

SUPPLEMENT TO FREQUENTLY ASKED QUESTIONS
February 28, 2013

This document supplements the document titled "Frequently Asked Questions" that was previously posted on ML Manager LLC's webpage.

Q-8 I am an MP Fund member and plan to file a protective refund claim reporting theft losses for 2009. I plan to include with my protective refund claim a Form 8082 that discloses inconsistencies between that claim and the Schedule K-1 that I received from the MP Fund. I actually received three different Schedule K-1s from the MP Fund for the 2009 tax year: the first one was an original Schedule K-1 that I received in 2009, showing no activity; the second one was an amended Schedule K-1 that I received in 2011, showing a long-term capital loss; and the third one was an informational Schedule K-1 that I received in 2012, showing my allocable share of the theft losses claimed by the MP Fund on an amended return (administrative adjustment request). Which Schedule K-1 should I use for purposes of completing the Form 8082?

A-8 Tax professionals may have differing opinions on the content of a Form 8082 to be filed in connection with a protective refund claim, or whether or not a Form 8082 is even required if an investor files a Form 1040x that is clearly identified as a protective refund claim for theft losses and that describes in detail the reasons for which the protective refund claim is being filed.

If an MP Fund member elects to file a Form 8082, it is unclear under existing authorities which of the three potential Schedule K-1s should be used for purposes of preparing the Form 8082. Technically, the original Schedule K-1 issued in 2009 may be the most correct one to use, because the IRS has not formally accepted the amended 2009 tax returns that were filed by the MP Funds in 2011 and 2012. However, the original Schedule K-1 showed no activity, so it is not a very good reference point from which to inform the IRS of inconsistent treatment. The most rational approach (which may not be the most technically correct one) may be to use the amended Schedule K-1 that was issued in 2011, that reported long-term capital losses, because it provides the most relevant information to the IRS as to inconsistent treatment. The MP Funds' amended 2009 tax returns that were filed in 2012 are being audited by the IRS, so it may not be proper to use the informational Schedule K-1 that was issued in 2012 as the basis for completing the Form 8082.

Irrespective of which Schedule K-1 is used, it seems appropriate to add notes to the Form 8082 to make it clear that multiple K-1s exist, and to describe the tax positions being taken in a manner that reasonably identifies any potential inconsistent treatment. For example, if a taxpayer chose to use the 2011 version of the Schedule K-1, the note added to the Form 8082 might read something like the following (but should include any additional information

that an investor's tax advisor deems appropriate in connection with the protective refund claim):

Taxpayer received an original Schedule K-1 from [name of MP Fund] in 2009 reflecting no activity and a second, amended Schedule K-1 from [name of MP Fund] in 2011 reflecting a long-term capital loss. In 2012, [name of MP Fund] filed an administrative adjustment request (which is currently being reviewed by the IRS) reporting theft losses for 2009, determined at the partnership level, and issued a third, informational Schedule K-1 to taxpayer. This Form 8082 reflects inconsistent treatment of tax items determined by reference to the tax items shown on the Schedule K-1 received by taxpayer in 2011 from [name of MP Fund], and reflects that taxpayer is reporting a theft loss for 2009 as a partner item, rather than as an allocable share of a partnership item.

Ultimately, the determination of whether to file a Form 8082, the correct method of completing it and which Schedule K-1 to use is a judgment call that should be made by an investor upon consultation with his or her tax advisor, and neither ML Manager LLC nor its advisors are providing advice on this or other tax matters to individual investors.

- Q-9. I am an MP Fund member and plan to file a protective refund claim reporting a theft loss for 2009. Is there a way to ensure that the same person or group of people at the IRS will review my protective refund claim in concert with the MP Fund's amended tax return that claimed theft losses, to avoid potential confusion?
- A-9. The IRS has suggested that MP Fund members add the following legend to their protective refund claims to ensure, to the extent possible, that the protective refund claim is routed to the same personnel at the IRS that are handling the MP Funds' tax returns: "Protective Refund Claim - Mortgages Ltd. Theft Loss". Note that this legend is not intended to supersede the legend required by Revenue Procedure 2009-20 (as discussed in question and answer 6B above).