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Date: OCT 14 1998

P1 =

P3 =

P4 =

P5 =

F1 =

S1 =

S2 =

S3 =

A1 =

Date 1 =

State X =

State Z =

Dear

This is in reply to a letter of September 15, 1998, and previous correspondence submitted on behalf of P1, P3, P4, P5, S1, S2, S3, F1, and A1, by their authorized representative, requesting certain rulings regarding the transfer of certain assets to P1.

P1, P3, P4, and P5 are each a series of A1. A1 is a trust formed under the laws of State X, pursuant to an Agreement and Declaration of Trust ("Declaration"). A1 is registered with the Securities and Exchange Commission (the "SEC") under the 1940 Act as an open-end diversified management investment company.

F1 is a voluntary association formed as a business trust under the laws of State Z. F1 is registered with the SEC as an open-end diversified management investment company under the 1940 Act. S1, S2, and S3, are each a series of F1. S1, S2, and S3 each qualify for treatment as a regulated investment company (RIC) under § 851 et seq. of the Internal Revenue Code and intend to continue to so qualify for all subsequent tax years.

Prior to Date 1, S1 held an interest in P3, S2 held an interest in P4, and S3 held an interest in P5. On Date 1, P3, P4, and P5 (the "Transferors") contributed certain investment assets to P1 in exchange for beneficial interests in P1. Immediately thereafter the Transferors distributed their respective interest in P1 to their respective partners in liquidation.

The Trustees for P1 have adopted Capital Account Establishment and Maintenance Procedures ("Procedures").

Holders of interests in P1 will be limited to certain institutional investors ("Holders"), and will not include individuals, S corporations, partnerships, or grantor trusts that are beneficially owned by any individual, S corporation or partnership.

P1 will invest its aggregate assets in a manner that complies with the requirements specified in § 851(b) of the Code as though P1 were a RIC subject to § 851(b).

The Declaration for P1, which governs the rights, obligations and liabilities of the Holders, provides that the Holders' interests in P1 are not transferable. Increases and decreases in the size of a Holder's investment in P1 will be accomplished by adjustments to that Holder's capital account balance, not by a transfer of interests in P1 or capital accounts between the various Holders.

P1 represents that, except as required by § 704(c) of the Code and § 1.704-l(b) (4) of the Income Tax Regulations, each Holder's allocable share of P1's income will be comprised of a proportionate share of each item of income includable in P1's gross income. P1 further represents that the organization of P1 in a manner to enable it to be classified as a partnership under § 301.7701-2 of the Procedure and Administration Regulations was not done to enable a Holder that is a regulated investment company to make distributions that would be prohibited under Rev. Rul. 89-81, 1989-1 C.B. 266, had the regulated investment company invested directly in the assets of P1.

P1 represents that each entity that has been identified as a prospective Holder is either a RIC or an entity meeting the diversification requirements of § 368(a) (2) (F) (ii) of the Code immediately before -- and, taking into account the entity's proportionate share of P1's assets, will meet those requirements immediately after -- its investment in P1. Additionally, P1 represents that P1 will meet the diversification criteria of § 851(b) (4) immediately after the contributions of the Holders.

Furthermore, P1 represents that (1) interests in P1 will not be traded on an established securities market nor will any interests be issued in transactions registered under the Securities Act of 1933, and (2) P1 will not have more than 100 Holders at any one time.

P1 also represents that it is and will continue to be registered with the SEC under the 1940 Act as a manasement company; and that it will make all of its book allocations in proportion to the Holders' relative book capital accounts.

Furthermore, P1 represents that each Transferor transferred assets to P1 that satisfied the diversification test of § 368(a)(2) (F) (ii) of the Code. Solely for purposes of the preceding sentence, the principles of § 368(a) (2) (F) apply, except that Government securities are not excluded for purposes of determining total assets under § 368(a) (2) (F) (iv), unless the Government securities are acquired to meet § 368(a) (2) (F)(ii).

P1 and each Holder that is a RIC represents that for purposes of determining the required distribution under § 4982(a) (1) of the Code it will account for its share of partnership items of income, gain, loss, and deduction as they are taken into account by P1, as required by Rev. Rul. 94-40, 1994-1 C.B. 274.

Section 7704(a) of the Code provides that a publicly traded partnership shall be treated as a corporation.

Section 7704(b) of the Code provides that, for purposes of § 7704, the term "publicly traded partnership" means any partnership if (1) interests in such partnership are traded on an established securities market, or (2) interests in such partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

Section 1.7704-1(h)(1) of the regulations, concerning private placements, provides that except as otherwise provided in § 1.7704-1(h)(2), interests in a partnership are not readily tradable on a secondary market or the substantial equivalent thereof if (i) all interests in the partnership were issued in a transaction (or transactions) that was not required to be registered under the Securities Act of 1933 (15 U.S.C. 77a et seq.); and (ii) the partnership does not have more than 100 partners at any time during the taxable year of the partnership.

The Transferors will each have an interest in P1. P1 represents that P1 may in the future have additional Holders, but it will have no more than 100 partners (Holders), and that no interests in P1 have been, or will be traded on an established securities market or issued in a transaction registered under the Securities Act of 1933. Based on the information provided and the representations made, we conclude that P1 will not be a publicly traded partnership for purposes of § 7704 of the Code.

Section 851(b) of the Code provides that certain requirements must be satisfied for a domestic corporation to be taxed as a RIC.

Section 851(b)(2) of the Code provides that, to qualify as a RIC, 90 percent of a corporation's gross income must be derived from dividends, interest, payments with respect to securities loans (as defined in § 512(a)(5)), gains from the sale or other disposition of stocks, securities, foreign currencies, or other income derived with respect to the business of investing in such stocks, securities, or currencies.

Prior to its repeal by § 1271 of the Taxpayer Relief Act of 1997, Pub. L. 105-34, 111 Stat. 788, 1036, ("TRA '97"), § 851(b)(3) of the Code required that, to qualify as a RIC, less than 30 percent of the corporation's gross income may be derived from the sale or disposition of certain assets held for less than 3 months. The repeal applies to taxable years of a RIC beginning after August 5, 1997.

Section 851(b)(4)(A) of the Code (§ 851(b)(3)(A) for the taxable year of a RIC which begins after August 5, 1997) requires that, to qualify as a RIC, at the close of each quarter of the taxable year, at least 50 percent of the value of a corporation's total assets must be represented by cash and cash items (including receivables), Government securities, securities of other RICs, and other securities generally limited in respect of one issuer to an amount not greater in value than 5 percent of the value of the total assets of the corporation and to not more than 10 percent of the outstanding securities of such issuer.

Section 851(b)(4)(B) of the Code (§ 851(b)(3)(B) for the taxable year of a RIC which begins after August 5, 1997) provides that, to qualify as a RIC, not more than 25 percent of the corporation's total assets may be invested in the securities (other than Government securities and securities of other RICs) of any one issuer, or two or more issuers which the corporation controls and which are determined, under regulations, to be engaged in the same or similar trades or businesses or related trades or businesses.

Section 702(b) of the Code provides that the character of items stated in § 702(a) that are included in a partner's distributive share shall be determined as if such items were realized directly from the source from which realized by the partnership, or incurred in the same manner as incurred by the partnership. Section 702(c) provides that where it is necessary to determine the amount or character of the gross income of a partner, such amount shall include that partner's distributive share of the gross income of the partnership.

Section 1006(n)(1) of the Technical and Miscellaneous Revenue Act of 1988 added a sentence to the flush language of § 851(b) of the Code that states that income derived from a partnership or trust shall be treated as satisfying the 90 percent test of § 851(b)(2) only to the extent that such income is attributable to items of income of the partnership or trust which would be described in § 851(b)(2) if earned directly by the RIC. The legislative history of that sentence indicates that it was intended to clarify the general rule used to characterize items of income, gain, loss, deduction, or credit includable in a partner's distributive share, as applied to RICs that are partners. It therefore explains the relationship of § 702 to the 90 percent test under § 851(b)(2). See S. Rep. No. 445, 100th Cong., 2d Sess. 93 (1988).

Under subchapter K of the Code, a partnership is considered to be either an aggregate of its members or a separate entity. Under the aggregate approach, each partner is treated as an owner of an undivided interest in partnership assets and operations. Under the entity approach, the partnership is treated as a separate entity in which partners have no direct interest in partnership assets and operations. See S. Rep. No. 1622, 83d Cong, 2d Sess. 89 (1954) and H.R. Rep. No. 2543, 83d Cong., 2d Sess. 59 (1954).

In order for Holders to qualify as RICs under the diversification tests of § 851 of the Code, the aggregate approach will have to be applied to each Holder's partnership interest in P1. As an aggregate, each Holder will be entitled to take into account its share of the individual items of income and assets of P1.

Rev. Rul. 75-62, 1975-1 C.B. 188, concerns a life insurance company that contributed cash to a partnership in exchange for a 50 percent interest in the partnership. The partnership held real estate as its principal asset. For the taxable year in question, § 805(b) of the Code required life insurance companies to value their assets each taxable year. For this purpose, § 805(b)(4) required that shares of stock and real estate be valued at their fair market values, and that other assets be valued at their adjusted basis. The issue presented in the ruling is whether, for purposes of § 805(b)(4), the life insurance company's interest in the partnership is considered to be an investment in the real estate held by the partnership (an aggregate approach) or an investment in other property (an entity approach).

Rev. Rul. 75-62 holds that the partnership interest held by the life insurance company must be accounted for as other property for'purposes of § 805(b)(4) of the Code. The ruling cites §§ 705 and 741, both of which generally treat an interest in a partnership as an interest in an entity, as evidence of an intent in subchapter K to take the entity approach in questions concerning the nature of an interest in a partnership. The ruling states that the legislative history of § 805(b)(4) does not indicate that application of the entity approach to the facts of the ruling is inappropriate, and that there is no compelling reason to take the aggregate approach.

The flush language of § 851(b) of the Code and its legislative history indicate that here, unlike the situation described in Rev. Rul. 75-62, Congress intended that an aggregate approach be taken in determining the nature of the partnership interests held by the Holders. The flush language of § 851(b) mandates an aggregate approach in applying the 90 percent gross income test of § 851(b)(2) to RICs that hold partnership interests. It would be anomalous to suggest that Congress intended that a RIC's interest in a partnership be viewed as a direct investment in the partnership's assets for purposes of the § 851(b)(2) test but not be viewed as a direct investment in those assets for purposes of the test set out in § 851(b)(3) and (b)(4).

The tax treatment accorded real estate investment trusts (REITs) lends further support to applying the aggregate approach to the present case. REITs were created to provide an investment vehicle similar to the RIC for small investors to invest in real estate and real estate mortgages. See H.R. Rep. 2020, 86th Cong., 2d Sess. 3 (1960). Like RICs, REITs are subject to restrictions on the type of assets they can hold if they want to retain the benefits accorded them under subchapter M and are subject to certain gross income source tests. REITs and RICs also have similar distribution and holding period requirements.

Section 1.856-3(g) of the regulations provides that:

> In the case of a real estate investment trust which is a partner in a partnership, as defined in section 7701(a)-(2) and the regulations thereunder, the trust will be deemed to own its proportionate share of each of the assets of the partnership and will be deemed to be entitled to the income of the partnership attributable to such share. For purposes of section 856, the interest of a partner in the partnership's assets shall be determined in accordance with his capital interest in the partnership. The character of the various assets in the hands of the partnership and items of gross income of the partnership shall retain the same character in the hands of the partners for all purposes of section 856. Thus, for example, if a trust owns a 30-percent capital interest in a partnership which owns a piece of rental property the trust will be treated as owning 30 percent of such property and as being entitled to 30 percent of the rent derived from the property by the partnership. Similarly, if the partnership holds any property primarily for sale to customers in the ordinary course of its trade or business, the trust will be treated as holding its proportionate share of such property primarily for such purpose. Also, for example, where a partnership sells real property or a trust sells its interest in a partnership which owns real property, any gross income realized from such sale, to the extent that it is attributable to the real property, shall be deemed gross income from the sale or disposition of real property held for either the period that the partnership has held the real property or the period that the trust was a member of the partnership, whichever is the shorter.

Thus, the regulation adopts the aggregate "look-through" approach in determining how a REIT should account for its partnership interests for purposes of all of the income and asset qualification tests under § 856 of the Code.

The legislative purpose underlying the creation of both RICs and REITS was to provide small investors a means of pooling their resources to invest in a particular type of asset without the imposition of corporate income tax. The qualification tests are similar for each. Therefore, although the RIC regulations do not specifically address the issue herein, it is appropriate to adopt an approach for RICs that parallels that set forth for REITs.

Accordingly, each Holder that elects RIC status, as a partner in P1, will be deemed to own a proportionate share of the assets of P1 and will be deemed to be entitled to the income of P1 attributable to that share for purposes of determining whether that Holder satisfies the requirements of §§ 851(b)(2), 851(b)(3), and 851(b)(4) of the Code and the regulations thereunder, prior to their amendment by the TRA of '97 (or §§ 851(b)(2) and 851(b)(3) for taxable years of the RICs beginning after August 5, 1997). Gain properly allocated to a Holder under § 704(c) will not be considered gain derived by the other partners for purposes of § 851(b)(3). For purposes of these sections, the interest of the Holder in P1 shall be determined in accordance with the Holder's capital interest in P1. The Holder will be deemed to hold its proportionate share of the assets of P1 for the period that P1 has held the individual assets or for the period that the Holder has held the interest in P1, whichever is shorter. For these purposes, the holding period rules of § 1223 apply to determine a Holder's holding period in P1.

Section 704(a) of the Code provides that a partner's distributive share of income, gain, loss, deduction, or credit shall, except as otherwise provided in Chapter 1 of the Code, be determined by the partnership agreement.

Section 704(b) of the Code provides that a partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) shall be determined in accordance with the partner's interest in the partnership (determined by taking into account all facts and circumstances), if (1) the partnership agreement does not provide as to the partner's distributive share of income, gain, loss, deduction, or credit (or item thereof), or (2) the allocation to a partner under the agreement of income, gain, loss, deduction, or credit (or item thereof) does not have substantial economic effect.

Section 1.704-1(b)(2)(ii) of the regulations provides that in order for an allocation to have economic effect, it must be consistent with the underlying economic arrangement of the partners. This means that in the event there is an economic benefit or economic burden that corresponds to an allocation, the partner to whom the allocation is made must receive the economic benefit or bear the economic burden. Generally, an allocation has economic effect if (1) the partnership capital accounts are maintained in accordance with § 1.704-1(b)(2)(iv), (2) upon liquidation of the partnership (or any partner's interest in the partnership) liquidating distributions will be made to the partners in accordance with their positive capital account balances, and (3) partners are unconditionally required to restore the negative balance of their capital accounts to the partnership upon the liquidation of their interests in the partnership.

Section 1.704-1(b)(2)(iv)(b) of the regulations provides that the partners' capital accounts will be considered to be determined and maintained in accordance with the rules of paragraph (b)(2)(iv) if, and only if, each partner's capital account is increased by (1) the amount of money contributed by him to the partnership, (2) the fair market value of property contributed by the partner to the partnership (net of liabilities secured by such contributed property that the partnership is considered to assume or take subject to under § 752 of the Code), and (3) allocations to the partner of partnership income and gain (or items thereof), including income and gain exempt from tax and income and gain described in paragraph (b)(2)(iv)(g), but excluding income and gain described in paragraph (b)(4)(i); and decreased by (4) the amount of money distributed to the partner by the partnership, (5) the fair market value of property distributed to the partner by the partnership (net of liabilities secured by such distributed property that such partner is considered to assume or take subject to under § 752), (6) allocations to the partner of expenditures of the partnership described in § 705(a)(2)(B), and (7) allocations of partnership loss and deduction (or item thereof), including loss and deduction described in paragraph (b)(2)(iv)(g), but excluding items described in (6) above and loss or deduction described in paragraphs (b)(4)(i) or (b)(4)(iii).

Section 1.704-1(b)(2)(ii)(h) of the regulations provides that the partnership agreement includes all agreements among the partners, or between one or more partners and the partnership concerning affairs of the partnership and responsibilities of the partners.

Section 3.4 of Article III of the Procedures provides that the provisions contained in the Procedures, relating to the maintenance of book capital accounts and tax capital accounts, are intended to comply with § 1.704-1(b) of the regulations, and shall be interpreted and applied in a manner consistent with such regulations.

Section 3.4 of the Procedures further provides that the Trustees shall make any appropriate modifications in the event unanticipated events might otherwise cause the Procedures not to comply with § 1.704-1(b), including the requirements described in §§ 1.704-1(b)(2)(ii)(b)(1) and 1.704-1(b)(2)(iv) of the regulations.

Section 4.3 of Article IV of the Procedures provides that upon liquidation of P1, the proceeds will be distributed to the Holders as provided in Article VII of the Procedures.

Section 5.6 of Article V of the Procedures provides that if a redemption occurs prior to the end of a fiscal year, P1 will treat the fiscal year as ended for the purposes of computing the redeeming Holder's distributive share of P1 items and allocations of all items to such Holder will be made as though each Holder were receiving its allocable share of P1 items at such time.

Section 7.1 of Article VII of the Procedures provides that subject to § 7.4 of the Procedures, upon the dissolution of P1, the Trustees shall liquidate the assets of P1, apply and distribute the proceeds as follows:

(a) first to the payment of all debts and obligation of P1 to third parties, including without limitation the retirement of outstanding debt, including any debt owed to Holders or their affiliates, and the expenses of liquidation, and to the setting up of any reserves for contingencies which may be necessary; and

(b) then in accordance with the Holders' positive book capital account balances after adjusting book capital accounts for allocations provided in Article V of the Procedures and in accordance with the requirements described in § 1.704-1(b)(2)(ii)(b)(2) of the regulations.

Section 7.4 of Article VII of the Procedures provides that if a Holder has a negative balance in its book capital account following the liquidation of its interest, as determined after taking into account all capital account adjustments for the fiscal year during which the liquidation occurs, then such Holder shall restore the amount of such negative balance to P1 by the later of the end of the fiscal year or 90 days after the date of such liquidation so as to comply with the requirements of § 1.704-1(b)(2)(ii)(b)(3) of the regulations. Such amount shall, upon liquidation of P1 be paid to creditors of P1 or distributed to other Holders in accordance with their positive book capital account balances.

Based on the foregoing, the allocations provided for in the Procedures meet the requirements for economic effect set forth in § 1.704-1(b)(2)(ii) of the regulations. Accordingly, the allocations contained in the Procedures have economic effect within the meaning of § 704(b) of the Code. No opinion is expressed or implied regarding whether the allocations of profits and losses contained in the Procedures satisfy the requirements for substantiality as set forth in § 1.704-1(b)(2)(iii).

Section 1.704-l(b) (2)(iv) (f) of the regulations provides that a partnership agreement may, upon the occurrence of certain events, increase or decrease the partners' capital accounts to reflect a revaluation of partnership property on the partnership's books. Capital accounts so adjusted will not be considered to be determined and maintained in accordance with the rules of § 1.704-1(b) (2) (iv) unless--

(1) the adjustments are based on the fair market value of partnership property on the date of adjustment;

(2) the adjustments reflect the manner in which the unrealized income, gain, loss, or deduction inherent in the property (that has not been reflected in the capital accounts previously) would be allocated among the partners if there were a taxable disposition of the property for its fair market value on that date;

(3) the partnership agreement requires that the partners' capital accounts be adjusted in accordance with § 1.704-1(b)(2)(iv) (g) for allocations to them of depreciation, depletion, amortization, and gain or loss, as computed for book purposes, with respect to the property;

(4) the partnership agreement requires that the partners' distributive shares of depreciation, depletion, amortization, and gain or loss, as computed for tax purposes, with respect to the property be determined so as to take account of the variation between the adjusted tax basis and book value of such property in the same manner as under § 704(c); and

(5) the adjustments are made principally for a substantial non-tax business purpose--

(i) in connection with contribution of money or other property to the partnership by a new or existing partner as consideration for an interest in the partnership; or

(ii) in connection with the liquidation of the partnership or a distribution of money or other property by the partnership to a retiring or continuing partner as consideration for an interest in the partnership; or

(iii) under generally accepted industry accounting practices, provided substantially all of the partnership's property (excluding money) consists of stock, securities, commodities, options, warrants, futures, or similar instruments that are readily tradable on an established securities market.

Section 704(c)(1)(A) of the Code provides that under regulations prescribed by the Secretary income, gain, loss, and

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deduction with respect to property contributed to the partnership by a partner shall be shared among the partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution.

Section 1.704-3(a) (1) of the regulations provides that the purpose of § 704(c) is to prevent the shifting of tax consequences among partners with respect to precontribution gain or loss. Under § 704(c), a partnership must allocate income, gain, loss, and deduction with respect to property contributed by a partner to the partnership so as to take into account any variation between the adjusted tax basis of the property and its fair market value at the time of contribution. Notwithstanding any other provision of § 1.704-3, the allocations must be made using a reasonable method that is consistent with the purpose of § 704(c).

Section 1.704-3(a)(6) of the regulations provides that the principles of § 1.704-3 apply to allocations with respect to property for which differences between book value and adjusted tax basis are created when a partnership revalues partnership property pursuant to § 1.704-1(b)(2)(iv)(f) (reverse § 704(c) allocations).

Section 1.704-3(e)(3)(i) of the regulations provides that for purposes of making reverse § 704(c) allocations, a securities partnership may aggregate gains and losses from qualified financial assets using any reasonable approach that is consistent with the purpose of § 704(c).

Section 1.704-3(e) (3) (iii) (A) of the regulations provides that a partnership is a securities partnership if the partnership is either a management company or an investment partnership, and the partnership makes all of its book allocations in proportion to the partners' relative book capital accounts (except for reasonable special allocations to a partner that provides management services or investment advisory services to the partnership).

Section 1.704-3(e)(3) (iii) (B)(1) of the regulations provides that a partnership is a management company if it is registered with the Securities and Exchange Commission as a management company under the Investment Company Act of 1940.

Under Article II of the Procedures, "Net Unrealized Gain" is defined to mean the excess, if any, of the aggregate fair market value of all investments over the aggregate adjusted bases, for federal income tax purposes, of all investments.

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Under Article II of the Procedures, "Net Unrealized Loss" is defined to mean the excess, if any, of the aggregate adjusted bases for federal income tax purposes, of all investments over the aggregate fair market value of all investments.

Under Article II of the Procedures, the "Book Capital Account" means, for any Holder at any time in any fiscal year, the book capital account balance of the Holder on the first day of the fiscal year, as adjusted each day pursuant to the provisions of § 3.2 of the Procedures.

Section 3.2 of Article III of the Procedures, provides that the Book Capital Account balance of each Holder shall be adjusted each day by the following amounts: (a) increased by any increase in Net Unrealized Gains or decrease in Net Unrealized Losses allocated to such Holder pursuant to § 5.1(a) of the Procedures; (b) decreased by any decrease in Net Unrealized Gain or increase in Net Unrealized Losses allocated to such Holder pursuant to § 5.1(b) of the Procedures; (c) decreased by the amount of any Recognized Gain, and increased by the amount of any Recognized LOSS, allocated to such Holder's tax capital account on the disposition of any investment; (d) increased by any Capital Contribution made by such Holder; and, (e) decreased by any distribution, including any distribution to effect a withdrawal or Redemption, made to such Holder by the Trust. Any adjustment pursuant to § 3.2(a), (b) or (c) above shall be prorated for increases in each Holder's Book Capital Account balance resulting from Capital Contributions, or distributions or withdrawals from the Trust or Redemptions by the Trust occurring, during such Fiscal Year as of the day that the Capital Contribution, distribution, withdrawal or Redemption is accepted, made or effected by the Trust.

Accordingly, based on the information submitted and the representations made we conclude that P1 is a securities partnership for purposes of § 1.704-3(e) (3) of the regulations and that pursuant to § 1.704-3(e) (3), P1 will be allowed to make reverse § 704(c) allocations on an aggregate basis. Furthermore, we conclude that the approach used by P1 to aggregate gains and losses from qualified financial assets is a reasonable approach that is consistent with the purpose of § 704(c).

Section 721(a) of the Code provides that no gain or loss shall be recognized by either a partnership or its partners on the contribution of property to the partnership in exchange for an interest in the partnership. Section 721(b), however, provides that gain (but not loss) realized on such a transfer may be recognized if the partnership would be treated as an investment company within the meaning of § 351 of the Code, if the partnership were incorporated.

Based solely on the representations set forth and the facts presentedabove, the transfer of the diversified assets by each Transferor to P1 will not be a transfer to an investment company within the meaning of § 351(e)(l) of the Code.

Section 722 of the Code provides that the basis of an interest in a partnership acquired by a contribution of property, includingmoney, to the partnership shall be the amount of such money and the adjusted basis of such property to the contributing partner at the time of the contribution.

Section 723 of the Code provides that the basis of property contributed to a partnership by a partner shall be the adjusted basis of such property to the contributing partner at the time of thecontribution.

Accordingly, the basis of a Transferor in its interest in P1 will be the amount of money and the aggregate of the adjusted bases of the property contributed by the Transferor. Further, P1 will have a basis in any property contributed to it equal to the adjusted basis of such property to the Transferor at the time of thecontribution. Finally, under § 1223(2) the holding period of P1 in property received in the contribution from a Transferor which was a capital asset will include the Transferor's holding period for such property.

Section 731(a) of the Code provides that in the case of a distribution by a partnership to a partner (1) gain will not be recognized to such partner, except to the extent that any money distributed exceeds the adjusted basis of such partner's interest in the partnership immediately before the distribution, and (2) loss will not be recognized to such partner, except that upon a distribution in liquidation of a partner's interest in a partnership where no property other than that described in § 731(a) (2) (A) or (B) is distributed'to such partner, loss will be recognized to the extent of the excess of the adjusted basis of such partner's interest in the partnership over the sum of (A) any money distributed, and (B) the basis to the distributee, as determined under § 732, of any unrealized receivables (as defined in § 751(c)) and inventory (as defined in § 751(d)(2)).

Section 731(c) (1) of the Code provide that, for purposes of §§ 731(a)(l) and 737, the term "money" includes marketable securities, and such securities will be taken into account at their fair market value as of the date of.the distribution.

Section 731(c) (2) (A) of the Code provides, in general, that the term "marketable securities" means financial instruments and foreign currencies which are, as of the date of the distribution, actively traded (within the meaning of § 1092(d) (1)).

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Section 731(c) (2)(B)(v) of the Code provides that, except as otherwise provided in regulations, the term "marketable securities" includes interests in an entity if substantially all of the assets of such entity consist (directly or indirectly) of marketable securities, money, or both. Section 731(c) (2) (B)(vi) provides that, to the extent provided in regulations, such term includes any interest in an entity not described in § 731(c) (2) (B) (v) but only to the extent of the value of such interest which is attributable to marketable securities, money or both.

Section 1.731-2(c) (3) (i) of the regulations provides that, for purposes of § 731(c) (2) (B) (v), of the Code substantially all of the assets of an entity consist (directly or indirectly) of marketable securities, money, or both only if 90 percent or more of the assets of the entity (by value) at the time of distribution of an interest in the entity consist (directly or indirectly) of marketable securities, money, or both. Section 1.731-2(c) (3) (ii) provides that, for purposes of § 731(c) (2) (B) (vi), an interest in an entity is a marketable security to the extent that the value of the interest is attributable (directly or indirectly) to marketable securities, money, or both, if less than 90 percent but 20 percent or more of the assets of the entity (by value) at the time of distribution of an'interest in the entity consist (directly or indirectly) of marketable securities, money, or both.

Section 731(c) (3) (A) (iii) of the Code provides that § 731(c) (1) will not apply to the distribution from a partnership of a marketable security to a partner if such partnership is an investment partnership and such partner is an eligible partner thereof.

Section 731(c) (3) (C) (i) of the Code provides that, for purposes of § 731(c) (3) (A) (iii), the term "investment partnership" means any partnership which has never been engaged in a trade or business and substantially all of the assets (by value) of which have always consisted of (I) money, (II) stock in a corporation, (III) notes, bonds, debentures, or other evidences of indebtedness, (IV) interest rate, currency, or equity notional principal contracts, (V) foreign currencies, WI) interest in or derivative financial instruments (including options, forward or futures contracts, short positions, and similar financial instruments) in any asset described in § 731(c) (3)(C)(i) or in any commodity traded on or subject to the rules of a board of trade or commodity exchange, (VII) other assets specified in regulations, or (VIII) any combination of the foregoing.

Section 731(c) (3) (C) (iii) (I) of the Code provides that the term "eligible partner" means any partner who, before the date of

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the distribution, did not contribute to the partnership any property other than property described in § 731(c) (3) (C)(i).

Accordingly, based solely on the information provided and representations made, we conclude that each Transferor is an investment partnership within the meaning of § 731(c) (3) (C)(i) of the Code, and that all of the partners of the Transferor are eligible members of the Transferor within the meaning of § 731(c) (3) (C) (iii) (I) Further, under § 731(a), no member of a Transferor will recognize gain or loss on the distribution of an interest in P1 to that partner.

In addition, each partner of a Transferor who receives an interest in P1 in exchange for its interest in a Transferor will have a basis in its interest in P1, as determined under § 732(c) of the Code, equal to the appropriate portion of its adjusted basis immediately prior to the distribution in its interest in the Transferor, and provided any such interest in P1 is a capital asset, a holding period in each interest which includes the Transferor's holding period, as determined under § 1223.

Except as specifically ruled upon above, we express no opinion on the federal tax consequences of the transactions described above under any other provisions of the Code.

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

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,

J. Thomas Hines

J. THOMAS HINES
Senior Technician Reviewer
Branch 2
Office of the Assistant
Chief Counsel
(Passthroughs and
Special Industries)

Enclosures: 2
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