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February 19, 2004

Mr. Gregory F. Jenner  
Acting Assistant Secretary (Tax Policy)  
Department of the Treasury  
Room 3120 MT  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220

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

Dear Acting Assistant Secretary Jenner and Commissioner Everson:

I am pleased to submit the New York State Bar Association Tax Section's Report No. 1053 with respect to the tax treatment of foreign currency denominated contingent payment debt instruments and multicurrency debt instruments. This report addresses the Proposed Regulations issued by the Treasury Department and the Internal Revenue Service on August 28, 2003 relating to the federal income tax treatment of such instruments.

The Proposed Regulations provide that such debt instruments should generally be accounted for by applying the general rules of Treasury Regulations Section 1.988-2 while incorporating the "comparable yield" and "positive and negative adjustment" provisions of Treasury Regulations Section 1.1275-4. As noted in the report, we generally agree with this approach and we commend the Service and Treasury for issuing much needed guidance regarding the taxation of such instruments.

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Mr. Gregory F. Jenner  
The Honorable Mark W. Everson

Our comments primarily relate to three changes that we believe should be made when the Proposed Regulations are finalized. First, we recommend that the final regulations allow a nonfunctional currency contingent debt instrument that is not a multicurrency debt instrument to qualify as a variable rate debt instrument for tax purposes under certain circumstances. Second, we recommend that the regulations include an anti-abuse rule to prevent a taxpayer from structuring a multicurrency debt instrument and a related hedge in a manner so as to enable the taxpayer to defer inappropriately the inclusion of original issue discount with respect to the instrument. Third, we recommend that the regulations provide that a currency shall only be treated as the predominant currency of a multicurrency debt instrument if the present value of the payments that are denominated in, or determined by reference to such currency, exceeds 50% of the present value of all of the payments with respect to the multicurrency debt instrument.

In addition, our comments include certain technical comments and requests for clarification as well as responses to specific requests for comments that were included in the preamble to the Proposed Regulations.

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

Respectfully submitted,



Lewis R. Steinberg  
Chair

cc: Eric Solomon, Deputy Assistant Secretary, Regulatory  
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