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January 22, 2007

The Honorable Eric Solomon
Assistant Secretary (Tax Policy)
Department of the Treasury
Room 3120 MT
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

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

Re: Report on Reportable Transaction Disclosure and List Maintenance Regulations

Dear Assistant Secretary Solomon and Commissioner Everson:

I am pleased to submit New York State Bar Association Tax Section Report No. 1126 on the proposed regulations regarding reportable transaction disclosure and list maintenance rules (the "Proposed Regulations").

As you know, the Tax Section supports your efforts to promote transparency and disclosure with respect to potentially abusive transactions. We recognize the difficulties involved in creating adequate disclosure obligations that do not overburden taxpayers, advisors and the marketplace in general and we commend your continuing efforts to refine the disclosure and listing rules to achieve an appropriate balance in this regard. We believe that many of the amendments in the Proposed Regulations, such as the elimination of the

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book-tax difference filter, modification of the threshold amount of gross income for becoming a material advisor and clarification of the form and content for disclosures and lists will help to clarify and simplify operation of the disclosure and listing regime.

In addition, the new transaction of interest (“TOI”) category will help Treasury to gather information about specific transactions that do not fall within one of the reportable transaction filters while, at the same time, avoiding many of the burdens that arise from listing a transaction. We generally support the creation of a new reportable transaction category for TOIs. However, we are concerned that the lack of guidelines for what constitutes a TOI, combined with the substantially similar element of the TOI definition and the retroactive application of a TOI designation, could unfairly surprise and burden taxpayers and advisors and could chill the market for, or result in the unwinding of, transactions that ultimately are determined to be unobjectionable. To mitigate these adverse consequences, we have suggested that the Treasury and the Service consider the following modifications to the Proposed Regulations:

- Include in the regulations an explanation of the basic criteria for designating a transaction as a TOI;
- Publish advance notice of transactions that Treasury is considering designating as TOIs to give Treasury an opportunity to collect comments from taxpayers and practitioners and to provide notice to taxpayers;
- Limit the time-period for a TOI designation to twenty-four months unless Treasury affirmatively acts to extend the designation; and
- Limit the period of retroactivity to twenty-four months.

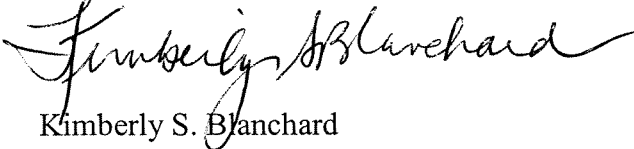
We also have comments regarding that portion of the definition of material aid or assistance set forth in Prop. Reg. § 301.6111-3(b)(2) that includes tax statements made to a material advisor. We recognize that, in certain circumstances, it can be helpful for Treasury to obtain disclosures and lists from material advisors who make tax statements to other material advisors involved in a transaction. At the same time, we are concerned that the proposed definition will include tax statements made by an advisor on one side of a transaction to an advisor on another side of a transaction who is adverse and about whom the first advisor has no information. In such cases, it may be awkward, difficult and sometimes impossible for the first advisor to know whether the other advisor is a material advisor and, if so, to obtain the necessary information required by the disclosure and listing rules. Accordingly, we have suggested a modification to the definition of what constitutes material aid or assistance to address this potential problem.

In addition, we have suggested technical revisions to the rules regarding the content of disclosure statements and lists to address certain difficulties and uncertainties inherent in the current formulation of the Proposed Regulations. We also have recommended a special rule regarding the timing of disclosure for shareholders, partners and beneficiaries who do not receive a K-1 indicating that they have participated in a

reportable transaction until after their tax return is due. Finally, we have a comment regarding the impact that the rules regarding reportable transaction numbers have on the attorney-client relationship.

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,

A handwritten signature in cursive script that reads "Kimberly S. Blanchard". The signature is written in black ink and is positioned above the printed name and title.

Kimberly S. Blanchard
Chair

Enclosure

Cc: Michael J. Desmond, Tax Legislative Counsel,
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