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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:FIP:2-PLR-118009-00
Date:
December 15, 2000

Legend:

Fund 1 =

Fund 2 =

Fund 3 =

Fund 4 =

Fund 5 =

Fund 6 =

Fund 7 =

Fund 8 =

Fund 9 =

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Corporation =

Advisor =

State =

Dear :

This responds to your request for a ruling dated September 15, 2000, filed by your authorized representative on behalf of Funds 1 through 9. The requested ruling is as follows: Payments and/or reimbursements of certain operating expenses of six new series of the Corporation (collectively "upper-tier funds") by the Funds pursuant to an annual servicing agreement will not be considered preferential dividends of the Funds under section 562(c) of the Internal Revenue Code of 1986.

FACTS

Corporation is organized under the laws of State and is registered with the Securities and Exchange Commission (SEC) as a diversified open-end management investment company under the Investment Company Act of 1940, as amended (the "1940 Act").

Each Fund is a series of Corporation. Each qualifies and intends to continue to qualify as a regulated investment company (RIC) under subchapter M, part I of the Code. Each Fund will operate as an underlying, or lower-tier, fund in a fund-of-funds structure.

Each Fund issues shares in classes: an institutional class and a retail class. Institutional and retail class shares may be purchased through financial intermediaries or directly from a Fund. Institutional class shares will bear neither sales charges, distribution fees, shareholder service fees, nor administrative service fees. Retail class shares will bear no sales charges but will pay distribution or shareholder service fees and an administrative service fee.

Corporation intends to create new series funds that will qualify as RICs. Each new series fund will operate as an upper-tier fund in a fund-of-funds structure.

Each upper-tier fund will also issue an institutional class and a retail class of shares. Institutional class shares will bear neither sales charges, distribution fees, shareholder service fees, nor administrative service fees. Retail class shares will bear no sales charges but will pay distribution or shareholder service fees and an administrative service fee.

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Each upper-tier fund will invest substantially all its assets in institutional class shares of Funds. Each will also hold cash and/or invest in money market instruments. An upper-tier fund will use its cash assets to rebalance its mix of assets periodically. Although investors may directly purchase shares of an individual Fund, shares of the Funds are offered and marketed principally

. In furtherance of this objective, assets invested in an upper-tier fund will be allocated among the Funds in accordance with pre-determined allocation ranges.

Advisor will serve as investment advisor and manager both to Funds and to the upper-tier funds. Advisor will charge each Fund an advisory fee. It will also charge each upper-tier fund an advisory fee for performing the investment advisory and asset allocation services described in the preceding paragraph. It will also provide administrative and transfer agency services both to Funds and to the upper-tier funds.

The upper-tier funds expect to generate cost savings for the Funds. To the extent an upper-tier fund attracts assets to the Funds that would not otherwise have been invested in the Funds, the Funds' expense ratios (total expenses divided by net assets) should decrease. Investments by the upper-tier funds in the Funds also may result in reduced portfolio turnover at the Fund level to the extent that investors seeking an asset allocation program invest in the upper-tier funds rather than directly in the Funds. Reduced portfolio turnover will lower transaction costs and lessen realized capital gains at the Fund level as the upper-tier funds use cash flows to rebalance asset mix.

Funds, the upper-tier funds and Advisor plan to enter into a servicing agreement whereby the Funds will pay or reimburse the upper-tier funds for a portion of their administrative expenses as consideration for the cost savings expected to be derived by the Funds, as described in the preceding paragraph. For purposes of the servicing agreement, the term "administrative expenses" includes transfer agency fees, shareholder servicing fees, trustees' fees, custody fees, legal fees, SEC and state "Blue Sky" registration fees, audit and accounting fees, printing, and postage expenses. Under the servicing agreement, the administrative expenses of the upper-tier funds will be allocated among the Funds in proportion to the average daily value of each Fund's shares held by the upper-tier funds.

LAW

Section 851(a) of the Code defines a RIC, in part, as a domestic corporation registered under the 1940 Act as a management company.

Section 851(b) of the Code limits the definition of a RIC to a corporation meeting

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certain election, gross income, and diversification requirements.

Section 851(h) of the Code provides a special rule for a RIC having more than one fund. This provision treats each fund as a separate corporation for all purposes of the Code, other than the definitional requirement of section 851(a).

A corporation that is a RIC within the meaning of section 851 of the Code and that is taxable under subchapter M, part I, pays tax on its investment company taxable income under section 852(b)(2) and on the excess, if any, of its net capital gain over its deduction for dividends paid, determined with reference to capital gain dividends only under section 852(b)(3).

Section 852 of the Code provides that a RIC is not taxable under subchapter M, part I, unless its deduction for dividends paid (as that term is defined in section 561(a) with certain modifications) for the taxable year equals or exceeds a specified portion of its taxable income (with certain adjustments) and its net tax-exempt interest income.

Section 561(a) of the Code defines the deduction for dividends paid, for purposes of section 852, to include dividends paid during the taxable year.

Section 561(b) of the Code applies the rules of section 562 to determine which dividends are eligible for the deduction for dividends paid under section 561(a).

Section 562(a) of the Code states that the term "dividend", except as otherwise provided, includes only dividends described in section 316 (which provides a definition of dividends for purposes of corporate distributions).

Section 316(a) of the Code defines the term "dividend" as any distribution of property made by a corporation to its shareholders (1) out of its earnings and profits (E & P) accumulated after February 28, 1913, or (2) out of its E & P of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the E & P at the time the distribution was made.

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 under section 561 unless the distribution is pro rata, does not prefer any shares of stock of a class over other shares of stock of that same class, and does not prefer one class of stock over another class except to the extent that one class is entitled (without reference to waivers of their rights by shareholders) to be preferred.

CONCLUSION

Because of the unique nature of open-end RICs, payments and/or

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reimbursements of certain operating expenses (described in this letter as “administrative expenses”) of the upper-tier funds by the Funds pursuant to an annual servicing agreement will not be considered preferential dividends of the Funds under section 562(c) of the Code.

Except as specifically ruled upon above, no opinion is expressed or implied regarding the Federal tax aspects of this transaction.

This ruling is directed only to the Funds. Section 6110(k)(3) 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 a Fund for each taxable year in which the Fund pays operating expenses under the servicing agreement described in this letter.

Sincerely yours,
Acting Associate Chief Counsel
(Financial Institutions & Products)
By: William E. Coppersmith
Chief, Branch 2