

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:FIP:2-PLR-100244-03
Date:
April 28, 2003

Legend:

Fund =

State =

x =

y Rate =

Date A =

Date B =

Date C =

Date D =

Dear _____ :

This responds to your request submitted December 23, 2002, by your authorized representative on behalf of Fund, that the Internal Revenue Service rule that (i) the "grandfather clause" of Rev. Rul, 89-81, 1989-1 C.B. 226, will apply to certain preferred shares of Fund; (ii) the payment of dividends by Fund on these preferred shares will not be considered preferential dividends under section 562(c) of the Internal Revenue Code of 1986; and (iii) dividends paid by Fund will be eligible for the dividends received deduction under section 243 in accordance with Fund's designation.

FACTS

Fund is a closed-end diversified management investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended (the 1940 Act). Fund is organized as a corporation under the laws of State. Fund has qualified and elected to be treated since its inception as a regulated investment company (RIC) under subchapter M, part I, of the Code.

Fund has two classes of stock, common and preferred. The shares of common stock are listed for trading on the New York Stock Exchange.

Fund's preferred shares are issued pursuant to authority granted to the board of directors under Fund's charter to issue one or more series of preferred stock and to fix the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemptions, of each series. On Date A, a date prior to June 13, 1989, the board exercised this authority by filing Articles Supplementary to Fund's charter that designated a certain number of the authorized shares of preferred stock (the "Preferred Shares") as shares of five series of remarketed preferred stock. Each series carries a mandatory redemption date. Registration statements for each series of Preferred Shares were filed with the Securities and Exchange Commission (SEC) on dates prior to June 13, 1989.

Each series of the Preferred Shares bore an initial dividend rate that was payable for an initial dividend period of x days or more. All subsequent dividend periods consist of x days. At the end of each dividend period, the remarketing agent conducts a remarketing of the shares of each series that sets a new dividend rate for that series for the upcoming dividend period. The rate is set at a level designed to enable all tendering holders to sell their Preferred Shares at a price equal to their liquidation value, subject to a maximum dividend rate.

Pursuant to the Articles Supplementary, Fund designates dividends paid on the Preferred Shares as qualifying for the corporate dividends received deduction to the extent the dividends do not exceed the Fund's qualifying income. Distributions on the common shares are designated as eligible for the dividends received deduction only to the extent that any qualifying income remains after distributions are made on the Preferred Shares.

On Date B, a date prior to June 13, 1989, and also prior to Date A, Fund was issued a private letter ruling (PLR 8842048) holding that Fund was entitled to designate dividends on the Preferred Shares as consisting of income eligible for the dividends received deduction each year. On Date C, a date prior to June 13, 1989, and also prior to Date A, the Internal Revenue Service withdrew this ruling (PLR 8845037, withdrawing PLR 8842048) because it was reconsidering its positions in two published rulings on which Fund had relied in seeking its private letter ruling. The Fund thereafter sought relief under section 7805(b) of the Code and was granted this relief on Date D, a date prior to June 13, 1989, and also prior to Date A, in the form of a private letter ruling (PLR 8850018).

Under recent market conditions, the remarketing agent has been unable to set the dividend rate payable on the Preferred Shares at a level that would enable all tendering holders to sell their Preferred Shares at a price equal to their liquidation value because of the operation of the maximum dividend rate provision applicable to the remarketing of the Preferred Shares. The maximum dividend rate is set by reference to a specified percentage (the “applicable percentage”) of the y Rate, a published variable rate, in effect on the day the dividend is set.

In order to restore the ability of the remarketing agent to set the dividend rate payable on the Preferred Shares at a level that would enable all tendering holders to sell their Preferred Shares at a price equal to their liquidation value, Fund proposes to amend its charter to increase the applicable percentage specified in the maximum dividend rate provisions governing the remarketing of the Preferred Shares. The proposed amendment of Fund’s charter will require neither the filing of a new registration statement with the SEC nor any amendment to the original registration statement filed with respect to the Preferred Shares.

LAW AND ANALYSIS

Section 562(c) of the Code provides that the amount of any distribution shall not be considered as a dividend for purposes of computing the dividends paid deduction, unless such distribution is pro rata, with no preference to any share of stock as compared with other shares of the same class, and with no preference to one class of stock as compared with another class except to the extent that the former is entitled (without reference to waivers of their rights by shareholders) to such preference.

If a RIC has two or more classes of stock and designates the dividends that it pays on one class as consisting of more than that class’ proportionate share of a particular type of income, Rev. Rul. 89-81 holds that these designations are not effective for federal tax purposes to the extent that they exceed the class’ proportionate share of that type of income. Rev. Rul. 89-81 further provides, however, under the authority contained in section 7805(b) of the Code, that it will not be applied to render ineffective for federal income tax purposes a non-proportionate designation made by a RIC pursuant to a rule described in a registration statement that was filed with the SEC before June 13, 1989 (the “grandfather clause”).

Fund has represented that the proposed amendment of its charter will require neither the filing of a new registration statement with the SEC nor any amendment to the original registration statement filed with respect to the Preferred Shares. Accordingly, designations made on Preferred Shares to be remarketed pursuant to the provisions of the amended charter will be made by Fund pursuant to a rule described in a registration statement that was filed with the SEC before June 13, 1989.

We conclude, therefore, that (i) the “grandfather clause” of Rev. Rul. 89-81 will apply to designations made on Preferred Shares to be remarketed pursuant to the provisions of the amended charter; (ii) the payment of dividends by Fund on these Preferred Shares will not be considered preferential dividends under section 562(c) of the Code by virtue

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of Fund's designation of dividend income as qualifying for the dividends received deduction pursuant to the provisions of the amended charter; and (iii) dividends paid by Fund on these Preferred Shares will be eligible for the dividends received deduction in accordance with Fund's designation pursuant to the provisions of the amended charter, to the extent the requirements of section 243 are otherwise satisfied.

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

A copy of this letter should be attached to the federal income tax return of Fund for each taxable year in which it makes a designation of dividend income as qualifying for the dividends received deduction pursuant to the provisions of the amended charter as described in this letter.

Sincerely yours,

WILLIAM E. COPPERSMITH
Chief, Branch 2
Office of Associate
Chief Counsel
(Financial Institutions & Products)

Enclosure: 6110 copy

cc: