

Internal Revenue Service

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Date:

October 30, 1998

Acquiring =

Target =

State X =

Date 1 =

Date 2 =

a =

b =

c =

d =

e =

In re:

Dear :

This letter is in response to your request, dated March 20, 1998, for rulings under § 368(a)(1)(C) of the Internal Revenue Code on behalf of the above-captioned taxpayers. Additional information with respect to the proposed transaction was submitted in letters dated June 17, 1998; October 13, 1998, and October 29, 1998.

The information submitted for our consideration is summarized as follows.

Acquiring, a State X corporation, is a diversified open-end management company that has elected to be taxed as a regulated investment company ("RIC") under §§ 851-855. Acquiring uses the accrual method of accounting and files its tax returns on a fiscal year ending on Date 1. Acquiring's investment objective is to provide its shareholders with long-term growth of capital by investing in a diversified portfolio of equity securities with emphasis on companies with above-average earnings growth rates.

Target, a State X corporation, is also a diversified open-end management company that has elected to be taxed as a RIC. Target uses the accrual method of accounting and files its tax returns on a fiscal year ending on Date 2. Target's investment objective is to provide investors with a high total return consistent with prudent risk. Target's current assets are primarily invested in equity securities of domestic and international companies.

Acquiring and Target each offer four classes of stock with identical rights and fees. Class A shares have a maximum initial sales charge of a% and are offered to a limited group of investors. Class B shares incur no initial sales charge when purchased, but are subject to ongoing account maintenance fees and Rule 12b-1 distribution fees between b% and c%, respectively, and a contingent deferred sales charge (CDSC) ranging between d% and e% if redeemed within four years from purchase. In general, Class B shares of stock will automatically convert into Class D shares of stock eight years from purchase. Class C incur no initial sales charge when purchased but are subject to account maintenance and Rule 12b-1 distribution fees of between b% and c%, respectively, and are subject to a CDSC of e% if redeemed within one year of purchase. Class D shares incur a maximum initial sales charge of a% and are subject to an ongoing maintenance fee of b%.

For what has been represented to be a valid business purpose, the following transaction has been proposed:

- (1) Target will transfer all of its assets and liabilities to Acquiring in exchange for an equal value of newly issued Acquiring Class A, B, C and D common voting stock.
- (2) Target will distribute to its shareholders all the Acquiring stock it received in the transaction. Each Target shareholder will receive shares of Acquiring on a pro rata basis, with the same class designation and the same account maintenance and distribution fees and sales charges, if any, as the Target shares held by such shareholder immediately prior to the proposed transaction. Target shareholders who own fractional shares in Target will receive fractional shares of Acquiring, not cash, in exchange thereof.

- (3) Target will then dissolve in accordance with the laws of State X and will terminate its registration under the Investment Company Act of 1940 (“the 1940 Act”).

Acquiring and Target have made the following additional representations:

- (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 of the gross assets held by Target immediately prior to the reorganization. For purposes of this representation, amounts used by Target to pay its reorganization expenses, amounts paid by Target to shareholders who receive cash or other property, and all redemptions and distributions (except for redemptions in the ordinary course of Acquiring’s business as an open-end investment company as required by § 22(e) of the 1940 Act pursuant to a demand of a shareholder and regular, normal dividends) made by Target immediately preceding the transfer will be included as assets of Target held immediately prior to the reorganization. There will be no payments to dissenters, as shareholders may redeem their shares at any time.
- (c) Acquiring has no plan or intention to reacquire any of its stock issued in the transaction except in connection with its legal obligation under § 22(e) of the 1940 Act.
- (d) 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.
- (e) Target will distribute to its shareholders the stock of Acquiring it receives pursuant to the plan of reorganization.
- (f) 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.
- (g) Following the reorganization, Acquiring will continue the historic business of Target or use a significant portion of Target’s historic business assets in the continuing business.
- (h) Acquiring, Target and the shareholders of Target will pay their respective expenses, if any, incurred in connection with the reorganization.
- (i) There is no intercorporate indebtedness existing between Target and Acquiring

that was issued, acquired, or will be settled at a discount.

- (j) Acquiring and Target each meets the requirements of a regulated investment company as defined in § 368(a)(2)(F)(i) and (ii).
- (k) The fair market value of the assets of 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) Acquiring does not own, directly or indirectly, nor has it owned during the past five years, directly or indirectly, any stock of Target stock.
- (m) Acquiring is not under the jurisdiction of a Court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).
- (n) Acquiring and Target have elected to be taxed as RICs under § 851 and, for all their taxable periods, (including the last short taxable period ending on the date of the reorganization, for Target) have qualified for the special tax treatment afforded RICs under the Code, and after the reorganization, Acquiring intends to continue to so qualify.
- (o) There is no plan or intention by Acquiring or any person related to Acquiring (as defined in § 1.368-1(e)(3)) to acquire or redeem any of the stock of Acquiring issued 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 § 22(e) of the 1940 Act.
- (p) During the five-year period ending on the date of the transaction, neither Target nor any person related to Target (as defined in § 1.368-1(e)(3) of the Income Tax Regulations without regard to § 1.368-1(e)(3)(A) will have directly or through any transaction, agreement, or arrangement with any other person, (i) acquired stock of Target with consideration other than shares of Acquiring or Target (except for shares of Target stock acquired from dissenters in the transaction), (ii) redeemed or made distributions with respect to Target stock, except for redemptions in the ordinary course of Target's business as an open-end investment company as required by § 22(e) of the 1940 Act and distributions necessary to qualify for the special tax treatment afforded regulated investment companies under § 852, as amended and made in the ordinary course of Target's business as a qualified RIC.
- (q) Prior to or in the transaction, neither Acquiring nor any person related to Acquiring (as defined in § 1.368(e)(3) will have acquired directly or through any transaction, agreement or arrangement with any other person, stock of Target

with consideration other than shares of Acquiring.

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

- (1) The acquisition by Acquiring of substantially all of the assets of Target, as described above, will qualify as a reorganization within the meaning of § 368(a)(1)(C), and Acquiring and Target will each be deemed a “party to a reorganization” within the meaning of § 368(b).
- (2) Target will not recognize any gain or loss on the transfer of its assets to Acquiring in exchange solely for voting shares of Acquiring or on the distribution of the Acquiring stock to Target shareholders (§ 361(a) and (c)).
- (3) Acquiring will not recognize any gain or loss on the receipt of the assets of Target in exchange for voting shares of Acquiring (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 reorganization (§ 362(b)).
- (5) Acquiring’s holding period for the Target assets acquired will include the period during which such assets were held by Target (§ 1223(2)).
- (6) The shareholders of Target will not recognize any gain or loss on the receipt of voting shares of Acquiring (including fractional shares to which they may be entitled) solely in exchange for their shares in Target (§ 354(a)).
- (7) The basis of the Acquiring shares received by Target shareholders (including fractional shares to which they may be entitled) will be the same, in the aggregate, as the basis of the Target shares surrendered in the exchange (§ 358(a)).
- (8) The holding period of the Acquiring shares received by Target shareholders in exchange for their Acquiring shares (including fractional shares to which they may be entitled) will include the period during which the exchanged Target shares were held, provided that the Target shares were held as capital assets in the hands of the Target shareholders on the date of the exchange (§ 1223(1)).
- (9) Pursuant to § 381(a) and § 1.381(a)-1, the tax year of Target will end 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, 382 and 384 and the regulations thereunder.

No opinion is expressed about the federal income tax treatment of the proposed 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 proposed transaction that are not specifically covered by the above rulings. Specifically, no opinion was requested, and none is expressed, about whether Acquiring or Target qualifies as a RIC that is taxable under Subchapter M, Part I of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

Each affected taxpayer must attach a copy of this letter to the federal income tax return for the taxable year in which the transaction covered by this ruling letter is consummated.

In accordance with the power of attorney on file in this office, we have sent copies of this letter to your authorized representatives.

Sincerely Yours,

Assistant Chief Counsel (Corporate)

By: _____
Howard W. Staiman
Assistant to the Chief
CC:DOM:CORP:1