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January 23, 2004

The Honorable Pamela F. Olson
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

Dear Secretary Olson and Commissioner Everson:

I am pleased to submit the New York State Bar Association Tax Section's Report No. 1048 on Proposed Regulations relating to Partnership Options and Convertible Securities. This report addresses Proposed Regulations issued by the Treasury Department and the Internal Revenue Service on January 22, 2003 relating to the federal income tax treatment of non-compensatory options and other rights to acquire a partnership interest. The Proposed Regulations follow the issuance of Notice 2000-29, which requested public comment on the appropriate tax treatment of non-compensatory options as well as compensatory options. The Tax Section has previously submitted comments in response to Notice 2000-29.

We believe the Proposed Regulations are a significant and important step towards clarifying the tax rules governing the issuance and exercise of partnership options. We are generally supportive of the Proposed

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Regulations, including the provision relating to corrective allocations following the exercise of an option.

Our comments are largely technical in nature. We do, however, make a proposal concerning corrective allocations that would narrow their scope slightly to carve out a small number of cases where we think they are not warranted.

We also comment substantively on the proposed rule that would require the characterization of a partnership option to be retested upon transfer. We favor, as a general rule, the more customary approach of not retesting the basic characterization of an instrument for tax purposes merely because ownership has been transferred. We appreciate that certain options, particularly those that have come into the money, can present opportunities for abuse. We would recommend that these situations be dealt with by more targeted rules rather than a general retesting rule.

We will shortly be submitting a companion report addressing the tax considerations relating to compensatory options. Again, we commend the Treasury and IRS for taking on this difficult project to provide guidance in an area that is presently largely uncharted.

If you have any questions regarding the report, please do not hesitate to contact us.

Respectfully submitted,

A handwritten signature in black ink that reads "Andrew N. Berg". The signature is written in a cursive, slightly slanted style.

Andrew N. Berg
Chair

cc: Eric Solomon, Deputy Assistant Secretary, Regulatory Affairs,
Department of Treasury

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