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Report No. 1523
March 20, 2026

The Honorable Scott Bessent
Secretary of the Department of the Treasury, and Acting Commissioner of the Internal Revenue Service
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Kenneth J. Kies
Assistant Secretary (Tax Policy) of the Department of the Treasury, and Acting Chief Counsel of the Internal Revenue Service
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: NYSBA Tax Section Report No. 1523 – *Report on Section 355 Private Letter Ruling Policies*

Dear Secretary Bessent and Assistant Secretary Kies:

Please see attached Report No. 1523 of the Tax Section of the New York State Bar Association (the "**Report**") on private letter ruling ("**PLR**") policies under section 355 of the Internal Revenue Code relating to corporate separations and spin-off transactions. The Report provides comments for consideration regarding the Internal Revenue Service's administration of the section 355 PLR program in light of the recent withdrawal of guidance issued in 2024 and 2025 and the reinstatement of guidance provided in 2017 and 2018.

The Report focuses on both procedural and substantive issues affecting the section 355 PLR program. The Report (i) recommends reinstating the availability of "significant issue" rulings for spin-offs and other corporate reorganizations, and (ii) summarizes certain guiding principles and general rules that we believe should inform the Internal Revenue Service's administration of the section 355 PLR program. In the

Report, we stress the importance of applying clear, well-understood PLR standards that are grounded in statutory language and tax policy, generally in accordance with the prior ruling practice developed between 2018 and 2024, and responsive to the practical realities of planning and executing complex spin-off transactions. We believe that consistent application of these guiding principles and general rules can reinvigorate the PLR program, to the benefit of taxpayers and the government alike, without the need for the publication of additional substantive guidance at this time.

We appreciate your consideration of our Report. If you have any questions or comments, please feel free to contact us, and we would be glad to assist in any way.

Respectfully submitted,

Lawrence M. Garrett
Chair

Enclosure

cc:

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**Report No. 1523**

# NEW YORK STATE BAR ASSOCIATION TAX SECTION

# REPORT ON SECTION 355 PRIVATE LETTER RULING POLICIES

**March 20, 2026**

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# Report on Section 355 Ruling Policies

## I. INTRODUCTION

This report (the "**Report**")[1] of the New York State Bar Association Tax Section provides suggestions for consideration by the Internal Revenue Service (the "**IRS**") in developing its private letter ruling ("**PLR**") policies on transactions intended to qualify as tax-free under section 355 ("**Spin-offs**"),[2] following the withdrawal of proposed regulations that were issued by the Department of the Treasury ("**Treasury**") and the IRS in 2025 on corporate separations, incorporations, and reorganizations (the "**2025 Proposed Regulations**"),[3] Revenue Procedure 2024-24,[4] and Notice 2024-38[5] (collectively, the "**Withdrawn Guidance**").

The issuance of Revenue Procedure 2024-24 and Notice 2024-38 in May 2024, together with the publication of the 2025 Proposed Regulations in January 2025, disrupted the PLR practice with respect to Spin-offs that had evolved since the issuance of Revenue Procedures 2017-52[6] and 2018-53[7] (together, the "**2017/2018 Guidance**"), creating uncertainty for taxpayers seeking to plan and execute Spin-offs. In September 2025, in conjunction with the withdrawal of the 2025

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[1] The principal author of this Report is Lulu Ma. Substantial contributions were made by Lawrence M. Garrett, Janine Mesina-Tiosejo, and Karen Gilbreath Sowell. Helpful comments were received from William D. Alexander, Tijana J. Dvornic, Lucy Farr, Kevin Jacobs, Joshua Micelotta, Michael T. Mollerus, Deborah L. Paul, Rachel B. Reisberg, David Rievman, David M. Schizer, Michael L. Schler, W. Wade Sutton, Linda Z. Swartz, Thomas F. Wessel, and Thomas F. Wood. This Report reflects solely the views of the Tax Section and not those of its individual members or any other party.

[2] Unless otherwise indicated, references herein to "**section**" or "**§**" are to sections of the Internal Revenue Code of 1986, as amended (the "**Code**"), the regulations promulgated thereunder (the "**Treasury Regulations**" or "**Treas. Reg.**"), and the 2025 Proposed Regulations (as defined herein).

In a typical Spin-off, a corporation ("**Distributing**") distributes to its shareholders and/or security holders the stock and securities of a corporation that it controls (within the meaning of section 368(c)) immediately before the distribution ("**Controlled**" and such control, "**Control**"). Controlled may be a preexisting corporation, holding all relevant Controlled business assets, or Distributing may transfer property to a preexisting or newly formed Controlled pursuant to section 368(a)(1)(D) (a "**Divisive Reorganization**"). A section 355 distribution may take the form of a *pro rata* distribution to shareholders, a distribution in redemption of shares, or a distribution in liquidation of Distributing. This Report generally refers to all forms of section 355 distributions as "Spin-offs" for ease of reading.

[3] REG-112261-24, 90 Fed. Reg. 5220 (Jan. 16, 2025). The 2025 Proposed Regulations, together with proposed regulations on multi-year reporting requirements for corporate separations and related transactions (*see* REG-116085-23, 90 Fed. Reg. 4687 (Jan. 16, 2025)) were withdrawn as of September 30, 2025. 90 Fed. Reg. 46776 (Sept. 30, 2025).

[4] 2024-21 I.R.B. 1214, *superseded by* Revenue Procedure 2025-30, 2025-42 I.R.B. 489, for PLRs filed after September 29, 2025.

[5] 2024-21 I.R.B. 1211, *revoked by* Revenue Procedure 2025-30.

[6] 2018-43 I.R.B. 667.

[7] 2017-41 I.R.B. 283.

Proposed Regulations, Revenue Procedure 2025-30 revoked Notice 2024-38, superseded Revenue Procedure 2024-24, and reinstated the 2017/2018 Guidance.[8]

The Tax Section previously submitted four reports addressing the Spin-off issues raised by Revenue Procedure 2018-53 and the Withdrawn Guidance.[9] We appreciate the government's acknowledgement of the concerns raised in the Prior Reports and commend the government's withdrawal of the Withdrawn Guidance. The significance of the government's swift action in this regard cannot be overstated. We also appreciate the reinstatement via Revenue Procedure 2025-30 of the 2017/2018 Guidance. Nevertheless, it is not clear whether, in resolving matters in its PLR practice under Revenue Procedure 2025-30, which essentially incorporates the original language of the 2017/2018 Guidance, the IRS will (i) follow the interpretative approaches, including with respect to issues not addressed by the 2017/2018 Guidance, that applied in the period between the issuance of the 2017/2018 Guidance and the development and issuance of the Withdrawn Guidance, or (ii) apply any of the substantive rules or interpretive approaches set forth in the Withdrawn Guidance.

As we noted in the March 2024 Report, PLRs have historically played an important role in planning effectively for Spin-offs.[10] Well-understood PLR standards are needed as a matter of sound administration and to avoid confusion and uncertainty, because Spin-offs take months and years to plan and certain elements are susceptible to market changes,.[11] While, in our experience, Spin-offs generally closed on the basis of opinions while the Withdrawn Guidance was outstanding, we believe the PLR program could be revitalized if PLR standards implemented by the IRS in administering Revenue Procedure 2025-30 are consistent with the established practice that prevailed during the period between the issuance of the 2017/2018 Guidance and the issuance of the Withdrawn Guidance, thus promoting greater predictability in outcomes to which market practice likely would conform.

The principal purpose of this Report, then, is to summarize general principles and general rules for a selected set of salient issues that should guide the resolution of these issues in the context of PLRs, recognizing that individual cases may have distinct facts that give rise to the need for a departure from such general principles and/or rules. In large part, our recommendations below

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[8] Rev. Proc. 2025-30, § 2.03.

[9] *See* New York State Bar Ass'n Tax Section, Report No. 1509, *Comments on Proposed Regulations Regarding Corporate Separations, Incorporations and Reorganizations* (March 17, 2025) (the "**March 2025 Report**"); New York State Bar Ass'n Tax Section, Report No. 1497, *Report on Changes to Spin-off Standards: Revenue Procedure 2024-24 and Notice 2024-38* (July 30, 2024) (the "**July 2024 Report**"); New York State Bar Ass'n Tax Section, Report No. 1491, *Report on Procedural Guidance for Private Letter Rulings on Divisive Reorganizations: Issues Related to Section 361 Exchanges* (Mar. 4, 2024) (the "**March 2024 Report**"); New York State Bar Ass'n Tax Section, Report No. 1436, *Report on Procedural Guidance for Private Letter Rulings on Divisive Reorganizations: Revenue Procedure 2018-53 and Plan of Reorganization Issues* (Mar. 13, 2020) (the "**March 2020 Report**" and, together with the March 2025 Report, July 2024 Report, and March 2024 Report, the "**Prior Reports**").

[10] *See* March 2024 Report, at pp. 1-2.

[11] *Id*.

restate or summarize in one place our recommendations for such principles and rules developed over the course of the four Prior Reports. Consistent with the March 2025 Report, we believe that the IRS's ruling practice on substantive issues prior to the development and issuance of the Withdrawn Guidance worked reasonably well and, accordingly, we do not recommend the issuance of additional published guidance at this time, except to reinstate, as a procedural matter, the ability of taxpayers to request "significant issue" rulings for Spin-offs and other tax-free reorganization transactions.

We believe that the implementation in the PLR program of these general principles and rules would be sound as a technical and policy matter and consistent with prevailing market practice. Therefore, such implementation should help to reinvigorate the PLR practice under sections 355 and 361, to the benefit of taxpayers and the government alike.

Part II summarizes the principal conclusions of this Report. Part III summarizes the evolution of Spin-off guidance from 2017 through 2026 and our Prior Reports on Spin-offs during the corresponding timeframe. Part IV elaborates on our procedural recommendation to reinstate "significant issue" rulings. Part V discusses certain guiding principles that we believe should inform the IRS's administration of the section 355 PLR program and illustrates the application of these principles to select issues.

## II. SUMMARY OF CONCLUSIONS[12]

1. We recommend that the IRS reinstate its practice of giving taxpayers the option to request a Significant Issue Ruling for corporate reorganizations under Section 368 and Spin-offs.

2. We believe that the following PLR standards for Spin-offs are appropriate:

    a. Allowing 12 months to effectuate a boot purge;

    b. Permitting a boot purge to shareholders to be accomplished through Ordinary Distributions as well an Extraordinary Distributions;

    c. Providing Backstop Retention Rulings;

    d. Allowing 24 months to effectuate a delayed transfer of Controlled stock;

    e. Applying the standards under Appendix B of Revenue Procedure 96-30[13] to PLR requests involving Retentions;

[12] Capitalized terms used but not defined in this Part II are defined below in this Report.

[13] 1996-1 C.B. 696, *modified by* Rev. Proc. 2013-32, *and superseded by* Rev. Proc. 2017-52.

f. Generally treating debt incurred under both revolvers and commercial paper programs as historic Distributing Debt eligible to be repaid in connection with a Spin-off;

g. Subject to certain limitations, permitting the use of the Direct Issuance Model to effectuate Debt-for-Equity and Debt-for-Debt Exchanges; and

h. Applying the "previously committed" representation set forth in Revenue Procedure 2018-53 to distinguish permissible new Distributing borrowings from borrowings intended merely to replace Section 361 Consideration nominally used to repay historic Distributing Debt.

## III. BACKGROUND

During the period after the issuance of the 2017/2018 Guidance and before the development and issuance of the Withdrawn Guidance, the PLR program under sections 355 and 361 was, in our view, appropriately grounded in the relevant statutory language and underlying tax policies and appropriately took into account practical realities of planning and executing Spin-offs. However, the issuance of the Withdrawn Guidance changed the landscape considerably, introducing certain PLR guidelines and proposed rules with which we strongly disagreed for the reasons set forth in detail in the July 2024 Report and the March 2025 Report. The shift in policy embodied in the Withdrawn Guidance generally had the effect of discouraging taxpayers from seeking PLRs and the "hangover" effects of the Withdrawn Guidance have lingered. This Part III summarizes the IRS's guidance since 2017 and our associated prior commentary.

### A. The 2017/2018 Guidance

Revenue Procedure 2017-52 provides the general procedures for taxpayers requesting PLRs on Spin-offs. At publication, Revenue Procedure 2017-52 gave taxpayers the option to request either a "**Transactional Ruling**" addressing the general U.S. federal income consequences of a Spin-off or a "**Significant Issue Ruling**" on only significant issues presented in a Spin-off.[14] Revenue Procedure 2017-52 does not explicitly address (i) the repayment or assumption of Distributing debt in the context of a Divisive Reorganization ("**Creditor Transactions**"); (ii) distributions of cash or other property to shareholders and delayed distributions of Controlled stock to Distributing's shareholders ("**Shareholder Transactions**"); or (iii) transactions involving the retention of Controlled stock or securities within the meaning of section 355(a)(1)(D)(ii) ("**Retentions**").

Revenue Procedure 2018-53 set forth the IRS's procedures for taxpayers requesting PLRs that no gain or loss will be recognized to Distributing upon Distributing's receipt in a Divisive Reorganization of Controlled stock, Controlled securities or other debt obligations, and money or other property (such consideration received, "**Section 361 Consideration**"; money or other

[14] Rev. Proc. 2017-52, § 2.03(2). The Significant Issue Ruling practice was eliminated by Associate Chief Counsel (Corporate) for all corporate transactions in Revenue Procedure 2024-1. Rev. Proc. 2024-1, § 16.

property received, "**boot**"), and the transfer of Section 361 Consideration to a creditor in satisfaction of Distributing's debt obligations under section 361(b)(3) and (c)(3) (*i.e.*, a Creditor Transaction). While Revenue Procedure 2018-53 was limited to Creditor Transactions involving "**Distributing Debt**",[15] it did not foreclose the possibility of PLRs on the assumption or satisfaction of Distributing obligations that are not Distributing Debt (for example, contingent liabilities), referring taxpayers to the general procedures under Revenue Procedure 2017-52 for transactions not involving Distributing Debt.

The March 2020 Report commented on the guidelines in Revenue Procedure 2018-53, providing recommendations for procedural guidance on Creditor Transactions, and also requested procedural guidance on Shareholder Transactions. As discussed in greater detail in Part V.B below, many of our recommendations from the March 2020 Report appear to have been adopted in PLRs issued prior to the Withdrawn Guidance. However, in 2024, we learned that certain of the well-established policies on Creditor Transactions that had evolved following the issuance of Revenue Procedure 2018-53, as well as the IRS's approach to ruling on Retentions, were being reconsidered by the government. The March 2024 Report addressed these issues, focusing primarily on (i) the mechanics for implementing the transfer by Distributing of Controlled stock or securities to its creditors in connection with a Divisive Reorganization in a "**Debt-for-Equity Exchange**" or "**Debt-for-Debt Exchange**"; (ii) the period of time afforded to complete Debt-for-Equity Exchanges; and (iii) the availability of protective rulings under section 355(a)(1)(D)(ii) and the standards for obtaining such rulings.

### B. Revenue Procedure 2024-24 and Notice 2024-38

Notice 2024-38 described the government's views and concerns relating to nine categories of issues addressed by Revenue Procedure 2024-24: (1) the distinction between delayed distributions of Controlled stock and securities and Retentions; (2) the degree of connection between Distributing and Controlled that prevents genuine separations; (3) solvency and the continued viability of Distributing and Controlled; (4) the plan of reorganization requirement for Divisive Reorganizations; (5) the application of substance over form, agency, and other relevant theories to intermediated exchanges and direct issuance transactions; (6) the U.S. federal income tax treatment and consequences of post-distribution payments; (7) the effect of transactions related to a Divisive Reorganization on Controlled securities; (8) replacement of Distributing Debt; and (9) the separate and distinct relevance and application of sections 357 and 361. Consistent with the concerns expressed in Notice 2024-38, Revenue Procedure 2024-24 modified, and superseded certain representations required under, Revenue Procedure 2017-52 and superseded Revenue Procedure 2018-53 in its entirety. It also established new procedures for requesting Spin-off PLRs on certain matters not previously addressed by Revenue Procedure 2017-52 or Revenue Procedure 2018-53. These modifications represented a sea change in the government's section 355 PLR

[15] For purposes of Revenue Procedure 2018-53, an obligation was "**Distributing Debt**" if (1) Distributing is the obligor, and (2) the obligation (a) is evidenced by a debt instrument (defined in Treas. Reg. § 1.1275-1(d)) that is not a contingent payment debt instrument subject to Treas. Reg. § 1.1275-4 and (b) by its terms is payable only in money. Rev. Proc. 2018-53, § 3.01.

policies, reversing the administrative position on a number of issues, including, *inter alia*, (i) the ability to satisfy Refinancing Debt (defined below) with Section 361 Consideration; (ii) the permissibility of the Direct Issuance Model (defined below) for Debt-for-Equity Exchanges and Debt-for-Debt Exchanges, and (iii) the availability of Backstop Retention Rulings (defined below). Finally, in stark contrast to Revenue Procedure 2018-53, Revenue Procedure 2024-24 appeared to drastically limit the ability of taxpayers to obtain PLRs on transactions that did not meet the bright-line requirements provided therein.[16]

The July 2024 Report addressed certain of the procedural changes made by Revenue Procedure 2024-24 and responded to the issues raised in Notice 2024-38 for purposes of developing potential substantive guidance. In the July 2024 Report, we observed that, while the IRS's ruling policies and practices under Revenue Procedure 2018-53 struck a sensible balance between what is permissible and what is not, a number of Revenue Procedure 2024-24's guidelines were unworkable as a practical matter. We also expressed our concern that the confusion and uncertainty created by Revenue Procedure 2024-24 and Notice 2024-38 would disrupt the successful implementation of Spin-offs. Ultimately, the transactions potentially impacted by the guidance continued to proceed, largely on the basis of opinions from advisors rather than PLRs.

### C. 2025 Proposed Regulations

The 2025 Proposed Regulations were extensive and complex. They related primarily to Spin-offs, attempting to create substantive rules with respect to the issues set forth in Notice 2024-38, but also extended in certain respects to acquisitive reorganizations and section 351 exchanges. As noted above, they were withdrawn in September 2025. According to the government's notice of withdrawal, the withdrawal was made in response to the generally critical comments received by Treasury and the IRS.[17] However, the notice of withdrawal does not clearly indicate the government's current views on the issues addressed in the 2025 Proposed Regulations.

The March 2025 Report recommended the withdrawal of the 2025 Proposed Regulations in light of our concerns that many of the rules therein incorrectly interpreted Code requirements and our belief that they unnecessarily created uncertainty and increased costs. We believed that the state of the law, as reflected in the PLR practice, was on a reasonably positive trajectory prior to the development and issuance of the Withdrawn Guidance. We expressed a strong preference for allowing the law under sections 355 and 361 to continue to evolve through PLRs and market practice without new and rigid substantive guidance, though we also proffered alternative recommendations to improve the 2025 Proposed Regulations in the event our primary recommendation for withdrawal was not adopted. We continue to believe that the issues covered by the 2025 Proposed Regulations generally do not lend themselves to rules stated in published guidance (and that substantive guidance of such kind is not needed at this time); thus, many of our alternative recommendations in the March 2025 Report, which were primarily focused on

[16] Rev. Proc. 2024-24, § 3.02(3)(a) (providing that, generally, "each numbered representation set forth in section 3.03 or section 3.05 of this revenue procedure must be submitted precisely in the language requested.").

[17] 90 Fed. Reg. 46776, at 46776-77.

improving the substantive guidance, do not necessarily represent our views on the appropriate administrative standards for Spin-off PLRs. However, as discussed further herein, much of the commentary underlying our prior alternative recommendations in the March 2025 Report may be useful in informing PLR policy.

### D. Revenue Procedure 2025-30

As noted above, Revenue Procedure 2025-30 restates the prior procedures and guidance provided in Revenue Procedure 2018-53. It requires the taxpayer to submit information describing the Distributing Debt to be assumed or satisfied, the Section 361 Consideration that will be transferred to creditors in satisfaction of Distributing Debt, and the transactions that will implement the assumption of Distributing Debt by Controlled or Distributing's receipt (and distribution to creditors) of Section 361 Consideration in satisfaction of Distributing Debt.[18] It also requires the taxpayer to submit (or explain why it cannot submit) several specific standard representations in connection with a PLR. The standard representations (1) provide that Distributing is the obligor in substance of the Distributing Debt that will be assumed or satisfied,[19] (2) provide that no holder of such Distributing Debt that will be assumed or satisfied is related to either Distributing or Controlled,[20] (3) set forth certain procedures for so-called "intermediated" exchanges,[21] (4) describe what debt will be considered "historic" debt of Distributing,[22] (5) define the historic average amount of debt with respect to which the IRS will issue its ruling,[23] (6) set forth parameters relating to the time period in which Distributing Debt is to be satisfied with Section 361 Consideration,[24] and (7) provide that Distributing does not have plans to immediately re-borrow an amount equal to the assumed or satisfied debt or otherwise functionally retain the proceeds.[25] Importantly, Revenue Procedure 2025-30 reinstates the flexibility (that was removed by Revenue Procedure 2024-24) for taxpayers to deviate from the standard representations.[26]

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[18] Rev. Proc. 2025-30, § 3.03.

[19] *Id.*, § 3.04(1).

[20] *Id.*, § 3.04(2).

[21] *Id.*, § 3.04(3).

[22] *Id.*, § 3.04(4).

[23] *Id.*, § 3.04(5).

[24] *Id.*, § 3.04(6).

[25] *Id.*, § 3.04(7).

[26] *Id.*, § 3.04 ("If the taxpayer is unable to submit an applicable representation in the form set forth in this section 3.04 (Standard Representation), the taxpayer should submit (1) an explanation for its inability to provide the Standard Representation and (2) the rationale supporting the issuance of each relevant requested ruling in the absence of the Standard Representation. If appropriate, the taxpayer should submit (1) a modified representation that addresses the same matter, (2) an explanation of the modification, and (3) the rationale supporting the issuance of each relevant requested ruling, taking into account the modified Standard Representation.").

Revenue Procedure 2025-30 supersedes Revenue Procedure 2024-24 and revokes Notice 2024-38.[27] On its face, this administrative action suggests a return to the historic IRS ruling policy that was upended by the Withdrawn Guidance. However, Revenue Procedure 2025-30, like Revenue Procedure 2018-53 before it, does not address Shareholder Transactions or Retentions, including issues that were negatively impacted by the Withdrawn Guidance (*e.g.*, Shareholder Purges (defined below) and the availability of Backstop Rulings). Revenue Procedure 2025-30 also does not incorporate the evolution of IRS ruling policy following the issuance of Revenue Procedure 2018-53 in certain areas that were also addressed by the Withdrawn Guidance (*e.g.*, with respect to the timing of transfers of Section 361 Consideration and the mechanics for Debt-for-Equity Exchanges and Debt-for-Debt Exchanges). Thus, Revenue Procedure 2025-30 does not clearly indicate the IRS's current ruling policy on these issues.

While we applaud the course correction implemented by Revenue Procedure 2025-30, in our experience, taxpayers remain reluctant to seek Spin-off PLRs in the aftermath of the Withdrawn Guidance. We believe that renewed clarity on certain key issues would encourage taxpayers to seek rulings again. A revitalized PLR program would, in turn, benefit taxpayers and the government alike – taxpayers would obtain certainty on their transactions, while the government would be provided with visibility into market developments and complex or unique issues.

## IV. PROCEDURAL ISSUES – SIGNIFICANT ISSUE RULINGS

In Revenue Procedure 2013-32,[28] the IRS announced that, in order to conserve IRS resources, it would restrict the scope of PLRs issued and rule only on significant issues under section 332, 351, 355, 368, or 1036 (*i.e.*, that it would only issue Significant Issue Rulings with respect to corporate transactions, instead of ruling that an overall transaction qualified for nonrecognition under the relevant Code provisions). In 2017, the IRS re-expanded its ruling program, offering Transactional Rulings on Spin-offs under Revenue Procedure 2017-52. As described above, for many years, Revenue Procedure 2017-52 gave taxpayers the option to request either a Transactional Ruling or a Significant Issue Ruling with respect to a Spin-off. In 2024, the IRS reintroduced the availability of a "comfort letter" for transactions under sections 332, 351, 355, 368, and 1036,[29] but simultaneously eliminated the Significant Issue Ruling practice for such transactions.[30] We recommend that the IRS reinstate the Significant Issue Ruling practice, providing the optionality for taxpayers to obtain a Significant Issue Ruling or a Transactional Ruling, not just for Spin-offs but for all corporate transactions.

In the context of non-Spin-off transactions, in the decade following Revenue Procedure 2013-32, taxpayers have become comfortable (and remain comfortable) proceeding with these

[27] *Id.*, §§ 1, 2.02(3), and 7.

[28] 2013-2 C.B. 55.

[29] Rev. Proc. 2024-1, § 6.11; Rev. Proc. 2024-3, 2024-1 I.R.B. 143, §§ 1.02(2), 4.02(9).

[30] Rev. Proc. 2024-1, § 16.

transactions without a PLR. As we observed in the March 2025 Report, public company acquisitive reorganizations or incorporations generally do not proceed on the basis of a PLR, even following the expansion of the PLR program for such transactions in 2024.

Similarly, with respect to Spin-offs, while it was previously common for taxpayers to close their transactions on the basis of a PLR, the market shifted heavily towards opinions while the Withdrawn Guidance was outstanding. As mentioned above, from our experience, there continues to be reluctance to seek PLRs given the "hangover" effect from the Withdrawn Guidance. While helpful in providing certainty on the overall treatment of large transactions, Transactional Rulings may not be necessary when a legal opinion is available. In addition, while the IRS has admirably expedited its processing of PLRs under the "fast-track" PLR program introduced by Revenue Procedure 2022-10,[31] there is apprehension that the IRS's reevaluation of the issues that were the subject of the Withdrawn Guidance will extend the timeline for obtaining PLRs. Furthermore, Spin-offs, which are often planned and executed over many years, frequently necessitate adjustments as aspects of a transaction are decided or evolve due to non-tax considerations (*e.g.*, legal restrictions or market conditions). It can be impractical to seek an advance Transactional Ruling while decisions regarding features of an overall transaction are pending or may change (whereas the facts needed to present and rule on a significant issue may be static).

Reintroducing the Significant Issue Ruling practice would alleviate these concerns and should encourage taxpayers to re-engage with the PLR program, even on non-Spin-off issues. There remains substantial utility in obtaining PLRs on a discrete issue for which there may be little to no guidance (*e.g.*, certain section 355(e) counting issues that are not readily susceptible to an opinion).[32] We believe it is beneficial for the IRS to be aware of these issues and have a role in shaping their resolution.

To the extent, if any, there is concern over a potential "halo" effect provided by a Significant Issue Ruling (*i.e.*, that a favorable ruling on one aspect of a transaction may imply the IRS has blessed other aspects of the transaction, or the transaction as a whole, on which it has not ruled), there are number of safeguards that have historically been in place that can be employed to address such concern. As an initial matter, as in the past, a taxpayer must provide all relevant information in its request for a PLR,[33] with a misstatement or omission of controlling facts resulting in the inability to rely on the PLR and potentially the explicit revocation of the PLR.[34] The information must be provided under penalties of perjury,[35] a requirement that is taken very

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[31] 2022-06 I.R.B. 473.

[32] *See, e.g.*, PLR 202347011 (Aug. 29, 2023) (ruling 21); PLR 202249011 (May 10, 2022) (ruling 23), *supplemented by* PLR 202249014 (Sept. 6, 2022); PLR 202145020 (Aug. 13, 2021) (ruling 1).

[33] *See* Rev. Proc. 2026-1, 2026-1 I.R.B. 1, § 7.01(1) and (3). *See also* Rev. Proc. 2017-52, § 5.02(3) (requiring taxpayers to provide a narrative description of the overall transaction that puts the significant issue for which a ruling is sought in context); Rev. Proc. 2023-1, 2023-1 I.R.B. 1, § 6.03(3) (same).

[34] Rev. Proc. 2026-1, § 11.05(1).

[35] Rev. Proc. 2026-1, § 7.01(16).

seriously by taxpayers who seek a PLR. Furthermore, the caveat language previously required to be included for Significant Issue Rulings can be utilized to make clear that there is no implication regarding a matter not directly addressed in the PLR.[36]

## V. SUBSTANTIVE ISSUES

### A. General Principles to Guide PLR Practice

We continue to believe that the principles and context for PLR guidelines articulated in the March 2020 Report are a helpful and appropriate framework for analyzing Spin-off issues. While we have summarized these principles in our Prior Reports, we restate them again below for ease of reference.

As discussed in the Prior Reports, the overarching purpose of section 355 is to permit the tax-free separation of existing businesses supported by business exigencies. In the context of a corporate separation, Sections 357 and 361 generally permit Distributing and Controlled to adopt the optimal capital structures for each company according to their own business judgment, while also imposing certain requirements (such as the "**plan of reorganization limitation**",[37] section 357(c),[38] and section 361(b)(3)[39]) and form-based limitations that must be complied with to achieve a tax-free result. It is important that the PLR procedural guidelines be grounded in the applicable law and statutory policies, in a manner consistent with the overarching purpose of sections 355 and 361 and with a practical recognition of commercial and market challenges and realities, all without exposing the IRS to a risk of issuing PLRs in inappropriate circumstances. Thus, we continue to believe that the IRS's PLR guidelines should be designed and applied in a manner that gives taxpayers flexibility to tailor the capital structures for Distributing and Controlled so long as (i) the transaction format undertaken is consistent with the Code's prescribed formats for tax-free treatment, and (ii) the overall effect achieved is consistent with identified

[36] *See* Rev. Proc. 2017-52, § 5.02(3) (requiring Significant Issue Rulings to contain the following (or similar) language: "The ruling[s] contained in this letter only address[es] one or more significant issues involved in the transaction. This Office expresses no opinion as to the overall tax consequences of the transactions described in this letter or as to any issue not specifically addressed by the ruling[s] below."); Rev. Proc. 2023-1, § 6.03(3) (same).

[37] Specifically, sections 361(b)(1) and (3) provide that Distributing does not recognize gain upon the receipt of boot provided that the boot is transferred to Distributing's shareholders or creditors in pursuance of the plan of reorganization (what is commonly referred to as a "**boot purge**"). In addition, under section 361(c), Distributing does not recognize gain or loss upon the transfer of Controlled stock or securities to its shareholders or creditors in pursuance of the plan of reorganization. While the statute uses the phrases "in connection with the reorganization," "in pursuance of the plan of reorganization," and "pursuant to the plan of reorganization," there is no indication that these phrases were intended to have different meanings.

[38] Section 357(c) generally requires gain recognition to the extent that liabilities assumed exceed the aggregate basis of the transferred assets.

[39] Section 361(b)(3) generally requires gain recognition to the extent that boot received exceeds the net basis of the transferred assets. *Cf.* section 361(c), which permits nontaxable distributions of Controlled securities without limitation by the basis of contributed assets.

policies underlying the Code's limitations. The following three guiding principles set forth in the March 2020 Report continue to be instructive in this regard.

First, any time-based rules for administering the plan of reorganization limitation should be grounded in a connection between the Spin-off and the Creditor Transaction or Shareholder Transaction, as applicable. As we observed in the Prior Reports, it is often necessary as a business matter for a Spin-off and certain related transactions to be undertaken over a period of time, in light of the challenges inherent in accomplishing the separation of a complex multinational company and the capital markets dynamics of separating a public company into two. Additionally, while time is certainly a factor in assessing the connection between the Spin-off and the Creditor Transaction or Shareholder Transaction, other factors could also apply to ensure the adequate degree of connectivity.

Second, with respect to Creditor Transactions, Section 361 is, in part, intended to facilitate the allocation of historic Distributing liabilities between Distributing and Controlled (the "**Debt Allocation Principle**"). Stated differently, with respect to a Creditor Transaction, section 361(b)(3) and (c)(3) require that boot and Controlled securities received in the section 361 exchange actually be used to retire Distributing Debt. On the other hand, section 361 is not intended to be used as vehicle to permit Distributing to retain Section 361 Consideration through an integrated transaction involving the receipt of new borrowing proceeds in a transaction that is more akin to a partial sale of Controlled's business, stock, or securities than a conduit transfer to creditors.[40]

Third, where the Debt Allocation Principle is satisfied, the mechanics used to effectuate the Creditor Transaction should have diminished importance, and the form of the transaction generally should be respected, provided that the form is consistent with the requisite transactional pattern permitted by section 361. In these cases, rather than applying step transaction or similar "anti-abuse" principles to impose artificial constraints on commercial transactions that otherwise meet the policy objectives of section 361, the IRS's advance ruling practice should refrain from drawing distinctions between economically similar transactions absent countervailing policy considerations or a clear, contrary mandate in the Code (the "**Economic Parity Principle**"). Moreover, the PLR guidelines should avoid creating further artificial distinctions between economically similar transaction formats because such distinctions merely increase the costs of implementing bona fide business transactions without advancing any real policy objective.

### B. Application of Guiding Principles to Key Issues

To illustrate the foregoing principles, below we examine a number of key issues that are common to Spin-offs and would benefit from clarity as the IRS develops its current PLR standards.

[40] As we observed in the March 2020 Report, these issues are not implicated by Shareholder Transactions. Because a Shareholder Transaction necessarily involves a transfer of value from Distributing to its shareholders, it cannot resemble a synthetic sale in which no debt is actually retired. In a Shareholder Transaction, Distributing is a conduit for the transfer of boot from Controlled to Distributing's shareholders, and Distributing is necessarily precluded from retaining the proceeds of a borrowing and using such proceeds in its business.

Where applicable, we offer our observations on the aspects of prior ruling practice that we believe worked well with respect to these issues. Consistent with the Prior Reports, this Report does not seek to suggest that rigid application of ruling standards across all Spin-offs is needed or appropriate. We continue to believe that the PLR guidelines should preserve the ability for taxpayers to seek PLRs that do not meet safe harbor guidelines on a case-by-case basis depending upon compelling business circumstances, consistent with the approach currently embodied in Revenue Procedure 2025-30.

### 1. Time-Based Limits and Plan of Reorganization Issues

#### a. Timing of Boot Purges

Almost every public Spin-off involves the receipt of boot by Distributing from Controlled in exchange for property, requiring Distributing to transfer such boot to its shareholders or creditors in pursuance of the plan of reorganization in order to obtain nonrecognition on the exchange.[41] As we have observed in Prior Reports, the tax law does not impose specific, time-based or other limitations on what distributions are to be treated as made pursuant to the plan of reorganization. Revenue Procedure 2018-53 adopted (and Revenue Procedure 2025-30 reinstates) specific time-based rules for administering the plan of reorganization limitation in the context of Creditor Transactions. Revenue Procedure 2018-53 permitted, without explanation, a delayed satisfaction of Distributing Debt with Section 361 Consideration within the 30-day period beginning on the date of the first distribution of Controlled stock (the "**Initial Distribution**").[42] In circumstances where Distributing Debt would not be satisfied within such 30-day period, Revenue Procedure 2018-53 required (i) a representation that the delay in satisfying Distributing Debt was motivated by substantial business reasons and would not extend beyond 180 days after the Initial Distribution, and (ii) an explanation of such business reasons.[43] For delays beyond 180 days, the taxpayer was required to "submit information and analysis to establish that, based on all the facts or circumstances, the satisfaction will be in connection with the plan of reorganization."[44] Neither Revenue Procedure 2018-53 nor Revenue Procedure 2017-52 provides time-based standards in the context of boot purges to shareholders.

In the March 2020 Report, we recommended that the default 30-day limitation for boot purges imposed by Revenue Procedure 2018-53 be generally extended to 12 months to adequately account for commercial realities while advancing the IRS's legitimate interest in adopting an administrable time-based standard in the context of its advance ruling program,[45] with potential additional safeguards for debt repayments beyond 12 months.[46] We also observed that these

[41] *See* sections 361(b)(1) and (3).

[42] Rev. Proc. 2018-53, § 3.04(6).

[43] *Id.* For a discussion of delayed transfers of Controlled stock or securities, *see* Part V.B.1.c, *infra*.

[44] Rev. Proc. 2018-53, § 3.04(6).

[45] March 2020 Report, at pp. 11-15 (including Case Study 1).

[46] *Id.*, at pp. 13-15 (including Case Study 2).

general guidelines could be applied to distributions of boot to shareholders. Although the timing of boot purges is often redacted in published PLRs, we understand that PLRs issued under Revenue Procedure 2018-53 regularly allowed 12 months from the Initial Distribution to purge boot in a Creditor Transaction or Shareholder Transaction, in recognition of the nearly universal presence of commercial realities requiring a longer purge period than the specific periods stated in the Revenue Procedure itself.[47] A general standard of 12 months remains non-controversial and was allowed even under the Withdrawn Guidance.[48]

### b. Manner of Making Shareholder Purges

As noted above, section 361(b)(1)(A) permits Distributing to purge boot received from Controlled via distributions to its shareholders in pursuance of the plan of reorganization (a "**Shareholder Purge**"). None of Revenue Procedures 2017-52, 2018-53, and 2024-24 addressed Shareholder Purges. In the March 2020 Report, we observed that a Shareholder Purge should be achievable by either (i) the payment of a special dividend or a special repurchase of Distributing

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[47] For PLRs with an unredacted boot purge period, *see, e.g.*, PLR 202449006 (Sept. 3, 2024) (step 54) (providing that Distributing may continue to transfer cash received from Controlled to creditors of Distributing Debt or shareholders within 12 months of the Distribution); PLR 202424004 (Dec. 20, 2023) (step 10) (providing that Distributing will use an aggregate amount equal to the cash received from Controlled to make payments to various creditors in satisfaction of Distributing Debt and/or to shareholders in the form of share repurchases or quarterly dividends within one year of the Distribution); PLR 202332001 (May 10, 2023) (step 15) (providing that Distributing will use cash received from Controlled to, among other things, repay a portion of the Distributing Debt; representing that all the Distributing Debt to be satisfied by such cash will be satisfied no later than 365 days after the Distribution).

We note that published PLRs also routinely provided that Distributing would not be required to segregate or otherwise trace the cash proceeds received from Controlled – a reasonable standard in light of the fungibility of cash. *See, e.g.*, PLR 202451015 (Sept. 26, 2024) (step 13) (providing that Distributing will not segregate or otherwise trace the use of the cash received from Controlled); PLR 202449006 (Sept. 3, 2024) (step 54) (same); PLR 202350010 (Sept. 15, 2023) (step 14) (same); PLR 202224012 (Feb. 14, 2020) (step 4) (same); PLR 202322006 (Mar. 6, 2023) (step 11) (providing that the cash received from Controlled will not be kept in a separate bank account or otherwise); PLR 202344013 (Aug. 3, 2023) (step 6) (same); PLR 202345008 (Nov. 21, 2022) (step 12) (same); PLR 202304005 (Nov. 1, 2022) (step 3) (same); PLR 202151001 (Sept. 24, 2021) (step 4), *supplemented by* PLR 202231004 (May 12, 2022) (same); PLR 202145027 (Aug. 20, 2021) (step 10) (same, with an amount of cash equal to such cash to be invested and/or otherwise used pending boot purges); PLR 202339007 (June 29, 2023) (ruling 72) (providing that Distributing will not be required to segregate or otherwise trace the cash received from Controlled); PLR 202424004 (Dec. 20, 2023) (step 7) (same); PLR 202332001 (May 10, 2023) (step 14) (same); PLR 202249011 (May 10, 2022) (ruling 16) (same); PLR 202152010 (Oct. 4, 2021) (ruling 13) (same); PLR 202026001 (Dec. 13, 2019) (rulings 84 and 96) (same); PLR 202441010 (July 5, 2024) (step 6) (providing that Distributing will use of an amount of cash from its general accounts equal to the amount of cash received from Controlled for boot purges); PLR 202231013 (May 10, 2022) (step 8) (same); PLR 202343025 (Aug. 2, 2023) (step 1) (providing that Distributing will hold any cash received from Controlled in its general accounts); PLR 202139006 (July 6, 2021) (step iii) (same); PLR 202322006 (Mar. 6, 2023) (step 14) (providing that Distributing will use an amount of cash from its general accounts equal or greater than the amount of cash received from Controlled for boot purges); PLR 202223004 (Dec. 17, 2021) (step 24) (same); PLR 202151001 (Sept. 24, 2021) (representation 9) (same); PLR 202139006 (July 6, 2021) (step vii) (same); PLR 202047007 (Aug. 24, 2020) (step v and representation g) (same); PLR 202019016 (Feb. 3, 2020) (step 8 and additional representation) (same).

[48] *See* Revenue Procedure 2024-24, § 3.05(10)(a)(ii) (representation 27); Prop. Treas. Reg. § 1.361-3(c)(1)(ii); (c)(2)(i)(B)(2).

stock that is not part of an existing stock repurchase program approved by Distributing's board of directors (an "**Extraordinary Distribution**") or (ii) the payment of regular quarterly dividends or a repurchase of stock under a previously authorized stock repurchase program (an "**Ordinary Distribution**").[49] PLRs issued prior to 2024 were consistent with this approach.[50] The 2025 Proposed Regulations reversed this longstanding PLR practice and provided, in examples, that while Extraordinary Distributions would be treated as properly made in pursuance of the plan of reorganization,[51] Ordinary Distributions would not.[52] As discussed in the March 2025 Report, we strongly disagreed with this distinction, both from a technical/policy perspective and a practical standpoint, which we believed was based in a fundamental misunderstanding of companies' corporate finance and treasury processes.[53] For the reasons stated in the March 2025 Report, we believe that the IRS's pre-2024 ruling standards on Shareholder Purges continue to be appropriate.

### c. Retained Equity

#### i. Backstop Retention Rulings

Following the Initial Distribution in a Spin-off, it is common for Distributing to hold a portion of the Controlled stock (the "**Remainder Shares**") or Controlled securities in order to transfer such stock or securities to its creditors in a Debt-for-Equity Exchange or Debt-for-Debt Exchange (a "**Delayed Section 361 Transfer**"). More infrequently, Distributing will continue to own stock or securities of Controlled that are not disposed of in pursuance of a plan of reorganization (*i.e.*, a Retention).[54]

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[49] *See* March 2020 Report, at p. 17 (Case Studies 5 and 6).

[50] *See, e.g.*, PLR 202343025 (Aug. 2, 2023) (step 5) (providing that Distributing will use cash received from Controlled to, among other things, make pro rata cash distributions to its shareholders, including by funding normal quarterly dividends); PLR 202345008 (Nov. 21, 2022) (step 13) (providing that Distributing will use an aggregate amount of cash equal to cash received from Controlled to, among other things, make distributions to its shareholders, which could include regular quarterly dividends); PLR 202249011 (May 10, 2022) (step 6a) (providing that Distributing intends to use all or a portion of the cash received from Controlled to pay up to the next specified regular quarterly dividends to its shareholders); PLR 202145027 (Aug. 20, 2021) (step 10) (providing that Distributing will use an aggregate amount of cash equal to the cash received from Controlled to, among other things, make distributions to its shareholders, which could include regular quarterly dividends to such shareholders); PLR 202114017 (Jan. 12, 2021) (step 11) (providing that Distributing will use cash received from Controlled to, among other things, make payments to shareholders for the next specified regular quarterly dividends ending no later than a specific number of months after the Distribution); PLR 202051011 (May 13, 2019) (step 6), *supplemented by* PLR 202051009 (Mar. 17, 2020) (step vii) (providing that Distributing will use some or all of the cash received from Controlled to, among other things, make pro rata special cash distributions to its shareholders).

[51] *See* Prop. Treas. Reg. § 1.361-3(f), Examples 2 and 4; Prop. Treas. Reg. § 1.368-4(g), Examples 8 and 9.

[52] *See* Prop. Treas. Reg. § 1.361-3(f), Examples 3 and 5; Prop. Treas. Reg. § 1.368-4(g), Examples 10 and 11.

[53] *See* March 2025 Report, at pp. 136-139.

[54] Section 355(a)(1)(D) generally requires that Distributing either (i) distribute all of the stock and securities in Controlled held immediately before the distribution or (ii) distribute an amount of stock in Controlled constituting Control. Section 355(a)(1)(D)(ii) further requires Distributing to establish, to the satisfaction of the Secretary of the

Under IRS practice prior to Revenue Procedure 2024-24, a taxpayer could receive a favorable ruling on a Delayed Section 361 Transfer or a Retention. In addition to rulings where a Retention was, *ab initio*, expected to occur, taxpayers were customarily granted protective rulings regarding the requirements under section 355(a)(1)(D)(ii) in the event that any Delayed Section 361 Transfer intended to occur in pursuance of the plan of reorganization either became unavailable or impractical, or could not occur within the requisite time period ("**Backstop Retention Rulings**").[55] Under Revenue Procedure 2024-24, the IRS ceased its policy of providing Backstop Retention Rulings, and began considering rulings requested under either (i) sections 355(c) or 361(c), or (ii) section 355(a)(1)(D)(ii), but not both, with respect to the same shares of Controlled stock.[56] While the 2025 Proposed Regulations indicated the ability for a plan of reorganization to include alternative transactions regarding the disposition of the same retained stock or securities, they would have required the plan of reorganization to evidence a definite intent regarding a specified ordering of such alternatives.[57]

We wrote at length about the need for, and appropriateness of, Backstop Retention Rulings in the March 2024 Report and the July 2024 Report.[58] We continue to believe they are a critical feature of any section 355 PLR program, necessary to provide taxpayers certainty that Delayed

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Treasury, that the retention of stock or securities in Controlled "was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax".

[55] *See, e.g.*, PLR 202344013 (Aug. 3, 2023) (transaction step 10 indicating that "*[i]f* Distributing retains the Remainder Shares and does not enter into the Debt-for-Equity Exchange with all of the Remainder Shares within a months following the Distribution Date, Distributing *may* (i) distribute such shares within a months of the Distribution Date as a pro rata dividend on the shares of Distributing common stock . . . , *or* pursuant to an exchange offer . . . , *or* (ii) sell some or all of the Remainder Shares in one or more public or private sales as soon as warranted, taking into account the business purpose for the retention, market and general economic conditions and sound business judgment, but in any event, not later than e years after the Distribution," accompanied by a ruling from the IRS (ruling 16) that "Distributing's continuing ownership of any Remainder Shares potentially until its disposal within e years after the Distribution will not adversely impact the qualification of the Proposed Transaction under sections 355, 368(a)(1)(D), and 361 and will not be in pursuance of a plan having as one of its principal purposes the avoidance of U.S. federal income tax for purposes of section 355(a)(1)(D)" (emphasis added)); PLR 202304005 (Nov. 1, 2022) (Distributing will distribute at least c percent of the Controlled stock pro rata to its holders of common stock or in exchange for such common stock (the "Distribution") (step 4); Distributing will then exchange the retained stock for Distributing debt in a subsequent debt-for-equity exchange (step 6); if there is any retained stock left, Distributing will (i) distribute some or all of such retained stock to its shareholders in a clean-up spin or split and/or (ii) sell the retained shares in one or more public or private sales as soon as warranted (step 7); IRS ruled that Distributing's continuing ownership of any retained stock until its disposition within f years after the Distribution will not adversely impact the qualification of the External Spin-Off under sections 355 and 368(a)(1)(D) and will not be in pursuance of a plan having as one of its principal purposes the avoidance of U.S. federal income tax for purposes of section 355(a)(l)(D)(ii) (ruling 16). *See also* PLR 202343025 (Aug. 2, 2023); PLR 202330002 (May 1, 2023); PLR 202345008 (Nov. 21, 2022); PLR 202218002 (Nov. 19, 2021), *supplemented by* PLR 202244009 (Aug. 11, 2022); PLR 202151001 (Sept. 24, 2021), *supplemented by* PLR 202231004 (May 12, 2022); PLR 202152010 (Oct. 4, 2021); PLR 202139006 (July 6, 2021); PLR 202047007 (Aug. 24, 2020).

[56] Rev. Proc. 2024-24, § 3.03(3)(a)(ii), (b)(iii).

[57] Prop. Treas. Reg. § 1.368-4(g)(13) and (14), Examples 13 and 14.

[58] *See* March 2024 Report, at pp. 30-32, 37-38, 40-47; July 2024 Report, at pp. 31-39.

Section 361 Transfers that cannot be completed in the requisite time period (or initially intended manner) will not cause a Spin-off, in its entirety, to be taxable. In addition, as we observed in the March 2025 Report, any required commitment to carry out potential alternative transactions to dispose of Remainder Shares in a specified order (as opposed to a firm commitment to undertake one or more alternative options each of which furthers the business purpose for the transaction – *e.g.*, deleveraging Distributing) does not appear to further any policy objective and is inconsistent with case law permitting alternative transactions to be properly included in a plan of reorganization.[59] The IRS's historic ruling practice prior to 2024 is consistent with this view.

### ii. Timing for Delayed Section 361 Transfers

As discussed above, Revenue Procedure 2018-53 provided, by its terms, that a favorable ruling was available if a Delayed Section 361 Transfer occurred within 180 days of the Initial Distribution (with business justification required for delays beyond 30 days). However, we understand that many PLRs permitted longer periods (up to 12 months) where sufficient business reasons for the delay were provided,[60] a standard later adopted by Revenue Procedure 2024-24.[61] In the March 2024 Report, we detailed the corporate finance and market considerations that could potentially limit the feasibility of executing a Debt-for-Equity Exchange within 12 months of the Initial Distribution and recommended that the IRS extend its advance ruling guidelines to afford taxpayers additional time to complete such an exchange.[62] In fact, the 2025 Proposed Regulations provided a safe harbor of 24 months,[63] a reasonable standard that adequately navigates the market issues we detailed in the March 2024 Report.

### iii. Standards for a Retention Ruling

Following the issuance of Revenue Procedure 2017-52, the IRS indicated in a statement published on its website that, "in determining whether a retention of stock or securities is in pursuance of a plan having as one of its principal purposes the avoidance of federal income tax, within the meaning of section 355(a)(1)(D)(ii), [the IRS] will continue to follow the guidelines in

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[59] *See* March 2025 Report, at pp. 46-47.

[60] For PLRs specifying an unredacted time period to effectuate a Delayed Section 361 Transfer, *see, e.g.,* PLR 202449006 (Sept. 3, 2024) (representation ss) (Distributing Debt that will be satisfied with the Remainder Shares will be satisfied no later than 12 months after the date of the Distribution); PLR 202244009 (Aug. 11, 2022), *supplementing* PLR 202218002 (Nov. 19, 2021) (supplemental representation 1) (exchange of the Retained Shares for Distributing Debt within 365 days following the date of the Distribution); PLR 202231004 (May 12, 2022), *supplementing* PLR 202151001 (Sept. 24, 2021) (step 3) (same); PLR 202047007 (Aug. 24, 2020) (step iv) (Distributing will transfer the Retained Shares to, among other potential transferees, creditors in exchange for a portion of Distributing Debt within 12 months following the Initial Distribution).

[61] *See* Rev. Proc. 2024-24, § 3.03(2)(b)(ii) (alternative representation 1B) and (c) (requiring an explanation of the business reasons for a delay beyond 90 days (including any regulatory, business, or market constraints that require the extended duration)).

[62] *See* March 2024 Report, at pp. 8-13, 25-26.

[63] Prop. Treas. Reg. § 1.368-4(d)(3)(i)(B).

Appendix B of [Revenue Procedure] 96-30 . . . . Thus, [the IRS] will continue to rule in accordance with prior practice as to the application of section 355 to the distribution of the stock, or stock and securities, that are not retained."[64] The statement was removed following the issuance of Revenue Procedure 2024-24 and has not been reinstated following the issuance of Revenue Procedure 2025-30.

Consistent with the IRS statement, PLRs that were issued prior to Revenue Procedure 2024-24 (including Backstop Retention Rulings) applied the standards of Revenue Procedure 96-30.[65] In the March 2024 Report, we cautioned against applying a heightened business purpose standard to PLR requests involving Retentions.[66] Revenue Procedure 2024-24 expanded upon the prior requirements for Retention rulings previously set forth in Revenue Procedure 96-30, introducing a new factor-based test for determining whether a Retention has a tax avoidance purpose and requiring in certain cases a showing of a "business exigency" that directly causes the need for the Retention.[67] We expressed our disagreement with this new business purpose standard in the July 2024 Report.[68] Consistent with our commentary in the March 2024 Report and the July 2024 Report, we believe that the IRS's pre-2024 ruling standards for PLRs on Retentions (including Backstop Retention Rulings), as previously embodied in Appendix B of Revenue Procedure 96-30, were sensible and worked well.

### 2. Key Issues Relating to Creditor Transactions

#### a. Fluctuating Balance Arrangements

Revenue Procedure 2018-53 generally required that the Distributing Debt that would be assumed or satisfied with Section 361 Consideration be incurred before (1) the request for any relevant ruling was submitted and (2) no later than 60 days before the earliest of the following dates: (i) the date of the first public announcement, (ii) the date of the entry by Distributing into a binding agreement, and (iii) the date of approval by the board of directors of Distributing, in each

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[64] IRS statement regarding private letter rulings on certain corporate transactions (published Oct. 13, 2017), *previously available at* https://www.irs.gov/newsroom/irs-statement-regarding-private-letter-rulings-on-certain-corporate-transactions.

[65] *See*, *e.g.*, PLR 202424004 (Dec. 20, 2023); PLR 202345008 (Nov. 21, 2022); PLR 202344013 (Aug. 3, 2023); PLR 202343025 (Aug. 2, 2023); PLR 202330002 (May 1, 2023); PLR 202304005 (Nov. 1, 2022); PLR 202218002 (Nov. 19, 2021), *supplemented by* PLR 202244009 (Aug. 11, 2022); PLR 202152010 (Oct. 4, 2021); PLR 202151001 (Sept. 24, 2021), *supplemented by* PLR 202231004 (May 12, 2022); PLR 202145027 (Aug. 20, 2021); PLR 202139006 (July 6, 2021); PLR 202047007 (Aug. 24, 2020); PLR 201818010 (May 22, 2017); PLR 201731004 (Feb 16, 2017); PLR 201703012 (Sept. 20, 2016); PLR 201651010 (Sept. 13, 2016); PLR 201634010 (Mar. 1, 2016); PLR 201612012 (Apr. 1, 2015).

For a detailed discussion of prior PLR practice on Retentions, *see* March 2024 Report, at pp. 38-40.

[66] *See* March 2024 Report, at pp. 47-49.

[67] *See* Rev. Proc. 2024-24, § 3.03(3)(b)-(e).

[68] July 2024 Report, at pp. 44-46.

case, of the Divisive Reorganization or a similar transaction[69] (such earliest applicable date, the "**EAD**"). Distributing Debt incurred after the EAD could still qualify as historic Distributing Debt if the taxpayer established that the borrowing and the assumption or satisfaction of the new Distributing Debt would result in an allocation of historic Distributing Debt between Distributing and Controlled or an exchange of historic Distributing Debt for Controlled stock.[70] For example, the taxpayer could demonstrate that the new Distributing Debt was "replacement debt" for historic Distributing Debt under the principles of Revenue Ruling 79-258,[71] (the "**Refinancing Exception**"), or by establishing that the proceeds of the new Distributing Debt were to be used in Controlled's business.[72] Revenue Procedure 2025-30 appropriately reinstates the Refinancing Exception.

In applying the Refinancing Exception, PLRs issued under Revenue Procedure 2018-53 regularly allowed for the use of Section 361 Consideration to repay amounts outstanding under fluctuating balance arrangements, such as commercial paper programs and revolving credit agreements,[73] an approach we recommended in the March 2020 Report with respect to commercial paper.[74] In the March 2025 Report, we noted that revolvers and commercial paper programs should be treated similarly, given their similar substance.[75] For the reasons stated in the March 2020 and March 2025 Reports, the IRS's historical practice of applying the Refinancing Exception

[69] Rev. Proc. 2018-53, § 3.04(4).

[70] *Id.*

[71] 1979-2 C.B. 143.

[72] Rev. Proc. 2018-53, § 3.04(4). In contrast, Revenue Procedure 2024-24 contained no explicit reference to the Refinancing Exception or the principles of Revenue Ruling 79-258. In the July 2024 Report, we expressed our strong disagreement with this approach, recommending that that IRS resume issuing favorable PLRs in circumstances where refinancing debt incurred after the EAD is satisfied with Section 361 Consideration. July 2024 Report, at pp. 68-80. The 2025 Proposed Regulations provided that debt incurred after the EAD may be eligible for assumption or repayment with Section 361 Consideration, provided that certain requirements were satisfied. Prop. Treas. Reg. §§ 1.357-3(d)(4)(ii)(B); 1.361-5(c)(2)(ii). In the March 2025 Report, we noted the numerous technical difficulties presented by the 2025 Proposed Regulations' approach to defining eligible Refinancing Debt. *See* March 2025 Report, at pp. 84-88; 103-106.

[73] *See, e.g.*, PLR 202505001 (Oct. 31, 2024) (step 7) (providing that Distributing will use a portion of the cash received from Controlled to satisfy, among other obligations, a portion of its obligations under its revolving credit facility); PLR 202345008 (Nov. 21, 2022) (step 13) (providing that Distributing will use an aggregate amount of cash equal to the cash received from Controlled to satisfy, among other obligations, commercial paper); PLR 202231013 (May 10, 2022) (step 8) (providing that Distributing will use an amount of cash equal to the amount of cash received from Controlled to satisfy, among other obligations, borrowings under Distributing's commercial paper program); PLR 202224002 (Dec. 28, 2021) (step 8b) (same); PLR 202145027 (Aug. 20, 2021) (step 10) (same); PLR 202047007 (Aug. 24, 2020) (step v) (same); PLR 202019016 (Feb. 3, 2020) (step 8) (same); PLR 202026001 (Dec. 13, 2019) (steps lxv and lxxiii) (same); PLR 201948001 (Aug. 30, 2019) (step xxii) (same); PLR 202051011 (May 13, 2019) (step 6) (same), *supplemented by* PLR 202051009 (Mar. 17, 2020) (same).

[74] March 2020 Report, at pp. 27-28 (Case Study 10).

[75] *See* March 2025 Report, at p. 105, in response to the approach taken in the 2025 Proposed Regulations of applying refinancing principles to revolvers only and not to commercial paper. *See* Prop. Treas. Reg. § 1.361-5(c)(2)(iii).

to both revolvers and commercial paper programs is a sensible application of the Debt Allocation Principle and the Economic Parity Principle.

One issue that was not specifically addressed in Revenue Procedure 2018-53 is the maximum amount of the revolver or commercial paper balance properly treated as historic Distributing Debt eligible for repayment with Section 361 Consideration. Instead, the total amount of Distributing Debt eligible for assumption or satisfaction was limited to Distributing's historic average debt levels measured over the eight fiscal quarters preceding the date of board approval for the Spin-off (the "**Eight-Quarter Average Limitation**").[76] As we observed in the March 2025 Report, the Eight-Quarter Average Limitation has historically been considered an alternative test for rolling debt amounts for PLR purposes, when direct tracing to historical Distributing debt in existence prior to an applicable date was either not possible or not required (for example, in connection with the repayment of rolling commercial paper or trade payables).[77] Consistent with this observation, many published PLRs upholding the repayment of Distributing Debt outstanding under fluctuating balance arrangements do not appear (in the non-redacted portions of such PLRs) to further limit or specify the balance eligible for repayment.[78] While more recent PLRs have indicated a maximum amount, specific details are generally redacted and no unified approach can be clearly gleaned from these rulings.[79] To the extent that the government believes that additional standards are needed for fluctuating balance arrangements, we note that there are instances where Distributing's business is subject to seasonal fluctuations that may artificially deflate (or inflate) its commercial paper or revolver balances as of the EAD, with such balances fluctuating in the ordinary course of business for reasons wholly unrelated to the Spin-off. In such cases, consistent with the Refinancing Exception, taxpayers should have the opportunity to demonstrate that a departure from the general ruling standard is appropriate.

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[76] Rev. Proc. 2018-53, § 3.04(5).

[77] March 2025 Report, at pp. 110-111.

[78] The 2025 Proposed Regulations limited eligible revolver balances to the lesser of (i) the balance as of the EAD, and (ii) the lowest balance between the EAD and the date on which Distributing has distributed Control of Controlled (*see* Prop. Treas. Reg. § 1.361-5(c)(3)(ii)(C)(1), (2)), which seems inconsistent with the Debt Allocation Principle and the policies animating the Refinancing Exception insofar as increases in the outstanding balance after the EAD are attributable to borrowings that refinance historic debt of Distributing.

[79] *See, e.g.*, PLR 202449006 (Sept. 3, 2024) (step 54) (providing that Distributing will use cash received from Controlled to, among other things, satisfy Distributing Debt, which includes the lesser of the amount outstanding on its revolving credit facility on Date 2 and the amount outstanding on the date of the Distribution); PLR 202441010 (July 5, 2024) (step 6) (providing that Distributing will use cash received from Controlled to, among other things, repay or repurchase debt from third-party lenders, including the Revolver (term defined in the legend) in an amount of up to a specified amount); PLR 202344013 (Aug. 3, 2023) (step 6) (providing that Distributing will use cash received from Controlled to, among other things, repay principal, interest, or premium on Distributing Debt, including the Revolver Amount (term defined in the legend)); PLR 202339007 (June 29, 2023) (providing that any cash received by Distributing from Controlled is expected to be used to first repay outstanding commercial paper, in an amount not to exceed the lesser of the commercial paper balance outstanding on Date A (which is 60 days prior to the public announcement of the transactions) or the commercial paper balance outstanding as of the date of filing of the ruling request).

### b. Mechanics for Implementing Debt-for-Equity Exchanges and Debt-for-Debt Exchanges

As detailed in the Prior Reports, taxpayers wishing to avail themselves of section 361(c) in the context of Divisive Reorganizations typically need to seek out financial intermediaries to facilitate a desired Debt-for-Equity or Debt-for-Debt Exchange, with two models having emerged for implementing such exchanges: the "**Intermediated Exchange Model**"[80] and the "**Direct Issuance Model**".[81] The government has studied these mechanics at various points over the years, including prior to the issuance of Revenue Procedure 2018-53.[82]

Revenue Procedure 2018-53, on its face, appeared to require taxpayers to adopt the Intermediated Exchange Model if a PLR was desired.[83] In practice, however, prior to the issuance of Revenue Procedure 2024-24, the IRS routinely blessed Debt-for-Equity Exchanges and Debt-for-Debt Exchanges employing the Direct Issuance Model.[84]

We wrote extensively in the Prior Reports on the appropriateness of the Direct Issuance Model[85] and continue to believe that the IRS's prior practice of allowing direct issuances is consistent with both the Debt Allocation Principle and the Economic Parity Principle, primarily

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[80] Under the Intermediated Exchange Model, the intermediary purchases Distributing's debt from historical Distributing creditors, and Distributing subsequently transfers Controlled stock and/or securities to the intermediary in exchange for the Distributing debt acquired by the intermediary.

[81] Under the Direct Issuance Model, Distributing uses its Controlled stock or securities to repay debt directly issued to the intermediary (the "**Exchange Debt**") and uses the proceeds of the Exchange Debt to repay its historical debt within a specified time period, with the ultimate outcome being the same as the Intermediated Exchange Model.

[82] *See* March 2024 Report, at pp. 16-19, for a detailed comparison of the Intermediated Exchange Model and the Direct Issuance Model and the IRS's historic ruling practice with respect thereto.

[83] *See* Rev. Proc. 2018-53, § 3.04(3) (requiring a representation that that any financial intermediary which receives Section 361 Consideration in satisfaction of Distributing debt must not have acquired the Distributing debt from Distributing, Controlled, or any other related person).

[84] *See, e.g.*, PLR 202344013 (Aug. 3, 2023); PLR 202343025 (Aug. 2, 2023); PLR 202339007 (June 29, 2023); PLR 202330002 (May 1, 2023); PLR 202322006 (Mar. 6, 2023); PLR 202345008 (Nov. 21, 2022); PLR 202304005 (Nov. 1, 2022); PLR 202249011 (May 10, 2022); PLR 202224002 (Dec. 28, 2021); PLR 202218002 (Nov. 19, 2021), *supplemented by* PLR 202244009 (Aug. 11, 2022); PLR 202151001 (Sept. 24, 2021), *supplemented by* PLR 202231004 (May 12, 2022); PLR 202231013 (May 10, 2022); PLR 202139006 (July 6, 2021); PLR 202127003 (Apr. 14, 2021).

In a reversal of this ruling practice, Revenue Procedure 2024-24 foreclosed the possibility of obtaining a PLR with respect to the Direct Issuance Model. *See* Rev. Proc. 2024-24, § 3.05(5)(b)(ii) (alternative representations 17A and 17B). However, the 2025 Proposed Regulations generally allowed both intermediated exchanges and direct issuances, subject to various requirements, including that the intermediary hold the historic Distributing debt acquired under the Intermediated Exchange Model or the Distributing debt newly issued under the Direct Issuance Model for at least 30 days before the distribution of Control of Controlled. *See* Prop. Treas. Reg. § 1.361-5(e)(3) and (4). It did not provide any standards regarding the length of time (if any) the intermediary or creditor must hold the relevant debt before entering into the exchange agreement with Distributing.

[85] *See* March 2024 Report, at pp. 19-25; July 2024 Report, at pp. 86-88.

under the theory that the Exchange Debt is a refinancing of historic Distributing Debt (*i.e.*, because the proceeds of the Exchange Debt are used to repay historic Distributing Debt and, thus, the intermediary steps into the shoes of the historic creditor of Distributing). Under this theory, arguably, no holding period is necessary prior to the parties entering into the exchange agreement to establish the intermediary's status as a creditor or the status of the Exchange Debt as bona fide, non-transitory debt of Distributing. This theory supports the IRS's prior practice of requiring the Exchange Debt to be outstanding for a minimum of one day before Distributing and the intermediary enter into the exchange agreement.[86] As discussed in the March 2024 Report, so long as the Exchange Debt, in substance, refinances historic Distributing Debt, we do not believe that step transaction principles should be employed to disregard the Exchange Debt as transitory, regardless of the length of time for which the Exchange Debt remains outstanding.[87]

However, as we acknowledged in the March 2024 Report, the longer the time period between the issuance of the Exchange Debt and the repayment of historic Distributing Debt, the more attenuated the characterization of the transaction as a refinancing of historic Distributing Debt. In these circumstances, with the addition of certain other safeguards, the permissibility of repaying the Exchange Debt with Section 361 Consideration also would be supported by another technical pathway: i.e., by establishing the independent significance of the Exchange Debt. For example, if Distributing needs more time to repay its historic debt with the Exchange Debt proceeds, *e.g.*, to efficiently engage in liability management because of the nature of the historic Distributing Debt and requirements or limitations associated with its repayment, consideration could be given to requiring that the Exchange Debt remain outstanding for a somewhat longer period before the parties enter into the exchange agreement and effectuate the Debt-for-Equity Exchange or Debt-for-Debt Exchange.[88]

### c. New Borrowings by Distributing

Revenue Procedure 2018-53 required taxpayers to submit a representation that "Distributing will not replace any Distributing Debt that will be assumed or satisfied with previously committed borrowing, other than borrowing in the ordinary course of business pursuant to a revolving credit agreement or similar arrangement."[89] It further provided that, if Distributing

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[86] *See, e.g.*, PLR 202339007 (June 29, 2023) (step 53(ii)); PLR 202330002 (May 1, 2023) (step 16); PLR 202244009 (Aug. 11, 2022) (step 2), *supplementing* PLR 202218002 (Nov. 19, 2021); PLR 202231013 (May 10, 2022) (step 3); PLR 202231004 (May 12, 2022) (step 2), *supplementing* PLR 202151001 (Sept. 24, 2021); PLR 202139006 (July 6, 2021) (step (ii)).

[87] *See* March 2024 Report, at pp. 19-25. As we noted in the March 2024 Report, intermediary financial institutions treat the Exchange Debt as bona fide indebtedness notwithstanding that it is expected to remain outstanding for a limited time, undertaking customary diligence and obtaining lending committee approval before the loan can be issued. *See id.* at pp. 22-23.

[88] For example, in certain cases, the Exchange Debt could be required to remain outstanding for a total of 5-10 days (*see* March 2025 Report, at p. 109), or potentially the prior "5/14" standard could be applied (*see* March 2024 Report, at p. 24).

[89] Rev. Proc. 2018-53, § 3.04(7).

is a prospective borrower under a revolving credit agreement or similar arrangement, it should be established that the agreement or arrangement was not entered into, and the amounts of borrowing provided for therein were not increased, in a transaction related to the Spin-off.[90] Revenue Procedure 2018-53 indicated that this representation was intended to establish that the application of section 361 to the transaction is consistent with the purpose of section 361.[91] PLRs issued under Revenue Procedure 2018-53 allowed exceptions for previously committed borrowings to fund an acquisition or capital expenditure unrelated to the Spin-off.[92] Revenue Procedure 2024-24 modified the "previously committed" standard, widening the net of the required representation to take into account borrowings that, prior to the Spin-off, were "anticipated" to occur.[93]

In the March 2020 Report, we indicated our belief that, in the context of formulating required representations regarding new borrowings by Distributing to support a PLR, the "previously committed" representation "[struck] a reasonable balance," considering (1) the relative rarity of replacement of Distributing Debt through a non-committed post-Spin-off borrowing and (2) the difficulty in identifying clear principles that would distinguish the cases in which a planned future borrowing by Distributing would lead to abusive results, without simultaneously preventing ordinary course or extraordinary borrowings that should be permissible or requiring a very intrusive inquiry into complicated capital management matters that the government is not well-positioned to administer effectively.[94] We also observed that the IRS should be willing to provide a PLR where a post-Spin-off borrowing by Distributing occurs pursuant to a pre-Spin-off financing commitment, even if not under a revolving credit agreement or similar arrangement, that is demonstrably independent of the Spin-off plan (*e.g.*, entered into as a result of changed

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[90] *Id.*

[91] *Id.* In the March 2025 Report, we observed that the proper inquiry to assess whether a new borrowing results in abuse of section 361 is whether Section 361 Consideration has been retained, rather than transferred (*i.e.*, whether Distributing's transfer of Section 361 Consideration to creditors is rendered transitory as the result of a corresponding, prearranged transfer of new borrowing proceeds from the same (or potentially a different) creditor to Distributing) (the "**Transitory Transfer Concern**"), instead of whether Distributing has replaced debt satisfied with Section 361 Consideration. March 2025 Report, at pp. 116-120. Absent this consideration, the Code does not impose greater limitations on subsequent borrowings by Distributing.

[92] *See, e.g.*, PLR 202139006 (July 6, 2021) (modified representation 7) (allowing an exception for previously committed borrowing to finance acquisitions unrelated to the Distribution pursuant to a revolving credit agreement or similar arrangement that would have been entered into whether or not Distributing decided to engage in the Distribution); PLR 202224012 (Feb. 14, 2020) (modified representation 7) (providing an exception for "a borrowing pursuant to the Revolver to fund an acquisition of assets to be used in Business B").

[93] Rev. Proc. 2024-24, § 3.05(12)(a). Exceptions remained available for (i) ordinary course borrowings pursuant to a revolver, but only if the borrowing would have been incurred without regard to the Spin-off or a related transaction, and (ii) borrowings resulting from non-ordinary course events unrelated to the Spin-off arising from changed circumstances that were not anticipated prior to the Spin-off. *Id.*, § 3.05(12)(b). The 2025 Proposed Regulations generally would have reduced the amount of Section 361 Consideration treated as transferred by Distributing to its creditors by "transitorily eliminated" debt equal to the amount of borrowing that Distributing (or a related person) "expects or is committed to, directly or indirectly," before the EAD. Prop. Treas. Reg. § 1.361-5(f)(1) and (2).

[94] March 2020 Report, at pp. 32-34.

circumstances that were unanticipated at the time the Spin-off was first announced).[95] In our experience, the "previously committed" representation (now reflected anew in Revenue Procedure 2025-30) worked well to capture potentially abusive cases (*i.e.*, those implicating the Transitory Transfer Concern) without unnecessarily impeding the sophisticated treasury processes undertaken by companies to effectively manage their leverage.

Consistent with the foregoing, as discussed in the July 2024 Report, an alternative standard focusing on mere anticipation is unworkable (*e.g.*, because the function of a corporate treasury department essentially always includes anticipating future borrowings). Any expansion of the required representation to address non-committed replacement borrowings should be narrowly drawn to address fact patterns that are more appropriately recast under step transaction principles, focusing on fact patterns and attendant circumstances indicating that Distributing has a clear plan to borrow new funds for the purpose of unwinding the de-leveraging undertaken pursuant to the Divisive Reorganization (*e.g.*, management is concerned the transfer of Section 361 Consideration to creditors will cause Distributing to be under-levered from a capital markets perspective and plans to address this concern by borrowing shortly after such repayment in order to replace the Section 361 Consideration transferred in repayment of Distributing Debt, potentially engaging in hedging against market risk during the interim).[96]

[95] March 2020 Report, at p. 35 (Case Study 16). We subsequently proposed additional alternative representations in response to the "anticipated" standard set forth in Revenue Procedure 2024-24 (*see* July 2024 Report, at pp. 89-104) and improvements to the transitory debt elimination framework introduced in the 2025 Proposed Regulations (*see* March 2025 Report, at pp. 116-136).

[96] *See* March 2020 Report, at p. 34. *See also* March 2025 Report, at pp. 127-130; July 2024 Report, at pp. 97-98.