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June 23, 2005

Mr. Eric Solomon
Acting Deputy Assistant Secretary (Tax Policy)
Department of the Treasury
Room 3104 MT
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

The Honorable Mark W. Everson
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Dear Acting Deputy Assistant Secretary Solomon and Commissioner Everson:

I am pleased to submit the New York State Bar Association Tax Section's Report No. 1089 on proposed Treasury Regulation Section 1.355-8 (the "Proposed Regulations"), which defines "predecessor" and "successor," and supplies special gain limitation rules, for purposes of Section 355(e) of the Internal Revenue Code.

The Report generally endorses the approach of the Proposed Regulations in limiting the potential scope of the terms "predecessor" and "successor" for purposes of Section 355(e). We note, however, that more guidance is needed to determine the circumstances under which the deemed acquisition of the stock of a predecessor pursuant to the Proposed Regulations will be considered to occur pursuant to a "plan" that includes the distribution, and we have made certain recommendations in this regard. We have also recommended clarification of the rules that provide for a deemed acquisition of the stock of a predecessor to exclude from the ambit of Section 355(e) transactions in which there is in fact no change in the indirect ownership of the predecessor. The Report also notes that the Proposed Regulations may create

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tracing and tracking requirements as well potential valuation disputes, and it therefore recommends the adoption of de minimis rules to ease administrability.

The Report also responds to a request for comments on the treatment of partnerships and their possible treatment as “successors” for purposes of the Proposed Regulations. The Report recommends that the asset-focused view that underlies the Proposed Regulations not be expanded to apply generally in any case in which the assets of Distributing or Controlled are transferred with a carryover basis to a partnership or corporation.

We appreciate your consideration of the recommendations we have made in the Report. As always, we would be pleased to discuss these matters with you further.

Respectfully submitted,



David P. Hariton
Chair

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