



COMMONWEALTH OF
PUERTO RICO

OFFICE OF THE COMMISSIONER OF
FINANCIAL INSTITUTIONS

Rafael Blanco-Latorre, Esq.
Commissioner

April 16, 2015

Nikos Buxeda, Esq.
Adsuar Muñiz Goyco
Seda & Pérez Ochoa, P.S.C.
P.O. Box 70294
San Juan, Puerto Rico 00936-8294

RE: ORGANIZATION OF THE ATLAS U.S. TACTICAL INCOME FUND, INC.

Dear Mr. Buxeda:

We make reference to your letter dated April 15, 2015, as well as multiple conversations held in connection with the organization of the Atlas U.S. Tactical Income Fund, Inc. (the "Fund").

On behalf of your client, Atlas Asset Management, LLC ("Atlas"), in the Letter you request authorization for the creation of a new diversified, leveraged, open-end, redeemable at will, mutual fund investment company, and certain rulings and waivers (collectively, the "Ruling") under the provisions of Act Number 93 of July 30, 2013, as amended, known as the Puerto Rico Investment Companies Act of 2013 (the "Act").

The determinations sought in the Letter are for the benefit of the Fund, which your client intends to register as an investment company under the provisions of the Act.

I. DEFINITIONS

For purposes of this administrative determination (the "Ruling"), unless otherwise specified below, the terms listed below shall have the following definitions:

- (1) "Total Assets", when used in connection with compliance with the 20% Investment Requirement (as defined below), means the total market value of a registered investment company's securities (including, but not limited to, portfolio securities purchased with the proceeds of leverage) and cash, including cash equivalents but excluding non-cash, non-portfolio securities (such as, but not limited to, prepaid items, receivables and swaps marked-to-market).
- (2) "Total Assets for purposes of compliance with the Maximum Leverage Authorized" (hereinafter "Total Assets for Leverage" or "TAL"), when used in connection with the Maximum Leverage Authorized (as defined below), means the total market value of the registered investment company's securities (including, but not limited to, portfolio securities purchased with the proceeds of leverage) and cash, including cash equivalents and non-cash, non-portfolio securities items (such as, but not limited to, prepaid items, receivables and swaps marked-to-market), after applying the proceeds of leverage.



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- (3) "Repurchase Agreement" or "Repurchase Transaction" refers to a transaction in which the Fund sells securities to a counterparty, that the Fund is obligated to purchase back from such counterparty, which constitutes a borrowing transaction.
- (4) "Reverse Repurchase Agreement" or "Reverse Repurchase Transaction" refers to a transaction in which the Fund purchases securities from a counterparty, that the Fund is obligated to resell to such counterparty, which constitutes an investment by the Fund.
- (5) "Net Asset Value (NAV)" refers to the number that is determined by subtracting the Fund's total liabilities from the Fund's total assets.
- (6) "Valuation Date" refers to the calculation of the Net Asset Value of the Fund undertaken each business day by the administrator of the Fund.

II. ADMINISTRATIVE DETERMINATION ("RULING")

Relying on the substantive premises listed below and subject to strict adherence to the terms and conditions set out herein, the Office of the Commissioner of Financial Institutions (the "Office" or the "Commissioner") hereby **AUTHORIZES** the organization of the Fund under the Act and we hereby issue the following administrative resolutions and rulings pursuant to the provisions of the Act.

III. SUBSTANTIVE PREMISES AND BASIS FOR THE RULING

In issuing this Ruling we rely on the factual representations, terms and conditions set out below. Given our reliance on these representations, terms and conditions, they are an integral part of this Ruling and strict adherence to the same is required for the validity of this Ruling:

IN GENERAL

- (1) Atlas is registered as an investment advisor with the Securities and Exchange Commission pursuant to the Investment Advisers Act of 1940, as amended.

CREATION OF THE FUND

- (2) The Fund will be organized as a Puerto Rico corporation.
- (3) The Fund will invest primarily in taxable and/or tax-exempt fixed income securities, but will have the flexibility, within certain limits, to invest in other securities, including large cap equity stocks, foreign securities and high yield bonds. The Fund will utilize leverage.
- (4) The Fund will comply with the 20% investment requirement in Puerto Rico securities as provided in Article 11(Q) of the Act (the "20% Investment Requirement").



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- (5) The Fund will register with the Office as a diversified, leveraged, open-end, redeemable at will, mutual fund investment company under the Act.
- (6) As required by Article 11 of the Act, the Fund will operate under the supervision of a Board of Directors (the "Board"), of which at least the majority of its members will not be "Interested Persons" of Atlas within the meaning of Section 3(P) of the Act (the "Independent Directors").
- (7) As required by Article 11(G) of the Act, at least two of the Fund's directors, the Fund's President (or Vice President) and the Fund's Secretary (or Assistant Secretary) will be residents of Puerto Rico.
- (8) As required by Article 11(E) of the Act, the Fund's principal office will be located in Puerto Rico. The official books and records of the Fund will be physically maintained in Puerto Rico and shall be readily accessible to the Office. For purposes of this paragraph, the term "readily accessible" means available to the Office within thirty six (36) hours after being first requested; provided that the thirty six (36) hours will not include hours of non-business days.
- (9) The investments of the Fund will initially be managed by Atlas (the "Investment Adviser"), which, as required by Article 11(H) of the Act, has its principal office in Puerto Rico.
- (10) As permitted by Article 15 of the Act, the contract between the Investment Adviser and the Fund for the management of the investments of the Fund (the "Investment Advisory Contract") will be approved by at least a majority of the Board and of Independent Directors.
- (11) As required by Article 15 of the Act, the Investment Advisory Contract will be for an initial term of two years, and unless otherwise terminated, will continue automatically for successive annual periods, provided such continuance is approved at least annually by a majority of the Board and of the Independent Directors. The Investment Advisory Contract may be terminated at any time, without the payment of penalty, by a majority vote of the Board, on 60 days' prior written notice to the Investment Adviser, or by the Investment Adviser at any time, without payment of penalty, on 60 days' prior written notice to the Fund.
- (12) Subject to the approval of the Board and of the Independent Directors, the Investment Adviser may also enter into separate sub-investment advisory agreements with each of one or more sub-advisers (the "Sub-Adviser").
- (13) Atlas will initially act as the Fund's administrator (the "Administrator") which, as required by Article 11(H) of the Act, has its principal office in Puerto Rico. The Administrator intends to retain Gemini Fund Services, LLC as sub-administrator. The Administrator will provide the Fund with administrative services including, without limitation, preparing the Fund's financial statements, coordinating with the Fund's outside auditors in connection with their annual audit, monitoring and assisting in the Fund's compliance with all applicable laws and regulations, and calculating the Net Asset Value of the Fund.



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- (14) Since all of the investments of the Fund will be exclusively book-entry securities, a custodian with those capabilities will be retained by the Fund (the "Custodian").
- (15) Gemini Fund Services, LLC is expected to act as transfer agent for the Fund (the "Transfer Agent"). The Transfer Agent may also retain a sub-transfer agent. The Transfer Agent will have the responsibility of ensuring that the Fund will be provided with the following services:
- issuing and recording the appropriate number of Shares, as authorized, and holding such Shares in the appropriate shareholder account;
 - effecting transfers of Shares by the registered owners thereof upon receipt of appropriate documentation issued by the Fund;
 - preparing and transmitting payments for income and other distributions declared by the Fund;
 - acting as agent for shareholders pursuant to any income reinvestment plan of the Fund; and
 - issuing replacement certificates for those certificates alleged to have been lost, stolen or destroyed.
- (16) Audits of the Fund will be conducted by Puerto Rico resident partners/managers of a nationally recognized public accounting firm with operations in Puerto Rico.
- (17) Oriental Financial Services LLC is expected to act as distributors in Shares of the Fund or act as agent for the Fund (the "Distributor"). Other distributors may be appointed in the future. As permitted by Article 16 of the Act, the Distribution Contract will be for an initial term of two years, and unless otherwise terminated, will continue automatically for successive annual periods, provided such continuance is approved at least annually by a majority of the Board and of the Independent Directors.

CAPITALIZATION OF THE FUND

- (18) The Fund will seek to achieve its investment objective by issuing shares of common stock on a continuous basis, representing undivided interests in the Fund's assets (the "Shares"), with the par value or liquidation preference (as applicable) determined at the time of issuance and described in the Prospectus or other offering document prepared in connection with such issuances.
- (19) The Fund will initially only offer Class A Shares and Class C Shares. Class A Shares will charge a front-end sales charge, but not a redemption fee (except as provided below) and will be charged distribution and servicing fees and operating expenses. Sales charges, fees and expenses may differ



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within the Class A Shares, depending on the amount invested. Class C Shares will not charge a front-end sales charge, but will charge higher distribution and service fees than the Class A Shares, and will be charged the same amount of operating expenses. All classes of Shares will have equal voting rights. Additionally, in order to deter market-timing, a redemption fee equal to 1.00% of the Net Asset Value of the redeemed Shares, may be applied to Shares of any class that are redeemed within sixty (60) days of their acquisition; provided that such fees shall inure to the benefit of the shareholders of the Fund.

- (20) The Fund intends to issue Shares on a continuous basis but reserves the right to suspend such issuances when the Investment Adviser determines that a suspension of such issuances is, in its discretion, appropriate, subject to the ratification of the Board within five (5) business days from the first date when such issuances are suspended.
- (21) The Fund intends to effect daily redemptions of the Shares but reserves the right to temporarily delay or suspend such redemptions in cases:
 - a. When banks in Puerto Rico or New York City are closed; or
 - b. when the New York Stock Exchange is closed or trading on the New York Stock Exchange is restricted; or
 - c. when an emergency exists that makes it not reasonably practicable for the Fund to dispose of securities owned by it or to determine fairly the market value of its assets; or
 - d. when the Investment Adviser determines that a suspension of redemption is, in its discretion, appropriate, subject to the ratification of the Board within five (5) business days from the date when such issuances are suspended.
- (22) As an open-end fund, the Fund is required to redeem its Shares at Net Asset Value per Share when tendered for redemption by the shareholders in accordance with the procedures set forth in the Prospectus for the Fund.
- (23) Actions affecting all shareholders of the Fund will be voted on by all shareholders. Actions affecting only a given class will be voted on by all shareholders of that class, respectively.
- (24) The Distributor will reduce or waive in its entirety the sales load on sales of the Shares of the Fund in certain circumstances, as set forth in the Prospectus (hereinafter referred to as the "Sales Load Waivers"). The Fund may impose restrictions to the Sales Load Waivers under temporary unusual market conditions, based on their adverse effect to its operations such as in the event of engaging in excessive trading by the investor (more than four Sales Load Waivers granted within a calendar year), purchases in excess of 1% of the Total Assets or for any other justified restriction to be detailed in the Prospectus.



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- (25) The Fund may modify the Sales Load Waivers described herein, as specifically detailed in the Prospectus.
- (26) The Fund may utilize leverage, in compliance with the following representations:
- The Fund intends to issue evidences of indebtedness, including commercial paper, short and medium-term notes and long-term debt securities (collectively, the "Notes" and jointly with the Shares, the "Securities"), borrow money and enter into Repurchase Agreements.
 - As permitted by Article 4(E) of the Act, the aggregate principal amount of the Notes, borrowed money and Repurchase Agreements will not exceed 50% of the TAL determined immediately after the issuance of any Note, any borrowing or any execution of a Repurchase Agreement. This provision is referred to herein as the "Maximum Leverage Authorized."
- (27) Notwithstanding the limitation set forth in the preceding paragraph, the Fund may borrow money from banks and other financial institutions for temporary or emergency purposes, including financing redemption requests that otherwise require the untimely disposition of securities owned by the Fund, in an amount not to exceed 5% of the TAL.
- (28) Securities issued by the Fund will be offered and sold exclusively to (i) individuals who are residents of Puerto Rico and/or (ii) to corporations, partnerships or other business entities that have their principal place of business in Puerto Rico, through broker-dealers that are residents of Puerto Rico (together with (i), the "Puerto Rico Residents"). Since the Shares will be offered solely to Puerto Rico Residents, in the opinion of the Fund's counsel the offering will be exempt from registration under the Securities Act of 1933 pursuant to Section 3(a)(11) thereof, and the Fund will be exempt from registration under the Investment Company Act of 1940 pursuant to Section 6(a)(1) thereof.
- (29) The Fund may establish a dividend reinvestment plan pursuant to which shareholders of the Fund would be permitted to invest all or a portion of their cash dividends or distributions in additional Shares, as described in greater detail in the Prospectus.

INVESTMENT OBJECTIVES AND INVESTMENT PRACTICES OF THE FUND

- (30) The Fund's investment objective seeks to maximize total return, consistent with preservation of capital.
- (31) The Fund will seek to achieve its investment objectives by investing the net proceeds from the sale of its securities, from borrowing and from Repurchase Agreements primarily in fixed income securities. The Fund intends to comply with the 20% Investment Requirement by investing 20% (twenty percent) of the Fund's Total Assets solely in securities issued by Government National Mortgage Association ("GNMA"), Federal National Mortgage Association ("FNMA") and Federal Home Loan Mortgage Corporation ("FHLMC") representing an interest in or guaranteed by mortgages on real property located



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in Puerto Rico. Under no circumstances will the Fund have the flexibility to invest in direct or indirect obligations of the Commonwealth of Puerto Rico or any of its instrumentalities.

- (32) The Fund will normally invest at least 80% (eighty percent) of the Fund's Total Assets in a diversified portfolio of fixed income securities of varying maturities, and normally will maintain an average portfolio duration of negative 3 years to plus 6 years.
- (33) The Fund will generally invest a maximum of 20% (twenty percent) of the Fund's Total Assets in the stock of large capitalization companies domiciled in the United States. The Fund intends to invest in this sector primarily, but not exclusively, in Exchange Traded Funds ("ETFs").
- (34) The Fund may not invest more than 10% of its assets in fixed income securities that, at the time of their purchase, are rated below one of the four highest rating categories (without regard to gradations within each category) by at least one of Standard & Poor's Rating Services ("S&P," BBB or higher), Moody's Investors Service, Inc. ("Moody's," Baa or higher), or Fitch, Inc. ("Fitch," BBB or higher), or that have received an equivalent rating by at least one other nationally recognized statistical rating organization ("NRSRO"), or, if not so rated, are of comparable credit quality in the opinion of the Investment Adviser (it being understood that in the case of a split rating the Fund may base its investment decision on the highest such rating) (commonly referred to as investment-grade securities).
- (35) The Fund may engage in transactions such as Repurchase Agreements, Reverse Repurchase Agreements, futures, options, swaps, and other derivative instruments with Puerto Rico or non-Puerto Rico counterparties. The Fund intends to use these transactions primarily, but not exclusively, to hedge its interest rate risk and its portfolio securities and not as part of its leverage program (except for Repurchase Agreements, which are used as part of such leverage program); provided however, that all leverage, regardless of its purpose, shall be included in the computation of compliance with the Maximum Leverage Authorized. The Fund may also use these transactions to attempt to achieve a risk and return profile for the Fund that approximates the result of investing the assets used to comply with the 20% Investment Requirement in the other securities purchased by the Fund, or otherwise in a manner reflecting the investment strategy of the Fund. The Fund will not use these transactions as a speculative investment (it being understood that debt securities purchased by the Fund that pay interest at a rate based on the value of another security, index of securities, or foreign currency shall not be considered "derivatives").

COMPLIANCE WITH THE 20% INVESTMENT REQUIREMENT

- (36) For purposes of compliance with the 20% Investment Requirement, the phrase "Puerto Rico Assets" refers to those assets identified in Article 11(Q) of the Act and also includes securities issued by GNMA, FNMA and FHLMC representing an interest in or guaranteed by mortgages on real property located in Puerto Rico.
- (37) The Fund will comply with the 20% Investment Requirement so long as it complies with the following:



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- a. At all times as verified on each Valuation Date, at least 20% of the Total Assets of the Fund will consist of Puerto Rico Assets;
 - b. In the event that at any time the Fund is not in compliance with the 20% Investment Requirement, the Fund shall achieve compliance with the 20% Investment Requirement by taking any such actions as may be determined by its Investment Adviser to be in the best interest of the Fund; provided that the amount required to be invested by the Fund in order to achieve compliance with the 20% Investment Requirement shall not exceed the amount of cash available for investment by the Fund at such time as a result of the sale, exchange, prepayment, maturity, or any other voluntary or involuntary disposition of any Fund assets or from the sale of its securities (net of any redemptions) or from any other sources. Accordingly, the Fund shall not be obligated to sell or otherwise dispose of any non-Puerto Rico Asset in order to achieve or maintain compliance with the 20% Investment Requirement.
 - c. The 20% Investment Requirement shall not be applicable:
 - i. During a maximum of sixty (60) days in any given fiscal year, for “defensive or strategic purposes”, such as strategies designed to protect investors and the Fund’s assets from fluctuations in interest rates or market conditions that could adversely affect the net asset value of the Fund’s shares;
 - ii. During a maximum of thirty (30) days in any given fiscal year, upon proof of scarcity of Puerto Rico Assets or upon proof of a market disruption. For these purposes, “proof of scarcity” shall mean that the Fund shall have demonstrated that Puerto Rico Assets are either unavailable or only available at prices unreasonably above their market value or at maturities or interest rates inconsistent with the Fund’s investment objectives, as reasonably determined by the Fund’s Investment Adviser; or
 - iii. Otherwise, for such longer periods and on such grounds as approved by this Office.
- (38) The determination of the Fund’s Total Assets, for purposes of determining the compliance of the Fund with the 20% Investment Requirement, will be made on each Valuation Date succeeding the first anniversary of the date of the initial issuance of Shares of the Fund to the public (the “Anniversary Date”). This determination shall be made by the Fund’s Administrator or any duly appointed sub-administrator with the assistance of the Fund’s investment adviser, in connection with the periodic calculation of the Fund’s Net Asset Value per share. For this purpose, the market value of the Fund’s total assets will be determined as follows: (i) in the case of assets traded on a national securities



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exchange, the market value established by the particular exchange; (ii) in the case of U.S. fixed income securities, based on the market value reported by Bloomberg, Reuters, or any other nationally recognized pricing service company; and (iii) in the case of all other assets, the market value as determined by the Fund's administrator with the assistance of the Fund's investment adviser based on publicly available information or as otherwise determined by the Fund's officers or directors utilizing quotations and other information relating to similar securities derived from recognized dealers in those securities and on information regarding the trading spreads quoted by recognized dealers between such securities and U.S. Treasury securities, the maturities of which are determined to be the most closely matched to the average life of the relevant Fund securities.

- (39) After the Anniversary Date, the Fund will render monthly and quarterly reports as well as such additional reports as may be specified by the Commissioner at a later date, which reports shall include a certification to the Commissioner of the Fund's compliance with the 20% Investment Requirement during the preceding month or quarter. In addition, if the Fund fails to comply with such requirement at any given Valuation Date, the Fund will file an immediate report specifying the extent of the breach of the 20% Investment Requirement, the reasons therefor and a description of the actions taken or to be taken by the Fund to achieve compliance. For purposes of this requirement to file quarterly reports, the fiscal year of the Fund shall be deemed to close on December 31.
- (40) In addition, the Fund will submit the annual reports for the year ended as of the last day of the calendar quarter selected by the Fund as its fiscal year end, and the audited financial statements for such fiscal year, as well as any other report that this Office may request from time to time. The Office, in addition to the internal audits or examination realized by its personnel, may designate an auditor at the Fund's expense, who may be an independent auditor, to verify the Fund's compliance with the requirements set forth in this ruling, the Act, and any regulation approved under the Act and any other applicable legal provision under the jurisdiction of this Office.

TRANSACTIONS INVOLVING AFFILIATES

- (41) It is not expected that the Fund will execute portfolio transactions with the Distributor or its affiliates and with persons or entities that control, or are controlled by, or are under common control with, the Distributor, or with the Investment Adviser or sub-advisers of the Fund.
- (42) Although the Fund does not anticipate entering into portfolio transactions with the Fund's investment adviser or its affiliates or with persons or entities that control, or are controlled by, or are under common control with, the Investment Adviser or any sub-adviser of the Fund ("Affiliate Transactions"), in the event the Fund enters into any such Affiliate Transactions, the Fund will comply with the following requirements: Such Affiliate Transactions will be executed pursuant to terms and conditions comparable to those under which the Fund would execute portfolio transactions with unrelated third parties in the ordinary course of its investment business. To ensure that such transactions are in the best interest of the Fund's shareholders, such Affiliate Transactions will be subject to procedures adopted in an effort to address potential conflicts of interest that may arise from such transactions.



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- (43) Such procedures shall include the following: (i) a price test requiring that the price available from the Fund's investment adviser or its affiliates be at least as favorable as the best price available from other unrelated sources; (ii) a requirement that the mark-up or mark-down or broker's commission on securities that are the subject of an Affiliate Transaction will not exceed the mark-up, mark-down or commission on comparable trades with institutional customers; and (iii) a requirement that when the Fund's investment adviser or its affiliates is acting as underwriter, the spread, profit or commission received by the Fund's investment adviser or its affiliates must be reasonable and fair as compared with the spread, profit or commission received by such entity in comparable underwritings during a comparable period of time.
- (44) The Fund will not purchase any securities issued by any Fund's investment adviser or its affiliates if, immediately after such purchase, the value of such securities exceeds 5% of its Total Assets.
- (45) Neither the Distributor, the Investment Adviser nor any of their affiliates will control the Fund by way of Share ownership. Neither the Distributor nor any affiliate thereof will own any Share, other than as incidental to their respective distribution or marketing activities, or in their capacity as trustees or agents for other beneficial owners, or in an amount corresponding to the initial capitalization of the Fund.

PROSPECTUS AND SUPPLEMENTAL MARKETING MATERIALS

- (46) In connection with the registration of the Fund under the Act, an offering document (the "Prospectus") will be prepared for the Fund.
- (47) In connection with an offering of Shares of the Fund, the Fund will state in the first page of the relevant Prospectus (the "Prospectus") and other marketing materials that (i) it is a diversified, leveraged, open-end, redeemable at will, mutual fund investment company, as defined in the Act, and (ii) contain a specific cross-reference to the section of the Prospectus that discloses the risks associated with an investment in the Fund, including the risk of loss of principal.
- (48) The Fund will emphasize on the cover page of any Prospectus and on any other marketing materials utilized in connection with the offering of any securities, the risks associated with the practice of leverage and its effects on the Net Asset Value of the Shares and the market value of other Securities by including cross-references to the leverage section of the Prospectus.
- (49) The Prospectus will emphasize the risks to a portfolio comprised of at least 80% fixed income securities, and up to 10% of below investment grade fixed income securities.
- (50) Among other things, the Prospectus and marketing materials will clearly disclose to investors the following:
 - a. The investment objective of the Fund;



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- b. All fees payable by the Fund or by investors in the Fund, including the front-end sales charges and redemption fees for each class of Shares and the expected annual fees and expenses to be paid directly or indirectly by each class of Shares, including a disclosure regarding whether such expenses are computed based on a definition of Fund assets that includes assets purchased with the proceeds of leverage;
- c. That an investment in the Shares is designed primarily and is suitable only for long-term investors, and may not be suitable for all investors;
- d. That investors in the Shares should not view the Fund as a vehicle for trading purposes;
- e. That an investment in the Fund entails certain risks, including the risk of loss of principal.
- f. That an investment in the Fund is not equivalent to an investment in the underlying securities of the Fund;
- g. That the Fund's utilization of leverage poses certain risks to investors in that in some cases a fluctuation in interest rates may increase the volatility of the return and affect the value of the investors' Shares to a significantly greater extent than a non-leveraged fund;
- h. That a claim by any of the Fund's investors against the Fund, or the directors or officers of the Fund will be subject to the jurisdiction of the Puerto Rico courts, and therefore, arbitration proceedings will not be the sole forum to resolve any claims;
- i. That relationships and transactions between the Fund and the Investment Adviser or its affiliates, if any, will be executed pursuant to terms and conditions comparable to those under which the Fund could execute similar portfolio transactions with unrelated third parties in the ordinary course of business.

Any supplementary marketing material that provides information with respect to the Fund's performance will also include the above disclosures.

- (51) The Prospectus and the sales and marketing materials will be filed with this Office prior to their use. As part of any such filing, the Fund shall submit a certification of compliance, assuring the Office that the Prospectus or the marketing materials, as the case may be, complies with the provisions of this ruling. This certification shall also attest to compliance with the applicable provisions of the Regulation adopted pursuant to the Puerto Rico Uniform Securities Act, Puerto Rico Regulation No. 6078 ("Regulation 6078"). However, the fact that such documents are filed with the Office, and even when the Office initially comments on such filings, does not constitute a determination on the sufficiency or acceptability of the Prospectus or materials filed and the Office retains the prerogative to act on such matters either in the context of a regular examination or upon its own initiative.



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- (52) If Tombstone Advertising is used, all applicable fees and charges must be included in such advertising. In addition to the fees and charges, the Tombstone Advertisement shall comply with the applicable provisions of Regulation 6078.
- (53) The annual report to shareholders of the Fund will disclose the dollar volume of its portfolio transactions entered into with each of the broker-dealers affiliated with the Fund that it used during the preceding fiscal year, if any, as well as disclose the aggregate dollar volume of its portfolio transactions entered into with broker-dealers not affiliated with the Fund, taken collectively.

CLAIMS AGAINST THE FUND

- (54) A claim by any of the Fund's shareholders against the Fund or the directors and officers of the Fund will be subject to the jurisdiction of the courts of the Commonwealth of Puerto Rico.
- (55) No agreement will be executed between the Fund and its investors whereby arbitration proceedings will be the sole forum to resolve claims.

REGISTRATION UNDER THE ACT

- (56) The Fund will file a registration statement under the Act, in which it will set forth in detail the investment objectives of the Fund, its structure and all other matters required by the Act and the regulation issued thereunder.
- (57) The initial registration fee that will be paid by the Fund shall be an amount equal to 3/100 of one percent (0.03%) of the Fund's initial capital. Thus, the initial registration fee shall be the amount of \$12,000.00 for the initial \$40,000,000.00 in Shares offered by the Fund. Thereafter, the fee for the registration of additional Shares of the Fund will be calculated pursuant to Article 10 of the Act, based upon the Fund's net sales of Shares during each fiscal year in excess of the initial \$40,000,000.00 in Shares offered by the Fund. The Fund will pay this fee in advance. For purposes of the calculation of the additional number of Shares issued by the Fund, the Net Asset Value of all Shares sold in the preceding period will be reduced by the net asset value of all redemptions of outstanding Shares for that same period. The phrase "preceding period" used herein refers to the period starting on the last date of registration or additional registration of Shares and ending on the date when registration of additional Shares is sought from this Office.
- (58) The Fund, by a vote of the Board including at least a majority of the Independent Directors, shall approve a Code of Ethics for itself, the Investment Adviser and the Distributor, as required by and in compliance with Article 8 of Regulation 8469 issued by this Office (collectively, the "Code of Ethics"), containing, as a minimum, provisions reasonably necessary to prevent Persons with Access (as defined in such Regulation) from the following acts in connection with the purchase or sale of securities between the Fund and such person: (i) employing any device, scheme or artifice to defraud the Fund;



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(ii) making an untrue statement of a material fact to the Fund or omitting to state a material fact necessary in order to make the statements made to the Fund, in light of the circumstances under which they are made not misleading; (iii) engaging in any act, practice or course of business that operates or would operate as a fraud or deceit on the Fund; or (iv) engaging in any manipulative practice with respect to the Fund.

(59) The Board shall take all legally required steps to monitor and ensure compliance with the Code of Ethics.

ADDITIONAL RULINGS UNDER THE ACT

In addition to the provisions set out above and pursuant to the authority granted to this Office under Articles 37 and 45 of the Act¹ and based on strict adherence to the representations, terms and conditions specified in this Ruling, we hereby issue the following additional administrative determinations pursuant to the provisions of the Act:

- (60) For the purpose of computing the number of persons holding Shares of the Fund in connection with such investment company's compliance with Article 11(P) of the Act, the beneficial owners of such Shares shall be considered the holders, irrespective of whether such shares are held in "street name" or by a fiduciary.
- (61) Unless and until applicable regulations are promulgated to this effect by this Office, the Fund may solicit proxies in accordance with the proxy voting procedures adopted by the Fund, consistent with federal proxy regulations and standard industry practices. In connection with this determination we find that proxies are permitted by U.S. laws governing investment companies and are a standard means of obtaining shareholder approval².

¹ Article 37 of the Act empowers this Office to issue administrative determinations, issue, amend and repeal regulations and orders as necessary to exercise the powers conferred by the Act. In turn, Article 45 of the Act enables this Office to grant waivers to any person, security or transaction from any provision of the Act, to the extent and in the manner the Office understands is prudent, if it understands that such exception is necessary or appropriate for the public interest, and consistent with the protection of investors, the purposes of the Act and the public policy set forth in Article 2 of the Act.

² We are persuaded by the arguments advanced in the Letter in support of this waiver request. Section 20(a) of the Investment Company Act of 1940, (as amended, the "40 Act") contains provisions similar to Article 21 of the Act, which provides that certain actions shall be illegal as they represent a danger to the public interest, including: "That any person solicit or permit the use of his name to solicit any proxy or consent or authorization in respect of any security issued by a registered investment company, in violation of the regulations that the Commissioner [of Financial Institutions] may establish in order to protect the public interest." [Translation supplied.]

The Securities and Exchange Commission ("SEC") has issued rules permitting and regulating the use of proxies, to wit: Rule 20a-1 promulgated under the 40 Act, Regulation 14A and Schedule 14A under the Securities Exchange Act of 1934, Rule 30b1-4 of the 40 Act, and others.



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- (62) Pursuant to Article 4(E) of the Act, the Fund is authorized to borrow money from banks and other financial institutions for temporary or emergency purposes, in addition to the 50% leverage permitted by Article 4(E). This may include, among other things, financing requests for redemption that would otherwise require the untimely disposition of securities owned by the Fund, in an amount not to exceed 5% of the Total Assets.
- (63) Pursuant to Article 46(D) of the Act, Securities (including the Shares) issued by and that (i) represent an interest in; (ii) represent a debt of; or (iii) are guaranteed by the Fund, will be exempt from the registration and filing requirements of Sections 301 and 403 of Act 60 of June 18, 1963, as amended (otherwise known as the "Uniform Securities Act").³
- (64) Notwithstanding the provisions of Article 11(M) of the Act, the Fund shall be permitted to issue two classes of shares: Class A shares and Class C shares. The Class A shares and the Class C shares shall have the same voting rights and participation in the earnings of the Fund. The only difference between such classes will be the charges paid by the classes. Specifically, holders of Class C shares shall not pay any front-end sales charges and will pay higher annual distribution and service fees (known as 12b-1 fees)⁴.

In the Letter you submit that in order to manage these complex requirements, proxy firms are frequently retained. A proxy firm is a firm hired by shareholders of a fund to recommend and sometimes cast proxy statement votes on their behalf. The two principal proxy firms are Glass, Lewis & Co. and Institutional Shareholder Services, Inc. ("ISS").

It is further represented that the Fund intends to retain one of the foregoing firms as its proxy advisory firm. The selected firm will provide the Fund with its U.S. Proxy Voting Guidelines and Global Proxy Voting Guidelines (collectively the "Guidelines"), as in effect at any given time. Further, it is represented that a Proxy Voting Committee will oversee and administer the Guidelines and the proxy voting firms' voting recommendations. The Fund expects the Guidelines to be sound and consistent with its proxy voting policies, and that it will generally vote all proxies in accordance with the Guidelines and the specific voting recommendations of the proxy voting firm. The Guidelines, as they may be amended from time to time, will be treated as part of the Fund's Proxy Policies and copies of the Guidelines will be available upon request.

³ Article 46(D) of the Act provides that "All legal references to investment companies registered under the [Puerto Rico Investment Company Act of 1954, as amended] shall include investment companies registered under this law." [Translation supplied.]

We concur with your view that the words "all legal references to investment companies registered under the [Puerto Rico Investment Company Act of 1954, as amended]" in Article 46(D) of the Act were intended by the Legislature to refer to all legal references to such investment companies in other laws. Article 402(a)(12) of the Uniform Securities Act provides that "Any security issued by and that represents an interest in, or a debt of, or which is guaranteed by any investment company registered under the [Puerto Rico Investment Company Act of 1954, as amended]" shall be exempt from the registration and filing requirements of Sections 301 and 403 of the Uniform Securities Act. [Translation mine] As a result, we concur with your opinion that by virtue of Article 46(D) of the Act, the Fund is exempt from the registration and filing requirements of the Uniform Securities Act pursuant to Article 402(a)(12) thereof.

⁴ Article 11(M) of the Act provides that certain actions shall be illegal as they represent a danger to the public interest, including:

"Issuing securities, which are not preferred securities [Note: the term preferred securities includes debt securities], that are not of the same class, and with the same right to vote and participate in profits, as all other non-preferred securities."



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- (65) The Fund will notify the Office of any future request for a ruling from any other Puerto Rico government agency. A copy of such ruling request shall be filed with the Office concurrently with the filing with such government agency for the Office's evaluation.

SCOPE OF SANCTIONS FOR VIOLATION OF THE TERMS OF THIS RULING

- (66) Upon the effective organization of the Fund, it shall be understood that the Fund's sponsor, the Fund's Investment Adviser and any affiliated sub-advisers agree that they may be directly responsible and subject to penalties and sanctions for material violations of the terms and conditions of this Ruling. It shall also be understood that in the event the Fund, the Fund's sponsor or the Fund's Investment Adviser enter into agreements with other parties to provide services to the Fund, such agreements must provide adequate and effective indemnity or contribution clauses which would allow the Fund to receive compensation from said service providers in the event they cause the Fund to engage in material violations of the terms and conditions of this Ruling. Such penalties or sanctions may be imposed by this Office and paid from funds other than moneys originating from the Fund. For purposes of this paragraph the phrase "material violations" means any violation that result out of gross negligence, reckless disregard or fraud.
- (67) Unauthorized deviations from the terms and conditions of this Ruling, or from the practices contemplated by this Ruling, constitute violations of the Ruling that may give rise to administrative sanctions and penalties. For the purposes of this paragraph the phrase "unauthorized deviations" means any practice that materially departs from the terms and conditions of this Ruling and which has not been authorized in writing by this Office prior to the commencement of such new or modified practice.

CONDITIONS FOR THE VALIDITY OF THIS RULING

- (68) The authorization to organize the Fund as contained in this ruling shall remain in effect for 180 days from the date hereof. Thereafter, it shall be void, unless further extensions of time are granted by this Office to organize the Fund.

This provision is similar to Section 18(f)(1) of the Investment Company Act of 1940, as amended (the "40 Act"), which makes it unlawful for any registered open-end investment company to issue or sell any senior security. Notwithstanding the foregoing, since 1985, the Securities and Exchange Commission ("SEC") has issued multiple exemptive orders allowing funds to issue multiple classes of shares representing interests in the same portfolio, typically with different distribution arrangements and voting rights. The SEC subsequently adopted rule 18f-3 under the 40 Act, to permit funds to issue multiple classes of shares without the need to seek exemptions from the SEC.

We are persuaded by the arguments in the Letter to the effect that the proposed classes do not contravene the tenor of the Act and, further, that permitting the issuance of Class C shares would be clearly beneficial to those investors with a shorter investment horizon, as Class C shares are not subject to any front-end sales charge.



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- (69) The foregoing rulings and waivers are granted based on the particular facts and circumstances of this Fund as described herein and, as such, shall not constitute a precedent binding upon this Office. This Office specifically retains the right to modify this ruling as public policy relating to this type of investment company may evolve.
- (70) Given our reliance on the representations discussed above, any different fact or condition may require a different conclusion and the reversal of this ruling.
- (71) Please note that our ruling today is solely directed to the questions discussed above. Moreover, please be advised that, unless otherwise exempted or waived herein, the Fund must comply with all applicable provisions of the Act and of all applicable regulations.
- (72) No reliance may be sought on representations made in any ruling request or other related documents which are not specifically incorporated in the factual background contained in this ruling.
- (73) At this time we do not address how other laws and regulations will or might apply to the Fund.

Cordially,