiring =

Target =

State A =

Dear :

This letter is in reply to a letter dated May 17, 2000 regarding the federal income tax consequences of a proposed transaction. Additional information was submitted in a letter dated August 21, 2000. The information submitted for consideration is summarized below.

Acquiring is organized under the laws of State A and is registered under the Investment Company Act (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 sections 851 through 855 of the Internal Revenue Code. Acquiring's investment objective will be to provide a high level of current income by investing in debt obligations of issuers located in emerging countries, with a secondary objective of capital appreciation.

Target is organized under the laws of State A and is registered under the 1940 Act as a non-diversified closed-end management investment company. Target has elected to be treated as a regulated investment company (RIC) under sections 851 through 855 of the Internal Revenue Code. Target's investment objective is to provide its shareholders with high current income by investing exclusively in U.S. dollar-denominated securities, substantially all of which will be debt securities, and, as a secondary objective, to seek capital appreciation. Under State A law, stockholders of Target do not have dissenter's rights.

Acquiring has authorized four classes of voting common stock, designated Class A, Class B, Class C, and Class D Common Stock. Target has one class of common stock authorized. Both Acquiring and Target file their income tax returns based on the

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accrual method of accounting.

Acquiring and Target have approved a plan of reorganization for what are represented to be valid business reasons. To the best of knowledge and belief, the transaction does not qualify under § 368(a)(1)(A). Pursuant to the plan, the following transaction is proposed (the Transaction):

- (i) Target will transfer all of its assets and liabilities to Acquiring in exchange for an equal value of newly issued Acquiring Class A voting common stock. Fractional shares will be issued.
- (ii) Target will liquidate and distribute to its shareholders all of the Acquiring stock received in the exchange. Each Target shareholder will be entitled to receive a proportionate number of Acquiring Class A shares equal to the aggregate net asset value of the Target shares owned by such shareholder on the exchange date.
- (iii) Target will dissolve in accordance with the laws of State A and will terminate its registration under the 1940 Act.
- (iv) Acquiring may sell up to 66% of the assets received in the transaction to unrelated purchasers and will reinvest any proceeds consistent with its investment objectives and policies.

The following representations have been made 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) There is no plan or intention by the Target shareholders who own 5% or more of the Target stock and to the best knowledge of the management of Target, there is no plan or intention on the part of the remaining shareholders of Target, to sell, exchange, or otherwise dispose of a number of shares of Acquiring stock received in the Transaction that would reduce Target shareholders' ownership of Acquiring stock to a number of shares having a value, as of the date of the Transaction, of less than 50% of the value of all of the formerly outstanding stock of Target as of the same date. For purposes of this representation, shares of Target stock exchanged for cash or other property or surrendered by dissenters will be treated as outstanding Target stock on the date of the Transaction. Moreover, shares of Target stock and shares of Acquiring stock held by Target shareholders and otherwise sold, redeemed, or

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disposed of prior to or subsequent to the Transaction will be considered in making this representation.

- (c) Acquiring will acquire at least 90% of the fair market value of the net assets and at least 70% of the fair market value of the gross assets held by Target immediately prior to the Transaction. For purposes of this representation, amounts paid by Target to dissenters, amounts used by Target to pay its Transaction expenses, and all redemptions and distributions (except for regular, normal dividends) made by Target immediately preceding the transfer will be included as assets of Target held immediately prior to the Transaction.
- (d) After the Transaction, the shareholders of Target will be in control of Acquiring within the meaning of section 368(a)(2)(H).
- (e) 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.
- (f) After the Transaction, Acquiring will use the assets acquired from Target 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 and as set forth above in step (iv) of the transaction. Any proceeds will be invested in accordance with Acquiring's investment objectives. Acquiring has no plan or intention to sell or otherwise dispose of any of the assets of Target acquired in the Transaction, except for dispositions made in the ordinary course of business.
- (g) Target will distribute to its shareholders the stock of Acquiring it receives pursuant to the plan of reorganization.
- (h) The liabilities of Target assumed by Acquiring and any liabilities to which the transferred assets of Target are subject were incurred by Target in the ordinary course of its business.
- (i) Following the Transaction, Acquiring will continue the historic business of Target or use a significant portion of Target's historic business assets in the continuing business.
- (j) At the time of the Transaction, Acquiring will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock of Acquiring that, if exercised or converted, would affect Target shareholders' acquisition or retention of control of Acquiring, as defined in section 368(a)(2)(H).

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- (k) Target, Acquiring, and the shareholders of Target will pay their respective expenses, if any, incurred in connection with the Transaction.
- (l) There is no intercorporate indebtedness existing between Acquiring and Target that was issued, acquired, or will be settled at discount.
- (m) Acquiring and Target each meets the requirements of a regulated investment company in section 368(a)(2)(F).
- (n) The fair market value of the assets of Target transferred to Acquiring will equal or exceed the sum of the liabilities to be assumed by Acquiring, plus the amount of the liabilities, if any, to which the transferred assets are subject.
- (o) The total adjusted bases of the assets of Target transferred to Acquiring will equal or exceed the sum of the liabilities assumed by Acquiring, plus the amount of the liabilities, if any, to which the transferred assets are subject.
- (p) Acquiring does not own, directly or indirectly, nor has it owned during the past five years, directly or indirectly, any stock of Target.
- (q) Target is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).
- (r) Target and Acquiring have elected to be taxed as RIC's under section 851 and, for all of their taxable periods (including the last short taxable period ending on the date of the Transaction, for Target), have qualified for the special tax treatment afforded RIC's under the Code. After the Transaction, Acquiring intends to continue to so qualify.
- (s) There is no plan or intention for Acquiring (the issuing corporation as defined in section 1.368-1(b)) or any person related (as defined in section 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 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 the Acquiring business as an open-end investment company as required by section 22(e) of the 1940 Act.
- (t) During the five-year period ending on the date of the Transaction: (i) neither Acquiring, nor any person related (as defined in section 1.368-

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1(e)(3)) to Acquiring, will have acquired Target stock with consideration other than Acquiring stock, (ii) neither Target nor any person related (as defined in section 1.368-1(e)(3)) to Target, will have acquired Target stock with consideration other than Acquiring stock or Target stock, and (iii) no distributions will have been made with respect to Target stock (other than regular, normal dividend distributions made pursuant to 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 sections 852 and 4982, as required for Target's tax treatment as a RIC.

- (u) The aggregate value of the acquisitions, redemptions, and distributions discussed in paragraphs (s) and (t) above will not exceed 50% of the value (without giving effect to the acquisitions, redemptions, and distributions) of the proprietary interest in 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 Target in exchange for voting stock of Acquiring and Acquiring's assumption of Target's liabilities, followed by the distribution by Target to its shareholders of the Acquiring stock and any remaining assets, in complete liquidation, will qualify as a reorganization within the meaning of § 368(a)(1)(D). Target and Acquiring will each be "a party to a reorganization" within the meaning of § 368(b).
- (2) No gain or loss will be recognized by Target upon the transfer of substantially all of its assets to Acquiring in exchange for voting stock of Acquiring and Acquiring's assumption of Target's liabilities. Sections 361(a) and 357(a). In addition, no gain or loss will be recognized by Target upon the distribution of the Acquiring stock to the Target shareholders. Section 361(c).
- (3) No gain or loss will be recognized by Acquiring upon the receipt of the assets of Target in exchange for voting stock of Acquiring. Section 1032(a).
- (4) The basis of Target's assets in the hands of Acquiring will be the same as the basis of those assets in the hands of Target immediately prior to the Transaction. Section 362(b).
- (5) Acquiring's holding period for the Target assets acquired will include the period during which such assets were held by Target. Section 1223(2).
- (6) No gain or loss will be recognized by the Target shareholders on the receipt of

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voting stock of Acquiring solely in exchange for their Target stock. Section 354(a).

- (7) The basis of the Acquiring stock received by the Target shareholders will be the same as the basis of the Target stock surrendered in exchange therefor. Section 358(a)(1).
- (8) The holding period of the Acquiring stock received by the Target shareholders in exchange for their Target stock 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. Section 1223(1).
- (9) Pursuant to § 381(a) and § 1.381(a)-1, the tax year of Target will end on the effective date of the Transaction and Acquiring will succeed to and take into account the items of 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 Target qualify as a RIC that is 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.

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.

Sincerely,
Associate Chief Counsel (Corporate)
by: Lewis K Brickates
Assistant to the Chief, Branch 2