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August 5, 2011

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## Re: **Report on Proposed Regulations Concerning Series Organizations**

Dear Ms. McMahon, Mr. Wilkins, and Mr. Shulman:

We are pleased to submit the New York Bar Association Tax Section Report No. 1245 on the proposed regulations concerning series organizations (the "Proposed Regulations") that were issued on September 14, 2010.<sup>1</sup> Under the Proposed Regulations, for federal tax purposes, a series of a domestic series LLC, a cell of a domestic cell company, and a foreign series or cell that conducts an insurance business would be treated as a separate entity formed under local law.

<sup>1</sup> REG-119921-09, 75 Fed. Reg. 55699 (Sept. 14, 2010).

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The Honorable Emily McMahon  
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The report addresses a variety of issues raised by the application of the Proposed Regulations to series and series organizations. In general, we agree with the approach of the Proposed Regulations, and believe that the Proposed Regulations provide useful guidance regarding transactions and structures involving series organizations that have become increasingly prevalent. Moreover, the Proposed Regulations generally are in accordance with the conclusions that most practitioners reached regarding these organizations in the absence of regulatory guidance.

This report offers several recommendations regarding the Proposed Regulations. For example, we recommend that final regulations amend Treas. Reg. § 301.7701-1(a)(3) to provide that an entity recognized under local law ordinarily is treated as a separate entity for federal tax purposes, subject to the application of general tax principles, such as the substance over form doctrine. We also recommend that taxpayers be permitted to file protective elections that cover both a series organization and all of its series in order to remove any doubt regarding the taxation of the combined entity in the event that the separate series are later found not to be separate entities. In addition, we recommend that additional examples be added to the final regulations that illustrate how they will apply in a situation where a series organization is the owner of one or more series or in a situation where the series organization owns no assets and conducts no activities independent of its series.

Regarding the effective date of the Proposed Regulations, we recommend that the regulations become effective after the date on which they are published as final regulation. If this recommendation is accepted, the grandfather rule in Prop. Treas. Reg. § 301.7701-1(f)(3)(ii)(A), as modified, would apply to series and series organizations formed on or before the date that the final regulations are issued. We also recommend that the final regulations should indicate that, for periods before the final regulations are published, the Internal Revenue Service will not challenge the treatment of two or more series in a series organization as a single entity, provided that there was a reasonable basis for that treatment, regardless of whether a particular series remains in existence on the effective date of the final regulations.

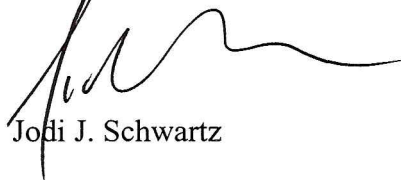
We recommend that any information statements required by the final regulations with respect to series organizations should not duplicate information already required to be filed by the series organization and its owners and should be filed when other tax returns are otherwise due, including extensions.

Finally, our comments include a discussion regarding the Proposed Regulations and employment tax and benefits issues. In general, we recommend that existing tax principles should be applied to resolve such issues in the context of series and series organizations.

The Honorable Emily McMahon  
The Honorable William J. Wilkins  
The Honorable Douglas H. Shulman  
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We appreciate your consideration of our recommendations. If you have any questions or comments regarding this report, please feel free to contact us, and we will be glad to discuss or assist in any way.

Respectfully submitted,



Jodi J. Schwartz

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