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June 26, 2008

The Honorable Eric Solomon
Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: **Report on Prepaid Forward Contracts**

Dear Sirs:

We write to comment on the taxation of exchange traded notes and other prepaid forward contracts. Our comments are in response to Notice 2008-2, which requested comments on a number of issues relating to the tax treatment of these instruments. We also offer comments on H.R. 4912, which was introduced by Representative Richard E. Neal on December 13, 2007.

In the attached report we consider six different regimes that might be applied to tax prepaid forward contracts and analyze them in light of a variety of (often conflicting) policy objectives. In short, we conclude that (i) legislative or regulatory guidance is needed to address the taxation of these instruments, (ii) any method of taxing prepaid forward contracts should be broadly conformed with the taxation of other financial instruments or combinations of financial instruments, and (iii) while there is no "correct" method of taxing prepaid forward contracts, on balance we support either an imputation regime or a

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regime that treats any gain (or, in the issuer's case, loss) recognized with respect to a prepaid forward contract as ordinary income (or loss) to the extent of the accrued time value. We also suggest consideration of a "safe harbor" for instruments with a relatively short duration or a relatively small amount of "time value" at issue.

We note that there are additional issues raised by prepaid forward contracts that provide for periodic coupon payments, periodic income "crediting" or periodic index rebalancings, but no special rules would be needed for these prepaid forward contracts if an imputation or other current inclusion regime is adopted for prepaid forward contracts generally.

We also address specific issues that are raised by Notice 2008-2, as well as some additional issues raised by some of these instruments.

Finally, we briefly address a number of issues raised by Congressman Neal's proposed imputation regime for taxing these instruments.

We appreciate your consideration of our suggestions. Please let me know if you would like to discuss these matters further or if we can assist you in any other way.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David S. Miller", is written over a horizontal line.

David S. Miller,
Chair

Enclosure

cc: The Honorable Donald F. Korb
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Identical letter to:

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Washington, DC 20515

Rep. Jim McCrery, Ranking Minority
House Ways and Means Committee
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Sen. Max Baucus, Chair
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Sen. Charles E. Grassley, Ranking Minority
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Rep. Richard E. Neal
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