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Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:FIP:B02  
PLR-101501-05

Date:  
June 07, 2005

In Re:

LEGEND:

Fund =

State =

Country =

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Dear :

This responds to your request for a ruling dated January 6, 2005, submitted on behalf of Fund. Fund requests a ruling that it will not recognize gain under section 852(b)(6) of the Internal Revenue Code of 1986 (the Code) upon the distribution of appreciated property in redemption of shares of Fund upon the demand of a shareholder pursuant to the terms of a series of self-tender offers that Fund will conduct, as described in this letter.

## FACTS

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

Fund invests primarily in equity securities of companies of Country. For a number of years, Fund's shares have traded at a substantial discount to the net asset value of its portfolio. In an effort to address the market discount at which Fund's shares trade, Fund's board of directors approved a program ("Program").

Under the terms of the Program, Fund will initially conduct an in-kind tender offer to repurchase up to w% of Fund's issued and outstanding shares at a purchase price, paid in kind, equal to z% of net asset value per share as of the day after expiration of the tender offer ("Initial Repurchase Offer"). In addition, for r calendar years following the Initial Repurchase Offer, Fund will conduct subsequent repurchase offers semi-annually. Each subsequent repurchase offer will offer to repurchase up to x% of Fund's issued and outstanding stock at a price equal to z% of net asset value per share on the day after the date the offer expires, if during a 13-week measuring period ending on the last day of the preceding semi-annual period, Fund's shares trade at an average weekly discount from net asset value that is greater than s%.

Fund intends to pay for the repurchased shares in kind with portfolio securities held by Fund on the date of repurchase. If any repurchase offer is oversubscribed, Fund will prorate the number of shares repurchased from participating shareholders in proportion to the total shares accepted for tender by Fund.

Fund represents that under the terms of Program, it will distribute to a shareholder exercising a redemption right a pro rata share of each of the securities held by Fund, except for (a) securities that are subject to restrictions on resale or transfer, such as private placement securities, (b) securities that, if distributed, would be required to be registered under the Securities Act of 1933, as amended, (c) securities issued by entities in countries that restrict or prohibit the holdings of securities by non-residents other than through qualified investment vehicles, or whose distribution would otherwise be contrary to applicable local laws, rules, or regulations, (d) portfolio assets that involve the assumption of contractual obligations, such as derivatives, or that require special trading facilities, or that can only be traded with the counterparty to the transaction, and (e) securities which are not traded on a public securities market and for which quoted

bid and ask prices are not available, consistent with the conditions imposed by the Securities Exchange Commission (SEC) on closed-end funds, such as Fund, in seeking orders to permit in-kind tender offers to limit distributed securities to those with readily available market quotations.

In addition, Fund will distribute cash in lieu of assets represented by cash equivalents net of all liabilities, fractional shares, portfolio securities not amounting to round lots (or which would not amount to round lots if included in the in-kind distribution), and accruals on such securities. Fund may round down the proportionate distribution of each portfolio security to the nearest round lot amount and will distribute the remaining odd lots in cash, or Fund may distribute a higher pro rata percentage of equity securities to represent such items.

Fund further represents that the securities distributed in consideration of the tendered shares will have an aggregate federal income tax basis that, as a percentage of Fund's aggregate federal income tax basis in all its assets prior to a tender offer, is no more than 1 percentage point lower than the percentage of the assets that are being distributed by Fund. For example, if a total of 50% of Fund's assets are distributed pursuant to a tender offer, Fund's aggregate federal income tax basis in all assets distributed in the tender will equal not less than 49% of the Fund's aggregate tax basis in all its assets prior to the tender offer.

The ability to redeem shares with appreciated portfolio securities without recognition of gain at the Fund level would enable Fund to avoid the distribution of a capital gain dividend to non-redeeming shareholders and the resultant depletion of Fund assets.

Fund has applied to the appropriate regulatory authority of Country to approve the transfer of Country securities to Fund shareholders in redemption of their shares. Fund has also applied to the Securities and Exchange Commission (SEC) for exemptive relief permitting it to conduct tender offers pursuant to Program.

## LAW AND ANALYSIS

Section 311(b) of the Code provides, in general, that if a corporation distributes appreciated property to a shareholder, it recognizes gain as if the property were sold to the distributee at its fair market value. Section 852(b)(6) provides, however, that section 311(b) shall not apply to any distribution by a RIC to which subchapter M, part I applies, if the distribution is in redemption of its stock upon the demand of its shareholder.

Section 317(b) defines a redemption as the acquisition of a corporation's stock, by the corporation, from a shareholder in exchange for property. Section 317(a) defines

property as money, securities and any other property, except stock in the corporation making the distribution (or rights to acquire such stock).

Section 852(b)(6) does not define the term "redemption upon demand" of a shareholder. Elsewhere in the tax law, the term has been read to apply to redemptions of stock in an open-end regulated investment company. Cf. Section 162(k)(2)(B); H.R. Conf. Rep. No. 99-841, 99<sup>th</sup> Cong., 2d Sess., at 168.

Under applicable securities law, an open-end management company is a management company which is offering for sale or has outstanding any redeemable security of which it is the issuer. 15 U.S.C. section 80a-5(a)(1). A redeemable security is defined as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. 15 U.S.C. section 80a-2(32).

Fund is not an open-end fund and does not issue redeemable securities within the meaning of the 1940 Act. Pursuant to the terms of the proposed tender offers, however, Fund will be authorized to redeem a limited amount of its shares. Were it required to sell assets to meet these redemption requests, Fund, like a similarly situated open-end fund, would be exposed to the market risk of disadvantageous sale prices and to the risk of potential depletion of its holdings. The policy concerns underlying section 852(b)(6) that are applicable to an open-end fund are therefore also applicable to Fund.

Fund has represented that it will distribute a pro rata share of each of its securities to a redeeming shareholder (subject to exceptions described above) and that the securities distributed will have an aggregate tax basis that, as a percentage of the Fund's aggregate tax basis in all its assets prior to the redemption, is no more than 1 percentage point lower than the percentage of the assets that are being distributed by the Fund. The transaction, therefore, will neither defer the recognition of gain to Fund's nonredeeming shareholders nor permit the disproportionate deferral of tax at Fund's level.

Accordingly, we rule that Fund will not recognize gain under section 852(b)(6) of the Code upon the distribution of stock or other securities in redemption of its shares upon the request of a shareholder pursuant to the proposed series of self-tender offers.

No opinion is expressed or implied concerning the federal income tax consequences of the transaction described in this letter, except as expressly provided.

In particular, no opinion is expressed with respect to the tax treatment of any foreign currency gain or loss that may arise from this transaction.

This ruling is directed only to the taxpayer who requested 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 distributes stock or other securities in redemption of its shares upon the request of a shareholder as described in this letter.

Sincerely yours,

/S/

Susan Thompson Baker  
Assistant to the Branch Chief, Branch 2  
Office of Associate Chief Counsel  
(Financial Institutions & Products)