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Internal Revenue Service

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Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:
July 16, 1999

Acquiring =

Acquiring Trust =

Target =

Target Trust =

State A =

X% =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

330

This letter responds to your request dated January 22, 1999, for rulings as to the federal income tax consequences of a completed transaction. Additional information was submitted in letters dated March 29, 1999, April 13, 1999, April 15, 1999, April 26, 1999, April 30, 1999, May 18, 1999, May 24, 1999, May 25, 1999, June 4, 1999, July 6, 1999, and July 12, 1999. The information submitted is summarized below.

Acquiring Trust is a business trust organized under the laws of State A and registered under the Investment Company Act of 1940 (the "Act") as an open-end management investment company.

Acquiring is an open-end management investment company, which is one of a series of funds of Acquiring Trust. Acquiring is treated as a separate corporation for federal income tax purposes pursuant to § 851(g) of the Internal Revenue Code (the "Code"), and has elected to be taxed as a regulated investment company ("RIC") under §§ 851 through 855. Acquiring is a money market fund subject to the provisions of Rule 2(a)-7 of the Act. Acquiring's investment objective is to provide high current income with liquidity and stability of principal by investing exclusively in U.S. Treasury bills, notes, bonds, and other U.S. obligations issued or guaranteed by the U.S. Treasury. Acquiring also engages in securities lending. Acquiring files its federal income tax returns on a Date 1 taxable year and reports its income under the accrual method of accounting.

Target Trust is a business trust organized under the laws of State A and registered under the Act as an open-end management investment company.

Target was an open-end management investment company, which was one of a series of funds of Target Trust. Target was treated as a separate corporation for federal income tax purposes pursuant to § 851(g), and had elected to be taxed as a RIC under §§ 851 through 855. Target had operated as a money market fund subject to the provisions of Rule 2(a)-7 of the Act. Target's investment objective was to preserve principal value and maintain a high degree of liquidity while providing current income by investing exclusively in obligations issued by the U.S. Treasury and in repurchase agreements involving such obligations. Target filed its federal income tax returns on a Date 2 taxable year and reported its income under the accrual method of accounting.

Acquiring and Target entered into an agreement and plan of reorganization for what were represented to be valid business reasons. Pursuant to the agreement, the following steps were taken on Date 3:

(1) Acquiring acquired all of the properties and assets of Target solely in exchange for Acquiring voting stock (including fractional shares) and the assumption of all of the liabilities of Target.

(2) Target distributed all of the Acquiring stock received in Step 1 to its shareholders in complete liquidation. (Steps 1 and 2 are hereinafter referred to as the "Transaction").

On Date 4, which was a few days prior to the Transaction, a shareholder of Target holding X% (which is an amount greater than 30%) of the stock of Target redeemed all of its interest in Target pursuant to § 22(e) of the Act (the "Redemption"). Under § 22(e) of the Act, each shareholder of an open-end management investment company has the right to redeem any or all of its interest in the investment company on any business day of the year. As such, Target was legally obligated to meet the redemption request by the shareholder.

The taxpayers have made the following representations in connection with the Transaction described above:

(a) The fair market value of the voting stock in Acquiring received by each Target shareholder was approximately equal to the fair market value of the Target stock surrendered in exchange therefor. The Target shareholders received no consideration other than Acquiring stock (which may have included fractional shares) in exchange for their Target stock.

(b) On the closing date of the Transaction (the "Closing Date") and at all times since the Closing Date, there was not and there has not been any plan or intention by Acquiring or any person related to Acquiring (as defined in § 1.368-1(e)(3) of the Income Tax Regulations) to acquire or redeem any of the Acquiring stock issued in the Transaction either directly or through any transaction, agreement, or arrangement with any other person, other than redemptions that Acquiring, as an open-end investment company, makes when its shares are presented to it for redemption pursuant to § 22(e) of the Act.

(c) During the five-year period ending on the Closing Date, neither Target nor any person related to Target (as defined in § 1.368-1(e)(3) without regard to § 1.368-1(e)(3)(i)(A)) will have directly or through any transaction, agreement or arrangement with any other person, (i) acquired Target stock with consideration other than stock of Acquiring or Target, except for (a) the Redemption, and (b) stock redeemed in the ordinary course of Target's business as an open-end investment company pursuant to § 22(e) of the Act, or (ii) made distributions (except for regular, normal dividend distributions made by Target in order to

comply with the requirements concerning the $1-per-share-net-asset-valuation convention under Rule 2a-7 of the Act, preceding the transaction). The amounts distributed in the Redemption described in (i)(a) above do not exceed 50% of the value (without giving effect to such Redemption) of the proprietary interest in Target on the date of the Transaction.

(d) Prior to or in the Transaction, neither Acquiring nor any person related to Acquiring (as defined in § 1.368-1(e)(3)) will have acquired, directly or through any transaction, agreement or arrangement with any other person, Target stock with consideration other than Acquiring stock.

(e) Acquiring acquired at least 90% of the fair market value of the net assets and at least 70% of the fair market value of the gross assets held by Target immediately prior to the Transaction. For purposes of this representation, (a) amounts paid by Target, out of the assets of Target, to Target shareholders in redemption of Target stock (other than redemptions that Target, as an open-end investment company, makes when its shares are presented to it for redemption pursuant to § 22(e) of the Act), (b) amounts used by Target to pay expenses of the Transaction, and (c) amounts used to effect all distributions (except for regular, normal dividend distributions made by Target in order to comply with the requirements concerning the $1-per-share-net-asset-valuation convention under Rule 2a-7 of the Act, preceding the transaction) were included as assets of Target held immediately prior to the Transaction.

(f) On the Closing Date and at all times since the Closing Date, Acquiring did not have and has not had any 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 its business as a series of an open-end investment company.

(g) Target distributed the Acquiring stock it received in the Transaction to its shareholders as provided in the Transaction documents.

(h) The liabilities of Target that were assumed by Acquiring, including the amount of liabilities, if any, to which the transferred assets were subject, were incurred by Target in the ordinary course of its business and were associated with the assets transferred to Acquiring.

(i) At all times following the Transaction, Acquiring has continued and intends to continue the historic business of Target as an open-end investment company that is a "money market fund" subject to the provisions of Rule 2a-7 of the Act that invests in U.S. government-backed obligations.

(j) Acquiring, Target and the shareholders of Taget paid their respective expenses, if any, incurred in connection with the Transaction.

(k) At the time of the Transaction, there was no intercorporate indebtedness existing between Acquiring and Target.

(l) For federal income tax purposes, Target qualified as a RIC, and the provisions of §§ 851 through 855 applied to Target for its taxable year beginning Date 5 and continued to apply to it through the Closing Date.

(m) For federal income tax purposes, Acquiring qualified as a RIC on the Closing Date and continues to so qualify, and the provisions of §§ 851 through 855 have applied to Acquiring for its taxable year beginning Date 6 and thereafter.

(n) On the Closing Date, Acquiring did not own, directly or indirectly, nor did it own during the five years preceding the Closing Date, directly or indirectly, any Target stock.

(o) The fair market value of the assets transferred to Acquiring by Target equaled or exceeded the sum of the liabilities that were assumed by Acquiring, plus the amount of liabilities, if any, to which the transferred assets were subject.

(p) On the Closing Date, Target was not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

(q) Amounts used by Target to meet redemptions that Target makes when its shares are presented to it for redemption in the ordinary course of Target's business as an open-end investment company pursuant to § 22(e) of the Act and amounts used to effect regular, normal dividend distributions made by Target in order to comply with the requirements concerning the $1-per-share-net-asset-valuation convention under Rule 2a-7 of the Act were paid out of Target's own assets. Furthermore, Target did not incur any indebtedness in order to make such payments.

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

(1) The acquisition by Acquiring of substantially all of the assets of Target solely in exchange for Acquiring stock and the assumption by Acquiring of certain liabilities of Target, followed by the distribution by Target of the Acquiring stock and any retained assets to its shareholders in complete liquidation, constituted a "reorganization" within the meaning of § 368(a)(1)(C). For purposes of this

ruling, "substantially all" means at least 90% of the fair market value of the net assets and at least 70% of the fair market value of the gross assets held by Target immediately prior to the Transaction. Acquiring and Target were each a "party to a reorganization" within the meaning of § 368(b).

(2) Target recognized no gain or loss on the transfer of substantially all of its assets to Acquiring solely in exchange for Acquiring stock and the assumption by Acquiring of its liabilities or on the distribution of such Acquiring stock to Target shareholders (§§ 361(a) and (c), and 357(a)).

(3) Acquiring recognized no gain or loss on the receipt of substantially all of Target's assets solely in exchange for the Acquiring stock (§ 1032(a)).

(4) The basis of the assets of Target in the hands of Acquiring was the same as the basis of those assets in the hands of Target immediately prior to the Transaction (§ 362(b)).

(5) Acquiring's holding period for the assets received in the Transaction includes the period during which those assets were held by Target (§ 1223(2)).

(6) The Target shareholders recognized no gain or loss on the receipt of Acquiring stock solely in exchange for Target stock (§ 354(a)(1)).

(7) The basis of the Acquiring stock received by Target shareholders was the same as the basis of the Target stock surrendered in exchange therefor (§ 358(a)(1)).

(8) The holding period of the Acquiring stock received by the Target shareholders includes the period that the shareholders held the Target stock surrendered in exchange therefor, provided the Target stock was held as a capital asset on the date of the exchange (§ 1223(1)).

No opinion is expressed about the tax treatment of the 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 transactions that are not specifically covered by the above rulings. Specifically, no opinion was requested, and none is expressed, about whether Acquiring or Target qualified (and whether Acquiring continues to so qualify) as a RIC that is taxable under Subchapter M, Part I of the Code.

This ruling is directed only to the taxpayers requesting it. 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 each taxpayer involved for the taxable year in which the Transaction covered by this letter is consummated.

Pursuant to a power of attorney on file in this office, a copy of this letter has been sent to the taxpayers.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By Michael J. Wilder
Michael J. Wilder
Assistant to the Chief, Branch 3